Des Moines
WATERLAND CITY

AGENDA
DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Suite C
Des Moines, Washington
Thursday, July 10, 2025 - 5:00 PM

CALL TO ORDER

CITY COUNCIL COMMITTEE OF THE WHOLE
5:00 p.m. - 5:50 p.m.

COMMITTEE OF THE WHOLE ITEMS

Item 1. SURFACE WATER MANAGEMENT UTILITY TREE PRESERVATION PROGRAM
Surface Water Management Utility Tree Preservation Program

Item 2. IMPLEMENTATION OF WA DEPARTMENT OF COMMERCE GRANT FOR ECONOMIC ANALYSIS OF THE ELECTRIC WATER TAXI PILOT PROGRAM
Implementation of WA Department of Commerce Grant for Economic Analysis of the Electric Water Taxi Pilot Program

CITY COUNCIL REGULAR MEETING
6:00 p.m. - 9:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

COMMENTS FROM THE PUBLIC

REGIONAL COMMITTEE REPORT

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

Item 1. INVESTMENT POLICY UPDATE
Staff Presentation By: Finance Director Jeff Friend

Item 2. CREDIT CARD POLICY UPDATE
Staff Presentation By: Finance Director Jeff Friend

CONSENT AGENDA

Item 1. APPROVAL OF VOUCHERS
Motion: To approve the payment vouchers through June 26, 2025 and payroll transfers through June 20, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#1203-12097	$907,284.98
Wires	#3003-3013	$480,416.41
Accounts Payable Checks	#166831-166878	$348,592.94
Payroll Checks	#19951-19952	$2,774.67
Payroll Advice	#13928-14087	$469,618.88
Payroll Advice	#14088-14088	$1,476.77

Total Checks and Wires for A/P & Payroll: $2,210,164.65

Approval of Vouchers

Item 2. INVESTMENT POLICY UPDATE
Motion 1: To enact Draft Ordinance No. 25-042 relating to municipal finance, repealing Des Moines Municipal Code Chapter 3.12 Investment Policy.

Motion 2: To enact Draft Resolution No. 25-043 relating to municipal finance, adopting the Draft Investment Policy.

Investment Policy Update

Item 3. CREDIT CARD POLICY UPDATE
Motion: To approve Draft Ordinance No. 25-048 relating to municipal finance, amending Des Moines Municipal Code Chapter 3.20 Credit Card Policy.

Credit Card Policy Update

Item 4. THERAPEUTIC COURT GRANT UPDATE
Motion: To accept the grant from the Washington Administrative Office of the Courts in the amount of $33,500 and authorize the Director of

Court Administration to sign the contract substantially in the form as attached.

Therapeutic Court Grant Acceptance

Item 5. 10TH AND 270TH CONSTRUCTION CONTRACT AWARD
Motion: To approve the Public Works Contract with Interstate Excavating LLC for the 10th and 270th Pipe Project, in the amount of $89,773.56, authorize a project construction contingency in the amount of $15,000, and further authorize the City Manager to sign said Contract substantially in the form as submitted.

10th and 270th Construction Contract Award

UNFINISHED BUSINESS

Item 1. REDONDO FISHING PIER REPLACEMENT PROJECT - CONSTRUCTION CONTRACT AND CONSULTANT SERVICES AGREEMENT AWARD
Staff Presentation By: Principal Engineer Khai Le

Redondo Fishing Pier Replacement Project - Construction Contract and Consultant Services Agreement Award

Item 2. CITY COUNCIL PROTOCOL MANUAL UPDATE AND ADOPTION
Staff Presentation By: City Attorney Tim George

City Council Protocol Manual Update and Adoption

NEW BUSINESS

Item 1. ANTI-CRUISING ORDINANCE
Staff Presentation by: Assistant City Attorney Matthew Hutchins

Anti-Cruising Ordinance

Item 2. CITY STRATEGIC PLAN & FACILITATION SERVICES - PROFESSIONAL SERVICES AGREEMENT WITH RAFTELIS
Staff Presentation By: City Manager Katherine Caffrey

City Strategic Plan & Facilitation Services - Professional Services Agreement with Raftelis

Item 3. CONSULTANT SERVICES CONTRACT WITH NELSON\NYGAARD
Presentation By: Consultant Dan Eernissee

Consultant Services Contract with Nelson-Nygaard

Item 4. TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH HYPERFIBER
Staff Presentation By: Assistant City Attorney Matthew Hutchins

Telecommunications Franchise Agreement with HyperFiber

Item 5. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

NEXT MEETING DATE

July 24, 2025 City Council Regular Meeting

ADJOURNMENT

Projected Future Agenda Items

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

COMMITTEE OF THE WHOLE

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Surface Water Management Utility Tree Preservation Program

ATTACHMENTS:
1. PowerPoint Presentation

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: July 2, 2025

CLEARANCES:
[ ] City Clerk ____
[X] Community Development ____
[ ] Courts ____
[X] Finance ____
[ ] Human Resources ____
[X] Legal /s/TG
[ ] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[X] Public Works ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

The purpose of this agenda item is to provide the City Council with an information update regarding the Surface Water Utility's feasibility study on developing a tree preservation program.

Background

The National Pollutant Discharge Elimination System (NPDES) is a water quality permit program first introduced to the City of Des Moines in 2007. Des Moines recently began implementing the 2024-2029 Western Washington Phase II permit, which outlines requirements to prevent, reduce, and eliminate pollutants from entering the City's surface water system.

As part of this new permit, the City must meet several new requirements related to tree canopy:

1. Tree Canopy GIS
"No later than December 31, 2028, begin mapping of Permittee-owned or operated properties with tree canopy based on available, existing data."

2. Tree Codes & Policy
"No later than December 31, 2028, Permittees shall adopt tree canopy goals and policies to support stormwater management and water quality improvement in receiving waters."

3. Tree Management Implementation
"No later than December 31, 2028, Permittees shall implement tree canopy goals and policies to support stormwater management and water quality improvement in receiving waters."

At the June 27th, 2024 Council meeting a contract with Parametrix Inc. was approved to support the City in addressing these new NPDES permit requirements.

Discussion

Since project initiation, Parametrix has supported Des Moines in completing a GIS-based inventory of trees identified as beneficial for stormwater management and water quality protection.

This inventory represented the first phase of the project, serving as a foundation to guide discussions between City staff and Parametrix around long-term stormwater tree canopy management goals. Following a review of the NPDES Permit, background materials, literature, and outcomes from City staff workshops, the consensus was that the highest priority goal should be: Protecting Existing Stormwater Trees on Public Land. Citywide, Des Moines has approximately 29% tree canopy cover. Of all land owned by the City (which makes up 5% of the total land area), this land contains 16% of the total tree canopy. Protecting this City-owned canopy represents a meaningful and achievable first step toward meeting tree preservation objectives.

The City and Parametrix are now evaluating the feasibility of transferring ownership, either in part or in whole, of City owned parcels to the Surface Water Utility for long-term protection and management. This evaluation includes assessing each parcel's suitability for transfer and its value in terms of tree canopy preservation.

Transferring these parcels to the Surface Water Utility would also shift the cost of ownership and maintenance from other City departments. These costs include property taxes, noxious vegetation control, canopy maintenance, hazard tree removal, and homeless encampment cleanups. City staff, in collaboration with financial consultants from FCS Group, are evaluating how these added responsibilities would impact the Utility's budget and rate structure. A one-time rate adjustment may be warranted to accommodate the additional costs.

Next steps include finalizing the list of recommended parcel transfers and developing a draft Tree Preservation Program. The current goal is to complete the program proposal by the end of 2025, begin parcel transfer in 2026, and launch operational & maintenance efforts at the start of 2027.

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Surface Water Management Tree Preservation Program

Purpose of Today's Presentation

- Outline permit-driven tree canopy requirements.
- Share progress on feasibility study with Parametrix.
- Preview recommended next steps and financial considerations.

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Background – NPDES Permit Requirements

- 1. Tree Canopy GIS

  "No later than December 31, 2028, begin mapping of Permittee-owned or operated properties with tree canopy based on available, existing data."

- 2. Tree Codes & Policy

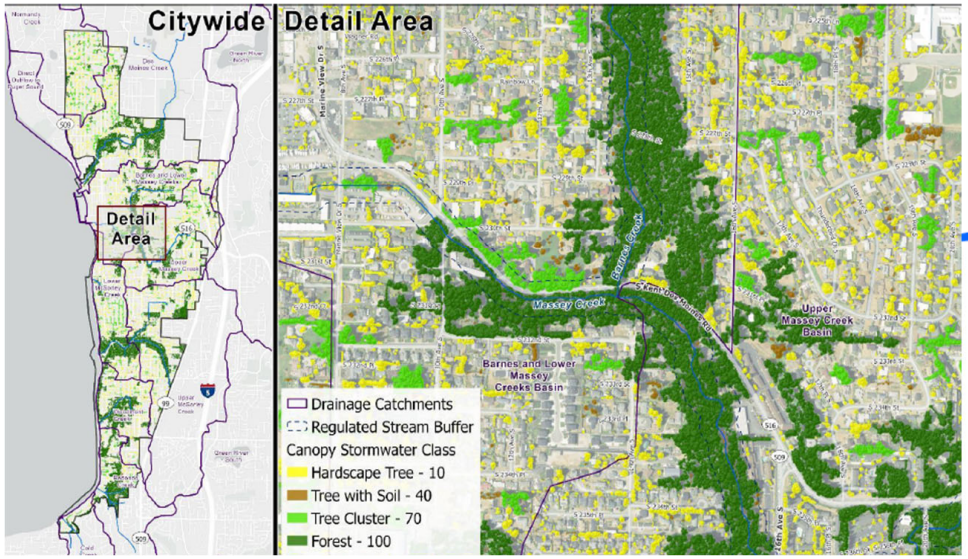
  "No later than December 31, 2028, Permittees shall adopt tree canopy goals and policies to support stormwater management and water quality improvement in receiving waters."

- 3. Tree Management Implementation

  "No later than December 31, 2028, Permittees shall implement tree canopy goals and policies to support stormwater management and water quality improvement in receiving waters."

Phase 1 Completed – GIS Based Tree Inventory

- Parametrix and City staff compiled city-wide canopy data.
- Identified "stormwater-beneficial trees" (e.g. Tree clusters and forests).
- Found 29% canopy citywide. Only 16% of that is on City-owned land (which makes up 5% of Des Moines).



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Our Priority Goal – Protect Existing Trees on Public Land

- Most feasible first step with implementation on public land.
- Aligns with water quality and permit requirements.
- Lays groundwork for future efforts.
  - Protecting existing trees on private land
  - Increasing existing tree canopy

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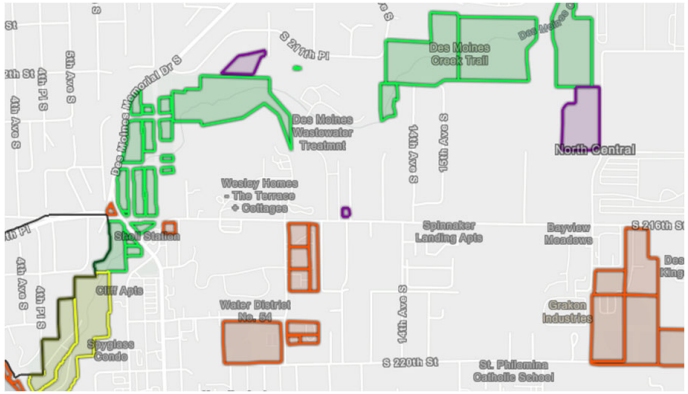
What We're Evaluating

- Which City-owned parcels have the largest volume of trees?
- Feasibility to transfer ownership to the Surface Water Utility?
- What are the legal/financial implications?



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Why Transfer Parcels to the Utility?

- Long-term protection for tree canopy.
- Ensures funding for maintenance.
- Centralizes responsibility within the Utility.
- Frees up general fund departments from costs.

Financial Considerations

- Transfer of costs (property taxes, maintenance, cleanups.)
- Potential one-time rate adjustment in 2027.
- Budget/rate modeling with FCS Group underway.

What's Next?

- Finalize list of parcels (Fall 2025)
- Develop Tree Preservation Program draft (Winter 2025)
- Begin parcel transfer (2026)
- Implement Utility rate increase if applicable (2027)
- Launch maintenance & protection activities (2027)

Questions?

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Des Moines
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COMMITTEE OF THE WHOLE

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Implementation $160,000 WA Department of Commerce Grant for Economic Analysis of the Electric Water Taxi Pilot Program

ATTACHMENTS:
- Amended Contract No. F24-51701-006 between City of Des Moines and WA Department of Commerce

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Administration

DATE SUBMITTED:

CLEARANCES:
[X] City Clerk
[ ] Community Development ____
[ ] Courts ____
[ ] Finance ____
[ ] Human Resources ____
[X] Legal /s/MH
[ ] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

The purpose of this agenda item is to:
- Update the Council on the Administration's plan for project management;
- Offer the Council an opportunity to shape the implementation of the grant; and
- Prepare Council for the recommendation to approve the $99,988.67 Nelson\Nygaard PSA Contract on tonight's Business Meeting agenda.

Background

During the Summer and Fall of 2022, the City of Des Moines engaged in a passenger ferry demonstration project between Des Moines and Seattle. The objective was to introduce the public and other stakeholders to the opportunities and benefits of a possible permanent ferry service and to verify certain estimates and assumptions.

Prior to the 2022 Project, the City of Des Moines completed a Ferry Demand Study Report and a Ferry Demonstration Project Scoping and Reconnaissance Report. These prior activities indicated there was

demand for the service and operations where feasible. Thus, the 2022 Ferry Demonstration Project was a logical step to confirm prior conclusions and to develop critical empirical data from operations.

The 2022 Ferry Demonstration Project operated from August 10, 2022, through October 9, 2022 and provided 4 roundtrips per day, 5 days per week (Wednesday – Sunday), between Des Moines Marina and Bell Harbor Marina in Seattle. Maritime Consulting Partners' final report from December 1, 2022, reported that 14,858 passengers were carried, and that $89,346 of fare revenue was collected off-setting a total operating cost of $220,402.

Approximately 10% of passengers responded to an online survey, and respondents indicated:

- 93% used the ferry for Leisure travel (site-seeing, events, and other).
- 2/3 preferred year-round service, and 1/3 preferred seasonal service.
- 78% indicated they would use the service periodically and 13% indicated they would use the service weekly or more often.
- 76% indicated they arrived at the Des Moines ferry in a passenger vehicle.
- 76% were 55 years of age or older, and 5% were under 35 years old.
- 89% thought the $10 one-way rate was "Just Right."
- Most riders were very satisfied with the overall experience.

Following the demonstration project, the City initiated discussions with the King County Metro Marine Division to explore the feasibility of including Des Moines in the regional marine transit network with permanent, regularly scheduled ferry service between Des Moines and Seattle. The discussions highlighted that potential positive economic and environmental impacts would support on-going investment from the County.

Subsequently, in 2024 the City applied for a $132,000 study grant from the Washington State Department of Commerce to assess and quantify the economic and environmental benefits of a permanent electric ferry service. In the ensuing discussions with Commerce, the City was encouraged to augment its application by also studying the potential benefits and transit improvements for underserved communities. The City added this element to its application, and the new application was awarded a $160,000 grant. The Council accepted the grant at the October 24, 2024 regular City Council meeting.

Discussion

The goal of the study is to generate actionable information to support Council's decision making, specifically its investment in future transit and economic development initiatives. The study is planned to be completed by the end of 2025.

The majority of the work is proposed to be provided by consulting firm Nelson\Nygaard (N\N), a nation-wide transportation planning consulting firm with a strong local Seattle office. In interviews, N\N staff demonstrated broad and unbiased understanding of the available transportation modes, costs, and demands for the Puget Sound region, and they provided many case studies that seemed relevant for Des Moines. Finally, N\N had solid experience with community outreach on transportation projects. The N\N contract approval is on this evening's agenda.

A separate economic development consultant will work in tandem with N\N to define and assess opportunities of the proposed ferry service and of other attractive alternatives that are proposed

during the study period. The balance of the grant funding will be spent on meetings, materials, and grant management.
Council input will be requested on the following questions to guide the implementation of the grant:

- Given the constraints of technology, is it acceptable to consider conventional fuel as well as electric ferry service?
- Ferry service involves risk and resources, and this study will seek to quantify both. That said, at this point does the City plan to take on all of the risks and provide all of the resources, or will the City require partners to take on specific risks and/or provide specific resources?
- Des Moines will soon have a second light rail station near its border. Are initiatives to support light rail use an acceptable alternative to ferry service? For example, would Council appreciate an analysis that contrasted the results of resources devoted to ferry service versus light rail service?
- What metrics does Council consider key to measuring economic and environmental impacts?

Docusign Envelope ID: BB66892E-8CF6-4FC0-9636-697C96F6962A

Attachment #1

Washington State Department of Commerce

Federal Interagency Agreement with

City of Des Moines

through

Energy Efficiency and Electrification program, Clean Buildings

Contract Number:
F24-51701-006

For

Community engagement and environmental analysis for Electric Taxi Initiative

Dated: Friday, November 15, 2024

Washington State Department of Commerce

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Washington State Department of Commerce

Face Sheet

Research & Development: ☐ Yes ☒ No **Contract Number:** F24-51701-006

Energy Division, Clean Buildings, Energy Efficiency & Electrification ☒**Subrecipient**
Energy Efficiency and Conservation Block Grant ☐**Contractor**

1. Contractor City of Des Moines 21630 11th Avenue S, Suite A Des Moines, WA 98198		**2. Contractor Doing Business As (as applicable)** N/A	
3. Contractor Representative Katy Bevengi, Assistant Harbormaster (206) 870-9149 KBevegni@desmoineswa.gov		**4. COMMERCE Representative** Kristen Kalbrener Program Manager (360)515-8112 Kristen.kalbrener@commerce.wa.gov	P.O. Box 42525 98504-2525 1011 Plum Street SE Olympia, WA 98501
5. Contract Amount $160,000	**6. Funding Source** **Federal:** ☒ **State:** ☐ **Other:** ☐ **N/A:** ☐	**7. Start Date** 11/15/2024	**8. End Date** 12/30/25
9. Federal Funds (as applicable) $160,000	**Federal Agency:** U.S Dept. of Energy	**ALN** 81.128	**Indirect Rate** N/A
10. Tax ID # 91-6016496	**11. SWV #** SWV0000307-00	**12. UBI #** 600-016-906	**13. UEI #** NY7AZ9H2VK25

14. Contract Purpose
The City of Des Moines is conducting community engagement, environmental and transportation analyses re: a planned electric ferry between the Des Moines Marina and downtown Seattle. Cost start date of 5/23/2024 is the date award letter was signed.

COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget

FOR CONTRACTOR	**FOR COMMERCE**
DocuSigned by: Katy Bevegni 7B23BC630A1E4BB... Katy Bevengi, Assistant Harbormaster 11/27/2024 | 10:00 AM PST Date	DocuSigned by: Michael Furze 10B18202855448A... Michael Furze, Assistant Director, Energy Division 12/2/2024 | 9:22 AM PST Date **APPROVED AS TO FORM ONLY** **BY ASSISTANT ATTORNEY GENERAL** **APPROVAL ON FILE**

Washington State Department of Commerce

Special Terms and Conditions

1. AUTHORITY

COMMERCE and Grantee enter into this Contract pursuant to the authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW.

2. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Date: 10/1/2023
Federal Award Identification Number (FAIN): DE-SE0000236
Federal Awarding Agency: U.S. Department of Energy, State and Community Programs
Total amount of federal funds obligated to this Subrecipient for this program: $160,000.00
Total amount of federal funds obligated to this Subrecipient for all programs: $160,000.00
Awarding official: Michael Fong, Director (360) 725-4021

Unless otherwise specifically authorized herein, the budget period start and end dates shall be the same as the start and end dates on the Face Sheet.

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

"This project was supported by Grant No. DE-SE0000236 awarded by U.S. Department of Energy, State and Community Programs. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Energy, State and Community Programs. Grant funds are administered by the Clean Buildings Program, Washington State Department of Commerce."

3. CONTRACT MANAGEMENT

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

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

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

4. COMPENSATION

COMMERCE shall pay an amount not to exceed $160,000 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the terms of Attachment A, Scope of Work.

5. SUBCONTRACTOR DATA COLLECTION

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

6. INDIRECT COSTS

Contractor shall provide their indirect cost rate that has been negotiated between their entity and the federal government. If no such rate exists a de minimis indirect cost rate of up to 15% of Modified

Total Direct Costs (MTDC) may be used.

7. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE via the Commerce Contracts Management System.

If required, the attachments to the invoice request in the Commerce Contracts Management System shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees.

The invoice shall include the Contract Number F24-51701-006 . If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of $50.00 or more in order to receive reimbursement.

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

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

If funds are available, COMMERCE may be able to amend and increase total funds based on realized expenditures to complete the project.

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

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.
The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

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

Disallowed Costs

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

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

8. AUDIT

If the Grantee expends $1,000,000 or more in federal awards as a Subrecipient from any and all sources in a fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year in accordance with 2 CFR 200 Subpart F. In accordance with 2 CFR

Washington State Department of Commerce

200.501(h), for-profit Subrecipients expending $1,000,000 or more in federal awards in a fiscal year are also required to procure and pay for a single audit or program-specific audit for that fiscal year.

Upon completion of each audit Grantee shall send all audit documentation to the Federal Audit Clearinghouse.

If the Grantee expends **less** than $1,000,000 in federal awards as a Subrecipient from any and all sources in a fiscal year the Grantee shall notify COMMERCE they did not meet the audit requirement threshold within 30 calendar days of the end of that fiscal year.

9. FRAUD AND OTHER LOSS REPORTING

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

10. DEBARMENT

A. Grantee, defined as the primary participant and it principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

- **i.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- **ii.** Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- **iii.** Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
- **iv.** Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.

B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.

C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- **i.** The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- **ii.** Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.

E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections

of the rules implementing Executive Order 12549. Grantee may contact COMMERCE for assistance in obtaining a copy of these regulations.

11. INSURANCE

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

12. ORDER OF PRECEDENCE

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

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

Washington State Department of Commerce

General Terms and Conditions

1. DEFINITIONS

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

A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.

B. "COMMERCE" shall mean the Washington Department of Commerce.

C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Exhibits, documents, or materials incorporated by reference and may constitute a Subaward if so designated. Electronic transmission of a signed copy of a Contract shall be the same as delivery of an original.

D. "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Agreement, and shall include all employees and agents thereof.

E. "Modified Total Direct Costs" (MTDC) shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of $25,000.

F. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

G. "State" shall mean the state of Washington.

H. "Subaward" shall mean an award provided by a pass-through entity to a Subrecipient for the Subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A Subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a Contract.

I. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" mean subcontractor(s) in any tier.

J. "Subrecipient" or "Subgrantee" shall mean a non-Federal entity that receives a Subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

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2. ALL WRITINGS CONTAINED HEREIN

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

3. AMENDMENTS

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

4. ASSIGNMENT

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

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;

ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and

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

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

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

6. COPYRIGHT

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

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes,

and/or sound reproductions. “Ownership” includes the right to copyright, patent, register and the ability to transfer these rights.

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

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

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

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

9. INDEMNIFICATION

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

10. LICENSING, ACCREDITATION AND REGISTRATION

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

11. RECAPTURE

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

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

12. RECORDS MAINTENANCE

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

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

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. SAVINGS

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

14. SEVERABILITY

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

15. SUBCONTRACTING

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

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

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

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

16. SURVIVAL

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

17. TERMINATION FOR CAUSE

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

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

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

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

18. TERMINATION FOR CONVENIENCE

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

19. TERMINATION PROCEDURES

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

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

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

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

A. Stop work under the contract on the date, and to the extent specified, in the notice;

B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;

E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;

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F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and

G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

20. TREATMENT OF ASSETS

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

A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.

B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.

D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.

E. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

21. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

AMENDMENT

AMENDED Attachment A: Scope of Work

PROJECT GOALS

- Complete a Community Engagement Study, an Economic & Environmental Analysis Study, and a study of secondary transportation options to shape the future of Electric Water Taxi service from Des Moines to downtown Seattle and possible other routes.
- Research the potential for multicultural outreach to be used for communicating to underserved communities about the complementary transit modes could be used to better serve the community.
- Use study data and recommendations for Des Moines to pursue additional partnerships with regional transit authorities and other cities.
- Use Information gained from the studies to strengthen state and federal grant applications and improve the city's chances for formula funding opportunities.

TASK DESCRIPTIONS & DELIVERABLES

Hire consultants to design Community Engagement and Economic & Environmental Analysis Studies (MAY – DECEMBER 2025): The City of Des Moines will develop the scope of work for both studies, post the requests for proposals according to city procurement practices, conduct interviews and negotiate contracts.

Deliverable: Consultants hired. design and complete studies and write up recommendations and findings **by the end of DECEMBER 2025.**

Economic & Environmental Analysis Study (JUNE - DECEMBER 2025)

Consultant will complete an analysis that provides projections regarding the expenses and revenue of the Des Moines-Seattle route; the economic impact on the city of Des Moines; updated information about commuter patterns and interest; first-mile/last-mile needs to access the ferry and connect to existing transit routes and hubs; impacts of commuters and recreational travelers in the Des Moines Marina; and potential for scalable additional routes and implementation partners including additional cities and transit authorities. The study will also provide a risk analysis on the potential impacts to low-income residents. The consultant will complete an analysis of the environmental benefits of a zero-emission transit option to Seattle and provide an analysis on the benefits of such an option to low-income residents.

Deliverable: Consultants will produce a study that includes the revenue and expenses of the ferry route; economic benefits; and an analysis of potential additional routes and partners. The report will contain timelines and actionable steps for the City of Des Moines to pursue ferry implementation and funding. The study will include pollution impacts and resulting benefits to low-income residents.

Community Engagement Study (JUNE - DECEMBER 2025)

Consultant will conduct outreach and engagement in-person and virtual meetings, focus groups, and surveys to shape public input on the implementation of the ferry. Outreach will include low-income, limited English-speaking populations, and other groups that represent the population of Des Moines and will provide translation services. The study will include how best to engage and shape the ferry initiative to serve underserved communities, ensure and publicize first/mile last mile service to the ferry and recommendations for a public information campaign to attract riders to the ferry.

Deliverable: Consultants will produce a report that includes data and recommendations from community engagement outreach; and the potential impacts and risk/benefit analysis on the underserved populations of Des Moines. The report will include community input for first mile/last mile infrastructure needs. Consultants will provide recommendations for a potential public information campaign to attract future riders to the ferry service.

Attachment B: Budget

EECBG Project Budget – 2 years

Project Costs must be:

- Directly related to project Scope of Work.
- Incurred during the budget period.
- Not also billed to any other source.

Resource: Code of Federal Regulations: eCFR :: 2 CFR Part 200 Subpart E -- Cost Principles

Grant Amount: $160,000
Commerce contract #: F24-51701-006
Fund Source: U.S. Department of Energy
Pass-through Entity: WA State Dept. of Commerce
De Minimis Indirect Rate: 15% unless recipient organization has established its own rate
ALN: 81.128 FAIN: DE-SE0000236

Project Total cost (over 2 years) Instructions: Text highlighted in yellow provided as an example. Please remove highlight, add/delete and replace

DESCRIPTION	DELIVERABLES	COST
Professional services (w/brief description): Type, billable hours, rate	PAID INVOICE/S	$110,000
TOTAL PROFESSIONAL SERVICES		**$110,000**
Materials/Supplies (brief description): Equipment, office supplies, printed brochures, public meeting expenses, mailing, etc.	PAID INVOICES	$25,000
Internal administration (w/brief description): Staff and/or contractor time and expense: # persons, labor hours, avg. wage rate incl. fringe, etc.	TIMESHEETS, DOCUMENTATION OF WAGES/PAID INVOICES	$25,000
TOTAL ADMINISTRATIVE SERVICES		**$50,000**
TOTAL GRANT AMOUNT		**$160,000**

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Attachment C: Quarterly Reporting

Quarterly reports are due to Commerce October 15, January 15, April 15, and July 15.

Grantee will report:

- Progress to completion of planned project
- Status of Energy plan development
- Title of any energy plan-related policies developed
- Brief description of community engagement in plan
- If applicable, any public education plan developed
- Expected date and amount of next A19/warrant to be submitted for reimbursement
- Number of Investment Grade Audits performed
- Square Footage of each IGA performed
- Number of building all types of energy audits performed
- Square footage of each energy audit performed
- Number of commercial audits vs. public building
- If applicable, number of audits for disadvantaged communities, for tribal communities

CITY OF DES MOINES
Voucher Certification Approval
July 10, 2025
Auditing Officer Certification

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

As of July 10, 2025 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through June 26, 2025 and payroll transfers through June 20, 2025 included in the attached list and further described as follows:

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

Jeff Friend, Finance Director

			# From		# To	Amounts
Claims Vouchers:						
EFT's			12038		12097	907,284.98
Wires			3003		3013	480,416.41
AP Checks			166831		166878	348,592.94
Total Vouchers paid						**1,736,294.33**
Payroll Vouchers						
Payroll Checks	6/20/2025		19951		19952	2,774.67
Payroll Advice			13928		14087	469,618.88
Payroll Advice	6/23/2025		14088		14088	1,476.77
Total Paychecks & Direct Deposits						**473,870.32**

Total checks and wires for A/P & Payroll	**2,210,164.65**

Consent Agenda Item #2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Investment Policy Update

ATTACHMENTS:
1. Draft Ordinance 25-042
2. Draft Resolution 25-043
3. Draft Investment Policy

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: June 30, 2025

CLEARANCES:
[ ] City Clerk ____
[ ] Community Development ____
[ ] Courts ____
[ ] Director of Marina Redevelopment ____
[ ] Emergency Management ____
[X] Finance
[ ] Human Resources ____
[X] Legal /s/TG
[ ] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation

The purpose of this Agenda Item is for the City Council to consider Draft Resolution 25-042 and Draft Resolution 25-043, repealing Des Moines Municipal Code (DMMC) 3.12 and adopting the draft investment policy.

Suggested Motion

Motion 1: "I move to enact Draft Ordinance No. 25-042 relating to municipal finance, repealing Des Moines Municipal Code Chapter 3.12 Investment Policy."

Motion 2: "I move to enact Draft Resolution No. 25-043 relating to municipal finance, adopting the Draft Investment Policy."

Background

The current investment policy of the City of Des Moines was adopted in September 1995 through ordinance 1144. Over the past three decades, there have been significant changes in Washington State law, financial markets, and best practices for public fund investing. For example, RCW 39.59 and RCW 43.250 have seen updates that influence the permissible investments for municipalities. A policy written in the mid-1990s may not reflect current statutory requirements, diversification standards, or risk management frameworks. Additionally, the rise of new financial instruments, changes in interest rate environments, and advancements in technology for monitoring and reporting investments underscore the need for a modern policy that can adequately guide fiduciary decision-making.

Beyond compliance and modernization, an updated investment policy strengthens transparency and accountability. Rating agencies, auditors, and the public expect municipalities to demonstrate sound stewardship of public funds, which includes a well-documented and regularly reviewed investment policy. Updating the policy allows the municipality to articulate its investment objectives, risk tolerance, and internal controls in a way that builds trust with stakeholders. It also ensures that staff and decision-makers have a clear and current framework to operate within, reducing the risk of error or misinterpretation. Updating a decades-old policy not only brings the City into compliance with today's standards but also reinforces its commitment to responsible financial management.

Discussion

It is the opinion of staff that it is unnecessary and impractical to codify a 26-page administrative policy to the Des Moines Municipal Code; therefore, staff is recommending repealing the existing investment policy that is included in the municipal code and adopting the new policy through resolution.

Notable updates to the existing policy are as follows:

Liquidity Objective (DMMC 3.12.030): The updated policy clarifies how the City could achieve its liquidity objective whereas the current policy merely states the investment portfolio "shall remain sufficiently liquid".

Delegation of Authority (DMMC 3.12.040): The updated policy adds references to enabling legislation regarding investment management, investment training requirements for personnel, and addresses contracted external investment managers per RCW 11.100.020.

Authorized Financial Dealers and Institutions (DMMC 3.12.060): The new policy would require prospective brokers to complete a Broker/Dealer questionnaire that includes: audited financial statements, current securities-related licensing; proof of registration and licenses held with the Financial Industry Regulatory Authority (FINRA); proof of registration with the State of Washington Securities Division; provide current active municipal client references; and certification of having read the City's current investment policy. Additionally, an annual review of the financial condition of qualified brokers would be conducted by the Finance Director, or their designee.

Authorized Investments (DMMC 3.12.070): The draft policy adds clarity to the difference between "primary" and "secondary" investments and updates the list of authorized and prohibited investments with current RCW references.

Safekeeping and Custody (DMMC 3.12.080): The new policy would require that a third party provide detailed monthly reports and that those reports be reconciled to the City's portfolio on a monthly basis.

Diversification (DMMC 3.12.090): The new policy introduces precise diversification thresholds (e.g., 15% limit on corporate notes, 10% CDs, 40% per GSE issuer, etc.) and promotes a laddered maturity structure.

Performance Standards (DMMC 3.12.120): The new policy updates the performance benchmark from six-month United States Treasury Bill and the average Federal Funds Rate to the yield of the Washington State Local Government Investment Pool (LGIP).

Reporting (DMMC 3.12.130): Whereas the current policy requires the Finance Director to submit a quarterly investment report to the City Council, the new policy would be in alignment with state law (RCW 35.39.032) by requiring the Finance Director to report investment transactions to the Council on a monthly basis. Quarterly reports to the City Council should include the following:

- An asset listing showing par value, cost and market value, type of investment, issuer, days to maturity and interest rate of each security;
- Average days to maturity of the portfolio;
- Maturity distribution of the portfolio and distribution by type of investment.
- Credit quality of portfolio holdings; and,
- Average weighted yield to maturity of portfolio on investments
- Performance comparison to benchmark

In addition to these changes, the proposed policy also adds the following:

Investment Strategy

- Introduces a "buy and hold" investment philosophy
- Establishes portfolio segmentation (Safety, Liquidity, Yield segments)

Internal Controls: The Office of the State Auditor requires that in accordance with Revised Code of Washington 43.09.260, the City of Des Moines must undergo annual financial examinations performed by State Examiners. Investment management is to be included as part of the annual independent audit to assure compliance with this investment policy.

The City Manager designates the Finance Director as responsible for internal controls, which shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or unanticipated changes in financial markets.

Alternatives

Council could choose not to repeal DMMC 3.12 nor adopt the Draft Investment Policy.

Recommendation

Staff recommends adopting Draft Ordinance 25-042 and Draft Resolution 25-043.

Council Committee Review

The draft Investment Policy was presented to the Finance Committee on April 3, 2025.

Attachment #1

CITY ATTORNEY'S FIRST DRAFT 06/30/2025

DRAFT ORDINANCE NO. 25-042

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance and repealing DMMC chapter 3.12.

WHEREAS, the City of Des Moines enacted an investment policy in 1995 to guide the finance director in investing City funds through sections 4 through 18 of Ordinance no. 1144, codified as DMMC chapter 3.12, and

WHEREAS, the City Council recognizes the need to periodically review and update its investment policy to reflect current financial conditions, regulatory requirements, and industry standards, and

WHEREAS, the policy contained in DMMC chapter 3.12 has not been updated since the time of its passage in 1995, and

WHEREAS, the Finance Department has reviewed the existing investment policy and recommends the adoption of a new policy to enhance the management of the City's investment portfolio, and

WHEREAS, the new policy is a much more detailed and comprehensive policy more suited to be adopted by reference by the City Council through resolution than to codified provisions of the Des Moines Municipal Code, and

WHEREAS, the City Council finds that the repeal of DMMC chapter 3.12 and sections 4 through 18 of Ordinance No. 1144 will allow the Council to adopt a new, more comprehensive investment policy and is appropriate and necessary for the preservation of the public health, safety, and general welfare; now therefore,

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

Sec. 1. Repealer. The previously codified provisions of Chapter 3.12 DMMC and sections 4 through 18 of Ordinance No. 1144 are repealed.

Sec. 2. Severability - Construction.

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

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

Sec. 3. Effective date. This Ordinance shall take effect and be in full force five (5) days after its 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 _____, 2025 and signed in authentication thereof this ___ day of _____, 2025.

_____
M A Y O R

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Published:

Attachment #2

CITY ATTORNEY'S FIRST DRAFT, 6/30/2025

DRAFT RESOLUTION NO. 25-043

A RESOLUTION OF THE CITY OF DES MOINES, WASHINGTON, related to municipal finance and adopting an Investment Policy for the City of Des Moines.

WHEREAS, the City of Des Moines is committed to the prudent management of public funds, ensuring their safety, liquidity, and yield in accordance with applicable laws and best practices, and

WHEREAS, RCW 35A.40.050 and RCW 39.59 authorize cities to invest public funds in a manner that prioritizes the safety of principal, provides sufficient liquidity to meet operational needs, and achieves a reasonable return; and

WHEREAS, the City Council recognizes the need to periodically review and update its investment policy to reflect current financial conditions, regulatory requirements, and industry standards, and

WHEREAS, the Finance Department has reviewed the existing investment policy and recommends the adoption of a new policy to enhance the management of the City's investment portfolio; now therefore,

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

Sec. 1. The findings expressed in the recitals to this Resolution are hereby affirmed by the City Council, supporting the acts taken herein.

Sec. 2. The City Council adopts the City of Des Moines Investment Policy which is attached to this resolution as Attachment "A".

Sec. 3. The Finance Director or their designee is authorized and directed to implement the provisions of the Investment Policy, including the execution of necessary documents and the establishment of procedures to ensure compliance with the policy.

Sec. 4. The Finance Director shall provide the City Council with periodic reports on the performance and status of the City's investment portfolio, as outlined in the Investment Policy.

Sec. 5. This resolution will take effect and be in full force on passage and signatures.

PASSED BY the City Council of the City of Des Moines, Washington this ___ day of _____, 2025 and signed in authentication thereof this ___ day of _____, 2025.

_____
M A Y O R

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Attachment #3

City of Des Moines
Investment Policy

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Policy Approval Date:
Authorized by: Resolution No.

Supersedes:
Policy Dated: September 14, 1995
Authorized by: Ordinance No. 1144

City of Des Moines
21630 11th Avenue S, Suite A, Des Moines, WA 98198

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I. PURPOSE

The purpose of this policy is:

- To establish investment objectives and parameters necessary to safeguard public funds entrusted to the City of Des Moines.
- To articulate City Council's intent for the governance over the City of Des Moines' investments.
- To communicate clear policy and strategy guidelines for the City of Des Moines' investment administration.
- To demonstrate to citizens, taxpayers and voters a transparent and accountable stewardship plan.

II. POLICY

It is the policy of the City of Des Moines to invest public funds in a manner that, giving first regard to safety, suitability and liquidity, will maximize long-term yield in conformance with State Statutes and Federal regulations, and city municipal code.

III. SCOPE

This investment policy applies to all financial assets of the City of Des Moines. These funds are reported in the City's Annual Financial Statements and include:

- General Fund;
- Special Revenue Funds;
- Capital Project Funds;
- Enterprise Funds;
- Internal Service Funds;
- Debt Service Funds (Unless prohibited by Bond indentures); and
- Any new fund created by City ordinance, unless specifically exempted by City Council.

Bond covenants which are more restrictive than this policy, those funds shall be invested in full compliance with those bond covenant restrictions.

Investments of City funds may be made on a pooled basis across all funds, with principal and interest apportioned for the benefit of the various participating funds or for the benefit of the general fund. (RCW 35.39.034)

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IV. AUTHORITY TO INVEST

- **Enabling Legislation**. All investments shall be managed in a manner responsive to the public trust, consistent with state statutes (Revised Code of Washington (RCW). Authority to manage the City's investment program is derived from RCW sections 35A.40.050, 35.39.032, 36.29.020 and from the City of Des Moines Municipal Code (DMMC) sections 2.44, 3.16 and 12.40.140(2).
- **Delegation of Authority**. This policy provides for accountability and transparency to the City Council, who authorizes the Finance Director or their designee, to engage in investment-related transactions within this policy without prior approval. Management responsibility for the investment program is delegated by the City Manager to the Finance Director, who shall establish procedures for investment activities and a system of controls consistent with this investment policy. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Finance Director. The Finance Director shall be responsible for all transactions undertaken.
- **Training**. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions to provide adequate redundancy by properly trained and informed staff. All staff engaging in investment transactions shall attend public investment training, which may include staff training by a qualified Finance Director. Staff shall not engage in any allowable investment transaction for which they cannot articulate a rationale for having done so.
- **Contracted Management**. Any external investment manager engaged to assist in the management of the city's investment portfolio will be held to the prudent investor standard of care (RCW 11.100.020).

V. OBJECTIVES

The prime objectives of this City's investment activities shall be the suitability of every investment to the financial requirements of the City, considering, in priority order:

- **Safety:** Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of principal in the overall portfolio. Each investment transaction shall be conducted in a manner to avoid principal loss arising from security default, institution default, broker-dealer default, safekeeping fraud, or the avoidable loss on the premature sale of an investment.
- **Liquidity:** The investment portfolio will be structured to meet all expected obligations in a timely manner, to avoid premature sale of an investment at a loss of principal. This is to be achieved by comparing investment maturities with forecasted cash flows and maintaining sufficient liquidity for contingencies across all funds. A 3 to 5-year historical liquidity trend history, combining the City's main

checking account, LGIP, and the investment portfolio, will clearly indicate seasonal low cashflows.

- **Yield or Return on Investment:** The investment portfolio shall be designed with the objective of attaining as high a rate of return as prudently possible having first satisfied the objectives of Safety and Liquidity.

VI. PRUDENCE

The standard of prudence to be used by investment officials shall be the "prudent investor standard" which, as enacted by State Statute (RCW 11.100.020), says:

1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

2) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust."

Investment officers acting in accordance with the written procedures and exercising due diligence shall be relieved of personal responsibility for individual security's credit risk or marketplace changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

VII. ETHICS AND CONFLICTS OF INTEREST

Officers and employees involved in the investment process shall refrain from, or disclose, personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and officers shall disclose to the City Manager any material financial interests in the financial institutions to conduct business with in this jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the City's portfolio. Employees and officers shall subordinate their personal interests to those of the City of Des Moines, particularly with regard to the time of purchases and sales.

The intent of "disclosure" an employee is unlikely to personally own a controlling interest in a security that becomes the best investment for the city such as a highly rated Microsoft or Coca-Cola medium-term note and should not have to sell their personal position in order to serve the city.

Employees and officers shall refrain from, or disclose any personal investment transactions with the same agents with whom business is conducted on behalf of the city and shall avoid, or disclose, transactions that might impair public confidence.

Consistent with general City Policy, officers and employees involved in the investment process may not accept any valuable gift, favor or gratuity which is made on the basis of his or her position in the City's service.

VIII. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The Finance Director or his/her designee will maintain a list of broker/dealers, which are authorized to provide investment services. To be eligible to do business with city, a broker/dealer must provide a Broker/Dealer Questionnaire that includes the following: audited financial statements, current securities-related licensing; proof of registration and licenses held with the Financial Industry Regulatory Authority (FINRA); proof of registration with the State of Washington Securities Division; provide current active municipal client references; and certification of having read the City's current investment policy. An annual review of the financial condition of qualified brokers will be conducted by the Finance Director, or his/her designee.

Banking services, depository accounts and certificates of deposit, as required by state law, (RCW 39.58), may be contracted only with those institutions approved by the Washington Public Deposit Protection Commission (PDPC)

IX. AUTHORIZED INVESTMENTS

State statutes permit local governments in the state of Washington only the specific investments permitted by state law, limited to the following:

A. The primary investment instruments expected to be utilized in the City of Des Moines' Investment Portfolio are:

- State of Washington Local Government Investment Pool (LGIP), the public funds investment account for investment and reinvestment by the state treasurer. RCW 43.250.040
- Treasuries. Certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States; or United States dollar denominated bonds, notes, or other obligations that are issued or guaranteed by supranational institutions, provided that, at the time of investment, the institution has the United States government as its largest shareholder; RCW 39.59.040 (4).
- Agencies. U.S. Government Agency obligations and U.S. Government Sponsored Enterprises (GSE's), which may include Federal Farm Credit Bank (FFCB), Federal Home Loan Bank (FHLB), Federal Home Loan Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Tennessee Valley Authority (TVA) or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system; RCW 39.59.040 (5)

B. The following secondary investment instruments are not expected to be routinely utilized in the City's Investment Portfolio but are also authorized by State Statute and should be disclosed and explained on monthly reporting:

- Corporate notes purchased on the secondary market; with a minimum credit quality rating of upper medium investment grade - at least A by Standard and Poor's, A2 by Moody's, or A by Fitch - on the date of purchase. RCW 39.59.040 (8) and Washington State Investment Board Policy No. 2.05.500.
- Bonds of the State of Washington and any local government in the State of Washington, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency.
- General obligation bonds of a state other than the State of Washington and general obligation bonds of a local government of a state other than the State of Washington, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency.
- Supranationals – Certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any U.S. dollar denominated bonds, notes, or other obligations that are issued or guaranteed by supranational institutions, provided that, at the time of investment, the institution has the United States government as its largest shareholder.
- Commercial Paper, purchased in the secondary market, provided that the policy adheres to the investment policies and procedures adopted by the Washington State Investment Board.
- Non-negotiable Certificates of Deposit of financial institutions which are qualified public depositories as defined by RCW 39.59 and in accordance with the restrictions therein.

X. PROHIBITED INVESTMENTS

Equities (stocks), Collateralized mortgage obligations, Money market mutual funds, Inverse Floaters, Negotiable Certificates of Deposit, Reverse Repurchase Agreements, Cryptocurrency and any investment type not expressly permitted by City Council in this policy are not eligible investments for the city.

XI. DIVERSIFICATION

Investments in securities shall not exceed the following percentages of the portfolio at time of purchase:

State Local Government Investment Pool	100%
Treasury Securities	100%
Government Sponsored Agency Securities	100%, (40% per issuer)
Corporate notes	15%, lesser of 5% or $1 million per issuer

Commercial Paper	15%, lesser of 5% or $1 million per issuer
Same-State/Local Securities	15%, lesser of 5% or $1 million per issuer
Certificates of deposit	10%, lesser of 5% or $1 million per issuer
Other-State/Local Securities	5%, lesser of 5% or $1 million per issuer
Same-county local government issuer	only by city council resolution

Staggered maturities are to be a component of the diversified investment strategy, employed to minimize reinvestment risk due to rate fluctuations building a reasonably laddered maturity schedule.

XII. MAXIMUM MATURITIES

- The average maturity of the portfolio will not exceed 3.5 years, including cash in depository accounts and the state investment pool. (For the purposes of this calculation, the maturity date of callable securities will be the final maturity date).
- The expected and final maturity of any security will not exceed 5-years; however, up to 10% of the portfolio may be invested in securities with maturities of up to seven (7) years and the rationale will be disclosed on the next monthly investment report.

XIII. SAFEKEEPING AND CUSTODY

Security transactions entered into by the City shall be conducted on a delivery-versus-payment (DVP) basis.

Securities will be held by third party custodian designated by the Finance Director, or his/her designee, and evidenced by safekeeping reports which will be reconciled monthly to the portfolio. Third-party custodial reports shall be required monthly, to list, at a minimum, each individual security, CUSIP, purchase date, cost, market value, par value, and maturity date.

XIV. COLLATERALIZATION

State statute (RCW 39.58) requires that all deposits of public funds be made with qualified public depositaries, protected through the actions of the Public Deposit Protection Commission (PDPC), comprised of the State Treasurer, Governor and Lieutenant Governor. State law requires that all deposits of public funds over and above federally insured amounts (including Certificates of Deposit) be collateralized in accordance with regulations of the PDPC. All collateral is regulated by the PDPC. The PDPC ensures public funds deposited in banks are protected should a financial institution become insolvent. The names of authorized public depositaries may be found at: https://tre.wa.gov/pdpc-banks/

XV. PERFORMANCE STANDARDS/BENCHMARK

The investment portfolio is expected to provide similar returns to the benchmark over interest rate cycles, but may underperform or outperform in certain periods. The City's cash management portfolio shall be managed using a comparison object of the yield of LGIP, the Washington State Treasurer-administered local government investment pool, which is typically the next investment choice for available cash if not invested for longer. The City portfolio will have a longer average maturity than the 60- to 90-day average portfolio of the benchmark so it will be less volatile. This means it can be expected that the city's portfolio average yield will trail the benchmark's yield in times of rising interest rates and lead the benchmark's yield in times of falling interest rates.

XVI. DOWNGRADED SECURITIES

The City may, from time to time, be invested in a security whose rating is downgraded. In the event a rating drops below the minimum allowed by this policy, the Finance Director will review and recommend an appropriate plan of action to the City Manager and the City Council. If the City utilizes an Investment Advisor, that Investment Advisor shall notify the Finance Director and recommend a plan of action within one month. The City may continue to hold a downgraded investment to maturity if a probable outcome is the eventual realization of full value, rather than a realized loss if divested prior to maturity.

XVII. REPORTING

Monthly Reports.

The Finance Director shall make a monthly report of all investment transactions to the City Council. (RCW 35.39.032)

Quarterly Reports.

The Finance Director shall prepare a quarterly investment report to City Manager and City Council that provides a summary of the current investment portfolio and that the individual transactions executed to show holdings and activities during the reporting period conform to the investment policy. The report should include the following:

- An asset listing showing par value, cost and market value, type of investment, issuer, days to maturity and interest rate of each security;
- Average days to maturity of the portfolio;
- Maturity distribution of the portfolio and distribution by type of investment.
- Credit quality of portfolio holdings; and,
- Average weighted yield to maturity of portfolio on investments
- Performance comparison to benchmark

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XVIII. INVESTMENT STRATEGY

Buy and Hold.
As a strategy, the City of Des Moines investments, will not be actively traded, meaning no attempt to "buy low" and "sell high" or "time the market" will be made. Investments purchased with the intent of providing investment income shall be intended to be held to maturity, relying on following a prudent course of action for income rather than predicting market direction. Securities may be sold before they mature if market conditions present an opportunity for the City to capture a benefit or to avoid a risk but the strategy will be primarily buy-and-hold.

Portfolio Segmenting.
In keeping with the priorities of Safety, Liquidity then Yield, the first considerations of investing will be the immediate operational needs and scheduled disbursements of capital expenditures and debt service payments.

- The city will utilize its depository bank and the State LGIP to maintain adequate levels for the **Safety Segment** and the **Liquidity Segment** of the Portfolio. This will allow for seasonal fluctuations, primarily the April/October inflows of property tax and outflows of capital projects and will maintain adequate levels to ensure availability.
- The **Yield Segment** of the portfolio is the portion of the city's cash reserves which, based on historical analysis, long-term budgeting, planning or council-approved reserve policy, will not be subject to seasonal spending and can be invested comfortably long-term. This segment is invested in a laddered portfolio comprised of Agencies, Treasuries and other authorized investments.

XIX. INTERNAL CONTROLS

The Office of the State Auditor requires that in accordance with Revised Code of Washington 43.09.260, the City of Des Moines must undergo annual financial examinations performed by State Examiners. Investment management is to be included as part of the annual independent audit to assure compliance with this investment policy.

The City Manager designates the Finance Director as responsible for internal controls, which shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or unanticipated changes in financial markets. Controls which the City deems important include, but are not limited to:

- Control of collusion
- Separation of functions
- Separation of transaction authority from accounting and recordkeeping
- Custodial safekeeping
- Avoidance of bearer-form securities
- Specific limitations regarding securities losses and remedial action
- Clear delegation of authority to subordinate staff members

- Written confirmation of telephone transactions
- Supervisory authority of employee actions
- Minimize the number of authorized investment officials
- Documentation of transactions and strategies

XX. INVESTMENT POLICY REVIEW, APPROVAL AND ADOPTION

This investment policy shall be adopted by resolution of the City Council. The policy shall be reviewed annually by the Finance Director and any significant modifications must be approved by resolution.

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XXI. ADDENDUM

A. Glossary

Accrued Interest – Interest earned but not received.

Active Investment Management – The active trading of securities, selling prior to maturity and purchasing secondary issues, in an effort to earn higher portfolio yield by the continual monitoring of financial markets, spreads and pricing opportunities of individual securities. Requires substantially more staff time than passive investing. (See also Passive Investment Management)

Agency – A debt security issued by a federal or federally sponsored agency. Federal agencies are backed by the full faith and credit of the U.S. Government. Federally Sponsored Agencies (FSAs) are backed by each particular agency with a market perception that there is an implicit government guarantee

Agencies – (See Government Sponsored Entities) Entities charted by Congress, such as Fannie Mae (FNMA), Freddie Mac (FHLMC), Federal Home Loan Bank (FHLB) Federal Farm Credit (FFCB).

Amortization – In portfolio accounting, periodic charges made against interest income on premium bonds in anticipation of receipt of the call price at call or of par value at maturity.

Annual Financial Report – The independently-audited annual report for the City of Des Moines. The City reports financial activity in accordance with the Cash Basis Budgeting, Accounting and Reporting System (BARS) Manual prescribed by the Washington State Auditor's Office under the authority of Washington State law, Chapter 43.09 RCW.

Average Maturity - A weighted average of the expiration dates for a portfolio of debt securities. An income fund's volatility can be managed by shortening or lengthening the average maturity of its portfolio.

Bid – The price offered for securities.

Bond – A long-term debt security, or IOU, issued by a government or corporation that generally pays a stated rate of interest and returns the face value on the maturity date.

Book Value - The amount at which an asset is carried on the books of the owner. The book value of an asset does not necessarily have a significant relationship to market value.

Broker - A broker brings buyers and sellers together for a commission paid by the initiator of the transaction or by both sides; he does not hold a position. In the money market, brokers are active in the markets in which banks and institutional investors buy and sell bills, notes or bonds and in interdealer markets.

Bullet (Non-callable) – An investment in which all of its outstanding principal amount may not be redeemed before maturity by the issuer, therefore assuring interest earnings through to the end maturity date.

Callable – An investment in which all or part of its outstanding principal amount may be redeemed before maturity by the issuer.

Certificates of Deposit – Certificates issued against funds deposited in a bank for a specified period of time that earns interest at a specified rate of return.

Collateral – Securities, evidenced by a deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public moneys.

Commercial Paper – An unsecured short-term promise to repay a fixed amount on a certain future date. Commercial paper usually matures from 2 to 270 days and is traded on a discount basis. This debt instrument, issued by banks, companies and other borrowers, uses only their credit ratings to back the security.

Coupon – The annual rate of interest that a bond's issuer promised to pay the bondholder as a percentage of the bond's face value.

Credit Quality - The measurement of the financial strength of a bond issuer. This measurement helps an investor to understand an issuer's ability to make timely interest payments and repay the loan principal upon maturity. Generally, the higher the credit quality of a bond issuer, the lower the interest rate paid by the issuer because the risk of default is lower. Credit quality ratings are provided by nationally recognized rating agencies.

Credit Risk - The risk that another party to an investment transaction will not fulfill its obligations. Credit risk can be associated with the issuer of a security, a financial institution holding the entity's deposit, or a third-party holding securities or collateral. Credit risk exposure can be affected by a concentration of deposits or investments in any one investment type or with any one party.

Cryptocurrency – A digital currency verified by a decentralized system using cryptography, outside a centralized government or authority; a foreign currency with no country.

Custodian –An independent third party (usually bank or trust company) that holds securities in safekeeping as an agent for the city or agency.

Custody (Safekeeping) – A service to customers rendered by banks for a fee whereby securities are held by an independent third-party for protection from fraud and theft.

Dealer - A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

Delivery versus Payment (DVP) – Delivery of securities with a simultaneous exchange of money for the securities used in conjunction with a third-party custodian to assure integrity of the exchange and to prevent fraud or misdirection, similar to an escrow process in real estate. Delivery vs. receipt is delivery of securities with an exchange of a signed receipt for the securities.

Depository bank - A bank used as the point of deposit for cash receipts.

Depository Insurance - Insurance on deposits with financial institutions. For purposes of this policy statement, depository insurance includes: a) Federal depository insurance funds, such as those maintained by the Federal Deposit Insurance Corporation (FDIC) AND Federal Savings and Loan Insurance Corporation (FSLIC); and b) Public Deposit Protection Commission.

Discount – The difference between the cost price of the security and its value at maturity when quoted at lower than its face value. A security selling below original offering price shortly after the sale is considered to be at a discount. This can be the normal mathematically equalizing of the stated rate of an investment with prevailing market rates.

Discount Securities – Non-interest-bearing money market instruments that are issued at a discount and redeemed at maturity for full face value.

Diversification - Dividing investment funds among a variety of securities and institutions so as to minimize market risk.

Fannie Mae – The trade name for the Federal National Mortgage Association (FNMA), A U.S. GSE (government-sponsored entity).

Farmer Mac – The trade name for the Federal Agricultural Mortgage Corporation (FAMC), A U.S. GSE (government-sponsored entity).

Federal Credit Securities – Agencies of the Federal government and guaranteed by the full faith and credit of the U.S. Government set up to supply credit to various

classes of institutions and individuals, e.g., Ginnie Mae, Sallie Mae, Tennessee Valley Authority.

Federal Deposit Insurance Corp (FDIC) - A Federal Agency that insures bank deposits. The current limit is up to $250,000 per depository account.

Federal Farm Credit Bank (FFCB) – The Farm Credit System is a nationwide network of borrower-owned lending institutions and specialized service organizations. Established by Congress in 1916 as the authority for certain predecessor entities, the System is the oldest of the Government-sponsored enterprises. Throughout its long history, the fundamental purpose of the System has remained the same: To provide American agriculture with sound and dependable credit at competitive interest rates. Currently, there are three Farm Credit Banks and one Agricultural Credit Bank providing funds and support services to approximately 78 locally owned Farm Credit Associations and numerous cooperatives nationwide. Approximately 40 percent of the real estate and non-real estate credit needs of U.S. agriculture are met by the System.

Federal Funds Rate – The target rate of interest at which Federal funds are traded. This rate is currently pegged by the Federal Open Market Committee.

Federal Home Loan Bank (FHLB) – Created by the Federal Home Loan Bank Act of 1932 to increase the amount of funds available for lending institutions who provide mortgages and similar loan agreements to individuals. Having served its original objectives well, the FHLB system now primarily focuses on increasing the amount of loanable funds available for affordable housing and community development projects. It continues to have a material impact on housing and development financing offering funds to member institutions at rates that are usually lower than commercially competitive prices. The 11 banks of the FHLB Bank System are owned by over 7,300 regulated financial institutions from all 50 states, U.S. possessions, and territories.

Federal National Mortgage Association (FNMA - Fannie Mae) -Like GNMA, was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a Federal corporation working under the auspices of the Department of Housing and Urban Development, HUD. It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

Federal Open Market Committee (FOMC) – Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member while the other presidents serve on a rotating basis. The Committee periodically meets to ser Federal Reserve funds target rate and guidelines regarding purchases and sales of Government Securities in an open market as a means of the influencing the volume of bank credit and money supply in the economy.

Federal Reserve System – The central bank of the United States created by Congress and consisting of a seven-member Board of Governors in Washington, D.C. There are 12 Regional Banks and about 5,700 commercial banks that are members of the system.

Financial Industry Regulatory Authority (FINRA) – A self-regulatory organization authorized to regulate U.S. stockbrokers and broker-dealer firms. Brokers must be registered with FINRA in order to execute trades on behalf of their clients.

Freddie Mac – The trade name for the Federal Home Loan Mortgage Corporation (FHLMC), a GSE (government-sponsored entity). Is a stockholder-owned, government-sponsored enterprise chartered by Congress in 1970 to keep money flowing to mortgage lenders in support of homeownership and rental housing for middle income Americans. FHLMC purchases, guarantees and securitizes mortgages to form mortgage-backed securities. The mortgage-backed securities that it issues tend to be very liquid and carry a credit rating close to that of U.S. Treasuries.

Ginnie Mae – The trade name for the Government National Mortgage Association (GNMA), a GSE (government-sponsored entity).

Government Sponsored Entities (GSEs) -Entities chartered by Congress, such as: Fannie Mae (FNMA), Freddie Mac (FHLMC), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB). These entities carry an implicit guaranty of the federal government.

Interest Rate Risk – The risk associated with declines or rises in interest rate that cause an investment in a fixed-income security to increase or decrease in market value.

Liquidity - Refers to the ease and speed with which an asset can be converted into cash without a substantial loss in value.

Liquidity Risk – The risk that an entity (i.e. the city) may be unable to meet short-term financial demands due to the inability to convert investments to cash without a loss of principal and/or interest income.

Loss - The excess of the cost or book value of an asset over selling price.

Local Government Investment Pool (LGIP) - The aggregate of all funds from political subdivisions that are placed in the custody of the Washington State Treasurer for investment and reinvestment.

Market Risk - The risk associated with declines or rises in interest rates which cause an investment in a fixed-income security to increase or decrease in value. The risk that the market value of an investment, collateral protecting a deposit, or securities underlying a repurchase agreement will decline.

Market Value - The price at which a security is trading and could presumably be purchased or sold.

Maturity – The time when a security becomes due and at which time the principal and interest or final coupon payment is paid to the investor.

Nationally Recognized Statistical Rating Organization (NRSRO) - A credit rating agency that issues credit ratings that the U. S Securities and Exchange Commission permits other financial firms to use for certain regulatory purposes (i.e. Fitch, Moody's S&P).

New Issue – An investment available at the time of issuance, and therefore not subject to the secondary market that would involve competitive bidding or price uncertainty.

Non-callable Bond (Bullet) – A bond issue in which all of its outstanding principal amount may not be redeemed before maturity by the issuer, therefore assuring interest earnings through to the end maturity date.

Par Value - The nominal or face value of a debt security; that is, the value that must be paid at maturity.

Passive Investment Management – Investing methodically, managing primarily diversification and maturities, with the intention of holding to maturity rather than seeking to make gains through market price fluctuations.

Portfolio - Collection of securities held by an investor.

Premium - The amount by which a bond sells above its par value.

Principal – The original sum of money put into an investment at the time of purchase, on which interest is charged or earned.

Prudence - The ability to govern and discipline oneself by the use of reason. Shrewdness in the management of affairs. Able to use skill and good judgment in the use of resources.

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Public Fund Interest-bearing Investment Accounts - Bank accounts with Qualified Public Depositories which pay a rate of interest on the balance maintained. Used in diversifying the investment portfolio and most commonly used as part of a liquidity portfolio.

Qualified Public Depository - A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated, for the benefit of the commission, eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

Safekeeping - A service to customers rendered by banks for a fee whereby all securities and valuables of all types and descriptions are held in the bank's vaults for protection, or in the case of book entry securities, are held and recorded in the customer's name and are inaccessible to anyone else.

Secondary Market – A market made for the purchase and sale of outstanding issues following the initial distribution.

SEC Rule 15C3-1 - Also known as the Net Capital Rule, requires broker-dealers to maintain more than a dollar of highly liquid assets for each dollar of liabilities. The rule ensures that broker-dealers have sufficient liquid assets to pay all liabilities to customers. It is a key financial responsibility requirement for broker-dealers.

Securities and Exchange Commission (SEC) - A U.S. government agency that oversees securities transactions, activities of financial professionals and mutual fund trading to prevent fraud and intentional deception. The SEC consists of five commissioners who serve staggered five-year terms. No more than three of the commissioners may belong to the same political party.

Settlement Date - The day on which payment is due for a securities purchase. For stocks and mutual funds bought through an investment dealer, settlement is normally five business days after the trade date. Bonds and options normally settle one business day after the trade date mutual fund shares purchased directly by mail or wire settle on the day payment is received.

Supranational Institution (SUPRA) – An international organization, or union, whereby member states transcend national boundaries or interests to share in the decision making and vote on issues pertaining to the wider grouping. It is formed by two or more central governments through international treaties. The purpose for creating a supranational is to promote economic development for the member countries. The International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank (IADB), IFC (International Finance Corporation) and ADB (Asian Development Bank) are examples of supra's.

Third-party Safekeeping - A safekeeping arrangement whereby the investor has full control over the securities being held and the dealer or bank investment department has no access to the securities being held.

Time Deposit - Interest-bearing deposit at a savings institution that has a specific maturity.

Treasury Bills (commonly called "T-Bills) - Treasury bills are short-term debt obligations of the U.S. Government. They offer maximum safety of principal since they are backed by the full faith and credit of the United States Government. T-Bills are sold in three, six, nine, and twelve-month bills. Because treasury bills are considered "risk-free," these instruments generally yield the lowest returns in the major money market instruments.

Treasury Notes and Bonds - While T-Bills are sold at a discount rate that establishes the yield to maturity, all other marketable treasury obligations are coupon issued. These include Treasury Notes with maturities from one to ten years and Treasury Bonds with maturities of 10-30 years. The instruments are typically held by banks and savings and loan associations. Since Bills, Notes and Bonds are general obligations of the U.S. Government, and since the Federal Government has the lowest credit risk of all participants in the money market, its obligations generally offer a lower yield to the investor than do other securities of comparable maturities.

Underlying Securities – Future securities transferred, the object of a repurchase agreement.

Vendor - A business or individual who provides a service or product at a cost.

Yield - The rate at which an investment pays out interest or dividend income, expressed in percentage terms and calculated by dividing the amount paid by the price of the security and annualizing the result.

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B. **Washington Statutes (RCW),** governing Investments of Public Funds by Local Governments

- **RCW 11.100.020 - Management of trust assets by fiduciary.**
- **RCW 35.39.030 - Excess or inactive funds—Investment.**
- **RCW 35.39.032 - Approval of legislative authority—Delegation of authority—Reports.**
- **RCW 35.39.034 - Investment by individual fund or commingling of funds—Investment in United States securities—Validation.**
- **RCW 39.58.020 - Public funds—Protection against loss.**
- **RCW 39.58.030 - Public deposit protection commission—State finance committee constitutes—Proceedings.**
- **RCW 39.58.050 - Collateral for deposits—Segregation—Eligible securities.**
- **RCW 39.59.010 - Definitions.**
- **RCW 39.59.020 - Authorized investments—Local government authority.**
- **RCW 39.59.040 - Authorized investments—Bonds, warrants, certificates, and other investments.**
- **RCW 43.250.040 - Authority of official to place funds in the public funds investment account—Investment of funds by state treasurer--Degree of judgment and care required.**

C. City of Des Moines Municipal Code (DMMC)

- DMMC 2.44.020(7) – Code of Ethics
- DMMC 3.51.010 – Special Revenue Funds – General Provisions
- DMMC 12.40.140 – Transportation Impact Fees

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D. Broker/Dealer Questionnaire

The City of Des Moines, WA, incorporated in 1959, provides a full range of municipal services, including public safety, road improvements, parks and recreation, judicial administration, community development, planning and zoning, code enforcement and municipal services such as surface water utility and a public marina. There are approximately 160 employees to serve about 32,700 residents with an annual operating budget of around $50 million. The City's manageable cash ranges from $70 to $80 million of which $26 million is invested with federal agencies, with the remaining liquidity maintained in the Washington State Treasurer's Local Government Investment Pool (LGIP). The City has adopted a written Investment Policy that regulates the standards and procedures used in its cash management activities. The most current policy is publicly available and should be reviewed prior to completing this form.

Firm Name: _____
Year Founded: _____
Corporate office address: _____
_____
Telephone #s: _____
_____

Principal, Managing Director or Partner:
Name _____
Title _____
Direct phone _____
E-mail address _____
Is your firm a broker (does not own securities being offered) _____
Is your firm a dealer (does own securities being offered)? _____

Local office address: _____
_____

Please attach a bio or resumé of the primary and secondary representatives covering this account, including securities-related employment history, licensing, certificates, complaints, disciplinary action, arbitration, litigation:

Primary Representative:
Name _____
Title _____
Direct phone _____
E-mail address _____

Secondary Representative:
Name _____
Title _____
Direct phone _____
E-mail address _____

Provide proof of registration with State of Washington ☐ attached ☐ NA
Provide proof of Financial Industry Regulatory Authority (FINRA) ☐ attached ☐ NA
Provide documentation that your firm is qualified under SEC rule 15C3-1
(Uniform Net Capital Rule) ☐ attached ☐ NA
Provide most recent audited financials ☐ attached ☐ NA

Is your firm is examined by and subject to rules and regulations of:

FDIC ☐ Yes ☐ No
SEC ☐ Yes ☐ No
NYSE ☐ Yes ☐ No
Comptroller of Currency ☐ Yes ☐ No
Federal Reserve System ☐ Yes ☐ No

List three current, active, comparable, municipal client references:
Entity Name _____
Contact _____
Address _____
Phone / E-mail _____
Entity Name _____
Contact _____
Address _____
Phone / E-mail _____
Entity Name _____
Contact _____
Address _____
Phone / E-mail _____

What market sectors are you and your firm currently involved? (Please feel free to provide additional information regarding specialization in any of the following market sectors).

	Firm Involvement	Broker Involvement

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US Treasuries	_____	_____
US Agency Bonds	_____	_____
Washington State Bonds	_____	_____
Municipal Bonds	_____	_____
Corporate Bonds	_____	_____
Commercial Paper	_____	_____
Other	_____	_____
	_____	_____

Please provide your normal custody and delivery process, including specific banking relationships.

What was your firm's total volume in US Government and agency securities trading last year?

Has this firm, or the representatives assigned to this account, been subject to a regulatory agency, state or federal investigation for alleged improper, disreputable, unfair or fraudulent activities related to the sale of securities or money market instruments that resulted in a suspension or censure? □ Yes (attached) □ No

Is there outstanding litigation which would materially affect your financial stability? □ Yes (attached) □ No

Do you provide any fixed income research and economic commentary? □ Yes (attached) □ No

Describe the precautions taken by your firm to protect the interests of the public when dealing with a local public entity. □ Attached □ NA

Has any client sustained a loss on a securities transaction engendered from a misunderstanding or misrepresentation of the risk characteristic of a financial instrument by your firm? □ Yes (attached) □ No

Please confirm that you:

(1) are familiar with the Revised Code of Washington (RCW) Sections 39.59.010 et al.

(2) have read, understand and agree to comply with the provisions of the City of Des Moines' current investment policy

by signing below.

Name: _____ Signature: _____
Title: _____ Date: _____

Name: _____ Signature: _____
Title: _____ Date: _____

Name: _____ Signature: _____
Title: _____ Date: _____

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E. Approved Broker/Dealer List

The following brokers have completed BDQs and investment policy acknowledgements on file with the City of Des Moines:

Corporate Name, City, State

Name, Local Officer City, State

Corporate Name, City, State

Name, Local Officer City, State

Corporate Name, City, State

Name, Local Officer City, State

Corporate Name, City, State

Name, Local Officer City, State

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F. Acknowledgement of Receipt/Adherence to Current Policy

City requires an annual certification from authorized Financial Dealers and Institutions of having read the current investment policy. It is the intent of the City to pro-actively contact current existing financial institutions annually, or at any change in the investment policy, and to maintain the current investment policy on the City's public website.

This is to acknowledge receipt of the City's current Investment Policy adopted by the Des Moines City Council on February , 2025.

Entity name: _____

Name: _____ Title: _____

Signature: _____ Date: _____

Please sign and submit via mail or email to:

City of Des Moines
21630 11th Avenue S., Suite A
Des Moines, WA 98198

Current staff contact information is available on the City of Des Moines website:
https://www.desmoineswa.gov/

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Credit Card Policy Update

ATTACHMENTS:
1. Draft Ordinance 25-048

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: June 30, 2025

CLEARANCES:
[ ] City Clerk ____
[ ] Community Development ____
[ ] Courts ____
[ ] Director of Marina Redevelopment ____
[ ] Emergency Management ____
[X] Finance
[ ] Human Resources ____
[X] Legal /s/TG
[ ] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

The purpose of this Agenda Item is for the City Council to consider Draft Ordinance 25-048 updating the credit card policy in DMMC Chapter 3.20.

Suggested Motion

Motion 1: "I move to approve Draft Ordinance No. 25-048 relating to municipal finance, amending Des Moines Municipal Code Chapter 3.20 Credit Card Policy."

Background

City personnel are provided with credit cards ("purchase cards" or "P-cards") to streamline purchasing, improve efficiency, and reduce administrative costs. P-cards allow employees to make authorized, purchases directly—such as office supplies, travel expenses, or training materials—without going through the full procurement process. This reduces paperwork, speeds up transactions, and provides better tracking and control through spending limits and transaction reporting.

The current credit card policy of the City of Des Moines was adopted in September 1995 through ordinance 1144. At that time, the maximum limit for credit cards was set at $5,000. The policy in the code has never been updated.

Discussion

Updating Des Moines Municipal Code 3.20 to reflect new credit limits is a necessary step to ensure the City's financial policies remain current and effective. The existing code, adopted in 1995, does not reflect inflation or the evolving needs of City operations. As the cost of goods and services has increased significantly over the past three decades, the outdated credit limits hinder operational efficiency and delay routine transactions. Revising the code to establish updated and flexible credit limits will support timely and responsible procurement.

According to the Federal Reserve Bank Inflation Calculator, $5,000 in 1995 is equal to $10,574 today. Therefore, a $10,000 maximum limit is appropriate to reflect the effect of inflation over 30 years.

Additionally, the code allows the credit card used in Accounts Payable to exceed the $10,000 limit. This particular card is used to pay many City-wide invoices electronically including utility invoices, cell phone invoices, and various vendor invoices for numerous City departments. The higher credit limit for this card reflects the higher volume of transactions (typically about 65 invoices per month) it incurs.

Alternatives

Council could choose not to adopt Draft Ordinance 25-048 and keep the current Credit Card policy.

Recommendation

Staff recommends adopting Draft Ordinance 25-048.

CITY ATTORNEY'S FIRST DRAFT 06/20/2025

DRAFT ORDINANCE NO. 25-048

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance, updating amending DMMC 3.20.020.

WHEREAS, the City Council of the City of Des Moines has enacted financial policies codified in Title 3 DMMC, and

WHEREAS, the City Council has adopted a credit card policy which empowers the Finance Director to procure credit cards for use by City employees to make purchases to further City purposes and to adopt rules for their use, and

WHEREAS, the City Council has also imposed a maximum credit limit on the credit cards acquired under this authority, and

WHEREAS, recent experience has shown that the current credit limit is insufficient to maintain efficient City operations, and

WHEREAS, occasionally, temporary increases to credit card limits are warranted to make large previously approved purchases on behalf of the City, and

WHEREAS, the City Council finds that increasing the credit limit contained in the credit card policy and allowing the Finance Director to approve temporary increases in the credit limit is appropriate and necessary for the preservation of the public health, safety, and general welfare; now therefore,

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

Sec. 1. DMMC 3.20.020 and section 59 of Ordinance No. 1144 are each amended to read as follows:

Credit card policy.

(1) The ~~f~~Finance ~~d~~Director is authorized to apply at any banking or financial institution for credit cards for use by officers and employees of the ~~city~~ City to pay for expenditures related to City business. ~~expenses incident to authorized travel~~.

(2) The ~~f~~Finance ~~d~~Director is authorized to apply at any banking or financial institution for credit cards for use by officers and employees of the ~~city~~ City to pay for official government purchases and acquisitions.

(3) The following policy is adopted for the use of credit cards:

(a) Distribution of the Credit Cards. Credit cards are distributed by the ~~f~~Finance ~~d~~Director pursuant to policies adopted by the ~~f~~Finance ~~d~~Director.

(b) Authorization and Control of the Use of Credit Card Funds. The use of credit card funds is authorized and controlled by department directors pursuant to the written policies of the ~~c~~City ~~m~~Manager and ~~f~~Finance ~~d~~Director.

(c) Credit Limits Available on the Credit Cards. Credit card limits shall not exceed ~~$5,000~~$10,000.00. The Finance Director may authorize temporary increases in credit limits to accommodate specific budgeted purchases. The Finance Director may authorize the limit for the Accounts Payable credit card to exceed $10,000 for administrative purposes.

(d) Payment of the Bills. Bills are paid by the ~~f~~Finance ~~d~~Director in the ordinary course of business following approval by the department director.

(4) Cash advances on credit cards are prohibited.

Sec. 2. Severability - Construction.

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

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

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

PASSED BY the City Council of the City of Des Moines this ___ day of _____, 2025 and signed in authentication thereof this ___ day of _____, 2025.

_____
M A Y O R

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Published:

Effective Date:

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Therapeutic Court Grant Acceptance

ATTACHMENTS:
1. Interagency Agreement between Washington State Administrative Office of the Courts and Des Moines Municipal Court

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Court

DATE SUBMITTED: June 26, 2025

CLEARANCES:
[ ] City Clerk ____
[ ] Community Development ____
[X] Courts M. Patrick
[X] Finance
[ ] Human Resources ____
[X] Legal /s/TG
[ ] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

The purpose of this Agenda Item is for the Council to consider accepting a grant from the Washington State Administrative Office of Courts to supplement the operations of the Des Moines DUI Court.

Suggested Motion

Motion: "I move to accept the grant from the Washington Administrative Office of the Courts in the amount of $33,500 and authorize the Director of Court Administration to sign the contract substantially in the form as attached."

Background

Des Moines Municipal Court began DUI Court operations in September 2017. DUI Court is a mandatory program for high risk/high needs DUI offenders convicted in Des Moines Municipal Court. DUI Court meets bi-weekly to review potential candidates, review existing cases, refine the program and research innovative ways to reduce DUI recidivism. This program has been within budget in all years of operation in part due to continued grant funding at the state and federal level. The court received funding from September 2017- June 2022 through the Washington Traffic Safety Commission. From October 2021-September 2025 our program has been funded through a Federal grant though the Bureau of Justice Assistance.

The court chose to seek out state funding rather than continue with federal funding as this AOC has more reach to both our participants and team members, including but not limited to increased peer supports for participants, statewide training and education for team members, and localized grant management. Annually, AOC offers Therapeutic Court funding to all courts of limited jurisdiction to support establishing a therapeutic court program or continue operations of an existing programs. Interested courts submit an application along with projected budget narrative with their funding requests in the categories of Training/Travel; Treatment Services; Recovery Support; Salaries and Benefits; Equipment; and Contract Services. Over fifty courts applied including eight courts seeking funding through this grant process (this includes Des Moines). Des Moines Municipal Court requested $66,000 in funding to cover additional staff hours, pro tem expenses, drug testing, interpreter services, but due to legislative appropriations for the state fiscal year 2026, full funding was unfeasible by AOC.

The DUI Court has met program objectives throughout the last eight year of operations resulting in eighty-one individuals screened for the program, fourteen graduates, ten current participants, and five candidates as of this date. The program boasts a DUI recidivism rate following departure from the program of 8% (national average is 25-30%). Through increased supervision, frequent court visits and drug testing we are better able to track and monitor participants. Additionally, DUI Court continues to partner with law enforcement, defense counsel, substance use treatment providers and local partners to ensure the success of the program and participants.

Discussion

Through this funding with AOC, our DUI Court program will continue to grow the program, maintain DUI Court standards, continue to produce substantive behavioral change in participants. AOC has awarded the court this grant of $33,500 to cover DUI Court specific expenses including ongoing team member education, participant peer navigation services, as well as ongoing support of our supervision standards including probation and drug testing.

Alternatives

City Council could choose to not approve the grant/contract. (Not recommended)

Financial Impact

The costs not covered by the grant will be absorbed by already budgeted line items in the court budgets (general, probation and DUI court) for fiscal year 2025-2026 as these are not new cases, but rather cases that would otherwise be prosecuted and adjudicated in the normal course of the court. Accordingly, there is no negative financial impact to accepting this grant.

Recommendation

Staff recommends that the Council approve and ratify the grant with the Administrative Office of the Courts for Des Moines Municipal Court-DUI Court.

Docusign Envelope ID: 31165647-B013-466A-815B-922E92A38C81

Attachment #1

WASHINGTON COURTS

INTERAGENCY AGREEMENT

BETWEEN

WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS

AGREEMENT # IAA26832

AND

DES MOINES MUNICIPAL COURT

FOR

THERAPEUTIC COURTS

1. PARTIES TO THE AGREEMENT

This Interagency Agreement is made and entered into by and between the State of Washington acting by and through the Washington State Administrative Office of the Courts. hereinafter referred to as "AOC or Procuring Agency," and Des Moines Municipal Court , referred to as "Court or Agency".

2. PURPOSE

The purpose of this Agreement is to provide reimbursements to Courts for assisting with costs related to Therapeutic Courts.

THEREFORE, IT IS MUTUALLY AGREED THAT:

3. STATEMENT OF WORK

The Court shall:

a. Use funding to identify individuals before their Therapeutic Court, as defined by RCW 2.30.030, with behavioral health needs outlined in their application and engage those individuals with community-based therapeutic interventions within the Therapeutic Court's jurisdiction in accordance with the Court's funding application. Funds will be allocated using budget line items with the following categories: Personnel Costs, Staff Equipment & Technology, Team Training/Travel, Treatment Services and Recovery Supports.

b. Submit reports to CLJ Therapeutic Court Program, following the following guidelines:
   i. Content of reports shall include:
      - Document the progress of their Therapeutic Court Program.
      - Identify the number of program participants (therapeutic court referrals, entries, opt in agreements, active participants, terminations and graduations).
      - The services provided to program participants for the corresponding quarter.
      - Challenges faced by the Court in operating their Therapeutic Court Program during the corresponding quarter.
      - Any questions CLJ Therapeutic Court staff include in the reporting portal
   ii. Reporting Schedule, reports shall be submitted quarterly observing the information provided below:

Period	Quarter	Report Due
07/01/25-09/30/25	1	10/15/25
10/01/25-12/31/25	2	01/15/26
01/01/26-03/31/26	3	04/15/26
04/01/26-06/30/26	4	7/15/26 (final report for the year)

   **** Failure to submit a report by the due date will adversely affect the Court's eligibility for future funding.***
   iii. Reporting shall be done in reporting portal, which will be provided via email prior to the quarterly report due date to Court by AOC Program Manager via email.

c. Submit questions related to deliverables or the required applicability to Court to your CLJ Therapeutic Court Contract Manager via email.
d. Other deliverables shall be required applicable to a specific Therapeutic Court may include the following:
   i. Planning:
      - Therapeutic Court staff shall complete applicable Best Practice Standards modules on-line courses/E-learning at https://allrise.org/trainings/online-courses/
      - Identify Target Population (e.g. eligibility and exclusion criteria, utilize valid Risk-Needs-Responsivity tool – RNR).

- Identify Team Roles and Responsibilities (judge, prosecutor, defense, coordinator, case manager, etc.).
- Equity and inclusion (e.g. staff training, equity monitoring, equitable treatment, equitable incentives, and sanctions).

ii. Implementation
- Develop guidelines, policies and procedures for therapeutic court structure, including drug testing practices, incentive and response policies, phase structure, and handbooks.
- Hold community partner meetings (prosecution, defense, treatment, law enforcement, probation, etc.).
- Create Memorandum of Understanding (MOU's) with stakeholders.

iii. Scale and Sustain
- Begin evaluation of data to assess successes and areas of need by completing the Washington Therapeutic Court Evaluation and Review (WATER) on an annual basis, according to the period of performance of this award (Refer to section III of the agreement). Process review/evaluation (after WATER).
- Employ continuous quality improvement methods to refine the model, updating model and adopted guidelines, policies and procedures as required, and as it relates to Best Practice standards.
- Develop system to track and evaluate performance of therapeutic court programming.

iv. Other
- Engage in technical assistance with the CLJ Therapeutic Courts team.
- Attend regular meetings with the Administrative Office of the Court CLJ Therapeutic Courts team.
- Attend trainings identified and/or provided by the CLJ Therapeutic Courts team.

4. PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on July 1, 2025, and end on June 30, 2026, unless terminated sooner or extended, as provided herein.

5. COMPENSATION

The amount awarded may not exceed **$33,500.00** for payments made during the period from July 1, 2025, through June 30, 2026, related to the purpose of this agreement.

The Court shall use these funds in the following cost categories:

Cost Category	Amount
Personnel Costs	$10,000.00
Staff Equipment & Technology	$2,500.00
Team Training/Travel	$8,500.00
Treatment Services	$0.00
Recovery supports	$12,500.00
Total Amount	**$33,500.00**

Ten percent (10%) or less of these funds can be moved from one category to another without exceeding the total amount of the funds provided. Any adjustments beyond 10% require written approval of AOC CLJ Therapeutic Court Contract Manager. This can be an authorization provided by email.

A list of allowable and unallowable expenses is provided to Court within attachment A of this agreement and should be referenced for adequate use of funds.

Procuring Agency may extend the term of this Contract or increase funds by mutual written amendment. Such amendment shall be on the same terms and conditions as set forth in this Contract.

6. REVENUE SHARING

a. The AOC will notify the Court no later than May 1, 2026 **via unilateral amendment to the agreement** that the AOC intends to redistribute funding among the courts participating in the program, pursuant to the program's appropriation language. The AOC may increase the total value of the Agreement if additional funds are available or reduce the Agreement amount based on actual expenses incurred by the Court through submitted Invoices and supporting documentation.

b. The Court must submit the final program Invoice to the AOC CLJ TC Therapeutic Court Contract Manager no later than July 12, 2026. The revenue sharing process must be completed by August 1, 2026.

7. INVOICES; BILLING; PAYMENT

The Agency will submit properly prepared itemized invoices via email on an A19 form addressed to AOC Program Manager at CLJTherapeuticCourtsApplications@courts.wa.gov. Invoices shall be submitted no more than once a month. Incorrect or incomplete A19s shall be returned by AOC to the Agency for correction or reissuance. All A19s shall provide and itemize, at a minimum, the following:

- Agreement Number: IAA26832
- Agency name, address and phone number
- Description of Reimbursement
- Date(s) Services were provided
- Receipt(s) if applicable
- Total Reimbursement

Payment will be considered timely if made by the AOC within thirty (30) calendar dates of receipt of a properly prepared A19. No A19 shall be submitted until after a deliverable has been accepted by the AOC CLJ Therapeutic Court Contract Manager.

The AOC will not make any advanced payments or payments in anticipation of services or supplies under this Contract.

8. AGREEMENT MANAGEMENT

The CLJ Therapeutic Court Contract Manager and Agency Program Manager noted below shall be responsible for and shall be the contact people for all communications and billings regarding the performance of this Contract. The parties may change administrators by written notice.

AOC Program Manager	Agency Program Manager
Ginnava Hooft PO Box 41170 Olympia, WA 98504-1170 Ginnava.Hooft@courts.wa.gov	**Melissa Patrick** 21630 11th Ave S Ste C Des Moines, WA 98198 MPATRICK@DESMOINESWA.GOV

9. RECORDS, DOCUMENTS, AND REPORTS

a. Records Retention. The Agency shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AOC, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The agency will retain all books, records, documents, and other material relevant to this contract as required, a minimum of six (6) years after end of period of performance (including all amendments to extend) or termination of the agreement or as otherwise specified and make them available for inspection by persons authorized under this provision. If any litigation, claim, or audit is

commenced prior to the expiration of the required retention period, such period shall extend until all such litigation, claims, or audits have been resolved.

b. Public Records. It is the policy of the Administrative Office of the Courts to facilitate access to its administrative public records. This Agreement and related records are subject to disclosure under General Court Rule 31.1. For additional information, please contact the AOC Public Records Officer.

10. RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the AOC. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

11. RESPONSIBILITY OF THE PARTIES

Each party to this Agreement assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, or its agents. Neither party assumes any responsibility to the other party for any third-party claims.

12. DISPUTE RESOLUTION

To the extent practicable, the Parties shall use their best, good faith efforts cooperatively and collaboratively to resolve any dispute that may arise in connection with this Agreement as efficiently as practicable, and at the lowest possible level with authority to resolve such dispute. The Parties shall make a good faith effort to continue without delay to carry out their respective responsibilities under this Agreement while attempting to resolve any such dispute. If, however, a dispute persists and cannot reasonably be resolved, it may be escalated within each organization. In such circumstance, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event the parties cannot agree on a mutual resolution within fifteen (15) business days, the parties shall appoint a member of a dispute resolution board within Thurston County and those two appointed members will select a third. The Board shall employ dispute resolution measures and its result is binding. Both parties agree that, the existence of a dispute notwithstanding, the Parties will continue without delay to carry out all respective responsibilities under this Agreement that are not affected by the dispute.

13. GENERAL PROVISIONS

a. Amendment or Modification. Except as set forth herein, this Agreement may not be amended or modified except in writing and signed by a duly authorized

representative of each party hereto. In revenue sharing procedures AOC will issue a unilateral amendment.

a. Appendix. All appendices referred to herein are deemed to be incorporated in this Agreement in their entirety.

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

c. Authority. Each party to this Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Agreement and that its execution, delivery, and performance of this Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

d. Captions & Headings. The captions and headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provisions hereof.

e. Conformance. If any provision of this Agreement violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

f. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the Parties shall not affect the validity thereof so long as all the Parties hereto execute a counterpart of this Agreement.

g. Electronic Signatures. An electronic signature or electronic record of this Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement or such other ancillary agreement for all purposes.

h. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.

i. Governing Law. The validity, construction, performance, and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law principles that would provide for the application of the laws of another jurisdiction.

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

k. Jurisdiction & Venue. In the event that any action is brought to enforce any provision of this Agreement, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.

l. No Agency. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement. Neither party is an agent of the other party nor authorized to obligate it.

m. Right of Inspection. The Agency shall provide right of access to its facilities to the AOC, or any of its officers, or to any other authorized agent or official of the State of Washington at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this agreement.

n. Severability. If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

o. Termination for Cause. If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

p. Termination for Convenience. Except as otherwise provided in this Agreement, either party may terminate this Agreement upon thirty (30) calendar days prior written notification. Upon such termination, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of such termination.

q. Termination for Non-Availability of Funds. AOC's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Agreement, AOC, at its sole discretion, may

elect to terminate the Agreement, in whole or part, for convenience or to renegotiate the Agreement subject to new funding limitations and conditions. AOC may also elect to suspend performance of the Agreement until AOC determines the funding insufficiency is resolved. AOC may exercise any of these options with no notification restrictions, although AOC will make a reasonable attempt to provide notice.

In the event of termination or suspension, AOC will reimburse eligible costs incurred by the Agency through the effective date of termination or suspension. Reimbursed costs must be agreed to by AOC and the Agency. In no event shall AOC's reimbursement exceed AOC's total responsibility under the agreement and any amendments.

r. Suspension for Convenience. AOC may suspend this Agreement or any portion thereof for a temporary period by providing written notice to the Agency a minimum of seven (7) calendar days before the suspension date. Agency shall resume performance on the first business day following the suspension period unless another day is specified in writing by AOC prior to the expiration of the suspension period.

s. Waiver. A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

EXECUTED AND EFFECTIVE as of the day and date first above written.

WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS	**Des Moines Municipal Court THERAPEUTIC COURTS**
_____	_____
Signature *Date*	*Signature* *Date*
Dawn Marie Rubio	**Melissa Patrick**
Name	*Name*
_____	Director of Court Administration
Title	*Title*

ATTACHMENT A: USE OF FUNDS

FY2026 Use of Funds	
Allowable Expenses Common allowable expenses listed below. Supporting documents are required for all allowable expenses. See what's required under each spending category.	**Unallowable Expenses** Funds cannot be used for: • Replacing or supplanting the salary of current employees of the Court (employees must be taking on additional work or be a new employee to be eligible for funding). • Program incentives that constitute a gift or reward. • Items and activities outside of the cost categories listed in the Court's contract. The list of unallowable expenses is not exhaustive. If you are unsure whether your expense is allowable, please contact CLJTherapeuticCourtsApplications@courts.wa.gov for clarification before making a purchase.

Personnel Costs
Personnel salaries and benefits for staff while working on therapeutic court duties or procedures
 	
Court Staff including:
• Coordinator
• Case Manager
• Peer Support
• Prosecution
• Defense
• Probation
• Judicial Officers
  ○ Judges
  ○ Pro Tem Judges
  ○ Commissioners
	Personnel Costs
	Court Staff including:
	• Security Personnel
	• Supporting the salary/benefits of any staff member not related to the therapeutic court
	• Indirect Cost

Supporting documents must list staff member name, staff member title, pay period • Payroll Ledgers • Pay Stubs Please highlight/write amount charged to AOC funding on supporting documentation and ensure it matches amount listed on A19.	

Staff Equipment & Technology
• Includes equipment, supplies, software, and IT maintenance for staff that support the program.
• Computers
• Cell Phones
• Printers/Fax Machines
• Staff Desk equipment and supplies
  ○ Office Chairs for Staff
  ○ Office Desk for Staff
  ○ Desk Phone
  ○ Keyboard/Mouse
  ○ Monitor(s)
  ○ Headsets
  ○ Computer Webcams
  ○ Desk Organizers/Storage
  ○ Pens/Pencils
  ○ Paper/Notebooks
  ○ Paper Clips/Binders/Stapler
  ○ A/V equipment for courtroom
  ○ Other Office supplies
  ○ Translation Services (program materials)
• IT Maintenance and Tech Support
• Software Subscriptions
• Supplies for community meetings and staff retreats
	Staff Equipment & Technology
	• Furniture
	  ○ Couches
	  ○ Beds
	  ○ Armoire
	  ○ Atelier
	  ○ Chaise longue
	  ○ Chifforobe
	  ○ Dresser
	  ○ TV Stands
	  ○ Bookcases
	  ○ Accent Chairs
	  ○ Conference Table
	• Software
	  ○ *New* subscriptions for case management software
	  ○ OCourt Subscriptions
	• Other Technology
	  ○ A/V equipment for conference rooms

Supporting documents must list name of vendor, purchase date, amount paid, and method of payment • Receipts • Invoices Please highlight/write amount charged to AOC funding on supporting documentation and ensure it matches amount listed on A19.	

Team Training/Travel
Training for program staff on the use of Risk-Needs-Responsivity (RNR) assessments and evidence-based treatment modalities.
 	
Exceptions to below list can be submitted for preapproval to CLJTherapeuticCourtsApplications@courts.wa.gov
 	
Prioritized Trainings
• WSADCP trainings/conferences
• All Rise trainings/conferences
 	
Other Eligible Training Suggestions upon approval of contract team
• NADCP trainings/conferences
• Center for Justice Innovation (CJI) trainings/conferences
 	
Travel expenses related to training
• Meals (per diem rate)
• Air travel – travel insurance/refundable tickets recommended
• Lodging (per diem rate) – the AOC will not reimburse until after checkout
• Transportation
  ○ Mileage
  ○ Car rental
  ○ Parking
	Team Training/Travel
	• Training and travel expenses not pre-approved by AOC staff
	• Staff mileage to/from work site
	• Purchase of vehicles

○ Other Transport ▪ Ferries ▪ Taxis ▪ Uber/Lyft ▪ Bus fare ▪ Shuttle fare ▪ Subway/Link/Railway fare *Tips cover transportation and must not be over 15% of purchase total. <u>Supporting documents</u> must list names and titles of therapeutic court staff attending, name of vendor, purchase date, amount paid, and method of payment • Receipts (receipts not required for meals, the AOC reimburses at the per diem rate) • Invoices Please highlight/write amount charged to AOC funding on supporting documentation and ensure it matches amount listed on A19.	
<u>Treatment Services</u> Treatment services not covered by participants' insurance or co-insurance, costs that are deemed unaffordable to the participants, and compliance monitoring. Participants are encouraged to apply for Apple Care. • Participant Medical Insurance Deductibles and Spend Downs • Therapeutic Services not covered by participant insurance but recommended by treatment or therapeutic court staff (i.e. DV treatment) • Lab & Toxicology Testing	**<u>Treatment Services</u>** • Professional Licensing Fees • Services that are eligible and covered via participants medical insurance (i.e. Ongoing treatment for a participant with Medicaid/private insurance in lieu of local BHA)

• Treatment Staff/Peer Support contracted by the court
  ○ Mental Health Services
  ○ Peer Support Services
  ○ SUDP
  ○ Veteran's Support Services
 	
<u>Supporting documents</u> must list name of vendor, purchase date, amount paid, and method of payment
• Receipts
• Invoices
Please highlight/write amount charged to AOC funding on supporting documentation and ensure it matches amount listed on A19.	

<u>Recovery Supports</u>
Other services for participants that are not accessible through other local, state, or federal programs, services meant to ensure participants' success in program.
****Not an exhaustive list***
 	
• Participant Transportation
  ○ Bus Passes
  ○ Uber/Lyft Rides
  ○ Car Services
  ○ Other Transit Services
• Food & Beverages - ***Participants**
  ○ Meals (*Graduation or other pre-approved event; must have agenda & sign in sheet, or other approved documentation – no more than $20.00 per person)
  ○ Snacks
  ○ Water
  ○ Non-alcoholic Beverages *(*no mocktails allowed*)
• Food & Beverages ***Staff**
	<u>Recovery Supports</u>
	• Gas cards
	• Gift Cards
	• Gifts
	• Logoed apparel
	• Driver Educational Courses
	• License reinstatement fees (i.e. Tickets, fines, etc.)
	• Advertising on radio stations, newspapers, billboards, etc.

○ Meals (*Must follow your agency policy on meal purchases for meetings. Agenda and sign in sheet required.) ○ Non-alcoholic Beverages *(*no mocktails allowed*)* • Cell Phones through a checkout program • Cell Minutes • Hygiene Products • Recovery Housing- when all other supports have been exhausted • Education ○ Parenting Classes ○ Financial Literacy • Graduation supplies • Driver's license/ID replacement fee Supporting documents must list name of vendor, purchase date, amount paid, and method of payment • Receipts • Invoices Please highlight/write amount charged to AOC funding on supporting documentation and ensure it matches amount listed on A19.	
Other Direct Costs Miscellaneous expenses directly related to program delivery or participant recovery supports. Requires pre-approval. Submit toCLJTherapeuticCourtsApplications@courts.wa.gov	

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 10th and 270th Construction Contract Award

ATTACHMENTS:
1. Public Works Construction Contract
2. Bid Proposal (Responsive Low Bid)

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: June 30, 2025

CLEARANCES:
[ ] City Clerk ____
[ ] Community Development ____
[ ] Courts ____
[ ] Director of Marina Redevelopment ____
[ ] Emergency Management ____
[X] Finance ____
[ ] Human Resources ____
[X] Legal /s/TG
[ ] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[X] Public Works MPS
APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval for the Public Works Contract (Attachment 1) with Interstate Excavating LLC. The following motion will appear on Consent Agenda:

Suggested Motion

Motion: "I move to approve the Public Works Contract with Interstate Excavating LLC for the 10th and 270th Pipe Project, in the amount of $89,773.56, authorize a project construction contingency in the amount of $15,000, and further authorize the City Manager to sign said Contract substantially in the form as submitted."

Background

The 10th and 270th Pipe Project is located within the greater Woodmont Neighborhood on a residential dead-end street. The project was initiated in January of 2020 as a result from a staff investigated drainage concern. Staff concluded that the existing drainage system along 10th Avenue South only

serves runoff on the east side of the road section with the majority of the road runoff being directed towards rear yards of the properties on 9th Avenue South.

This project proposes to add 5 catch basins and 200 linear feet of pipe to the west side of the road along with the necessary hot mix asphalt pavement for road restoration.

Discussion

The 10th and 270th Pipe Project was advertised for public bids in accordance with state law and requirements for competitive bidding of public works contracts. The engineer's estimate was under $150,000 and the project was advertised to registered contractors directly through Municipal Research and Services Center (MRSC), following their guidelines. Bid proposals from 11 contractors were received and opened on June 24, 2025 by the Project Manager and are summarized below.

BID RESULTS

Engineer's Estimate (including tax) $109,000.00

Contractor Name	Bid Amount
Interstate Excavation	**$ 89,773.56 (responsive low bidder)**
Pacific Civil & Infrastructure	$ 114,895.00
Scotty's General Construction	$ 115,667.00
BEAU Construction	$ 119,945.00
Clear Excavating	$ 139,951.00
C Denney Construction	$ 149,920.00
Core Tap Construction	$ 153,655.00
NW Cascade	$ 178,991.00
MNG Construction	$ 199,263.00
Puget Paving	$ 209,254.00
LZ Excavation	$ 285,915.00

Interstate Excavating LLC is the Responsive Low Bidder (Attachment 2). The bid tabulation and contractor qualifications have been reviewed and staff finds that the low bid is responsive and recommends award of the contract to Interstate Excavating LLC. Project completion is expected within 10 working days of Notice to Proceed.

Alternatives

The City Council could direct staff to reject all Bid Proposals and either elect to not move forward with the project or re-submit for construction bids at a later time.

Financial Impact

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

Recommendation

Staff recommends adoption of the motion.

Council Committee Review

Not applicable.

Attachment #1

PUBLIC WORKS CONTRACT
between City of Des Moines and

Interstate Excavating LLC

THIS CONTRACT is made and entered into this [10] day of [July], [2025], by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and [Interstate Excavating LLC] organized under the laws of the State of [Washington], located and doing business at [3071 Brick Mill Rd, Ellensburg, WA 98926, 253.670.1869, Clint Goold] (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.

Work anticipated to be performed in this contract is as follows:
Installing TESC measures including straw wattles and inlet protection
Removing pavement and structure excavation
Constructing storm drainage improvements
Paving with hot mix asphalt, including roadway pavement and raised edge
And all incidental items necessary to complete the Work as described in the Plans and Specifications

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, <u>including APWA General Special Provisions, if they are included</u>,
5. Contract Plans,
6. Amendments to the Standard Specifications,
7. <u>WSDOT</u> Standard Specifications <u>for Road, Bridge and Municipal Construction</u>,
8. <u>Contracting Agency's Standard Plans (if any)</u>, and
9. <u>WSDOT</u> Standard Plans <u>for Road, Bridge, and Municipal Construction</u>.

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 [within] [10 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 [$89,773.56], which includes 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 **$[00.00] (Liquidated damages are waived for this project)** 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, 294 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:	**CITY OF DES MOINES:**
By:_____	By:_____

(signature) Print Name:_____ Its_____ *(Title)* DATE:_____	*(signature)* Print Name: Katherine Caffrey Its City Manager *(Title)* DATE:_____ Approved as to Form: _____ City Attorney DATE:_____

NOTICES TO BE SENT TO: **CONTRACTOR:** Clint Goold Interstate Excavating 3071 Brick Mill Rd Ellensburg, WA 98926 253.670.1869 (telephone) clint@interstateex.com (facsimile/email)	**NOTICES TO BE SENT TO:** **CITY OF DES MOINES:** Alex Johnson City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206.249.5438] (telephone) amjohnson@desmoineswa.gov (facsimile/email)

INVITATION TO BID

City of Des Moines
10th & 270th Project

NOTICE IS HEREBY GIVEN that quotes will be received by email to, the Engineering Services Division of the City of Des Moines, Washington, until 5:00 PM, on **Tuesday June 24, 2025** to Alex Johnson (amjohnson@desmoineswa.gov). CG 6-24-25

10th & 270th PROJECT

SCOPE OF WORK contemplated to be performed under this contract is as follows:

DESCRIPTION & CONSTRUCTION REQUIREMENTS

The 10th & 270th Project is located on 10th Avenue South, at the intersection of 10th & 270th up to approximately 200 feet north of the intersection.

All work shall conform to the most current edition of the Washington State Department of Transportation Standard Specifications and Plans.

Contractor shall excavate road subgrade consisting of likely crushed rock and native material for the preparation of the pipe trench.

Contractor shall install five (5) new type 1 catch basins and connect with segments of 12" corrugated polyethylene pipe (CPEP) or ductile iron pipe (DIP), per the Plans. The placement of the catch basins will be marked in the field by the Contracting Agency prior to construction. The replaced pipe shall be bedded in crushed surfacing top course (CSTC) for a minimum compacted thickness of 6 inches in every direction around the pipe. From the existing catch basin at the intersection of 10th & 270th, a 12" CPEP pipe will be laid underground to connect to the first proposed Type 1 catch basin.

Contractor shall install 12" CPEP pipe to connect the Type 1 catch basins, as shown in the plans. Contractor shall install the 12" CPEP pipe at the percentages shown in the plans.

Contractor shall install inlet protection on existing drainage structures nearby the identified pavement repair area. Storm drain inlet protection shall meet the requirements of WSDOT Standard Plan I-40.20-00.

Contractor shall saw cut and excavate pavement repair areas to a depth of 10" consistent with the dimensions provided in Appendix A and/or as marked in the field and haul away debris. Contractor shall then backfill with 4" compacted CSBC and 2" compacted CSTC subbase before installing 4" of HMA Class ½" PG 58H-22 per detail and tamp and seal edges as needed to complete the described project. All pavement repair areas will need to be marked out by the contractor. The City's Engineering staff will make the final determination of the pavement repair dimensions and excavation depth required.

The Contractor shall excavate pavement repair areas and shall backfill these with HMA in accordance with the details shown in the Plans and as marked in the field. The Contractor shall conduct the excavation operations in a manner that will protect the pavement that is to remain. Pavement not designated to be removed that is damaged as a result of the Contractor's operations shall be repaired by the Contractor to the satisfaction of the Engineer

at no cost to the Contracting Agency. The Contractor shall excavate only within one lane at a time unless approved otherwise by the Engineer. The Contractor shall not excavate more area than can be completely finished during the same shift, unless approved by the Engineer.

Unless otherwise shown in the Plans or determined by the Engineer, excavate to a depth of 10 inches. The Engineer will make the final determination of the excavation depth required. The minimum width of any pavement repair area shall be 40 inches unless shown otherwise in the Plans. Before any excavation, the existing pavement shall be sawcut or shall be removed by a pavement grinder. Excavated materials will become the property of the Contractor and shall be disposed of in a Contractor-provided site off the Right of Way or used in accordance with Sections 2-02.3(3) or 9-03.21.

Asphalt for tack coat shall be required as specified in Section 5-04.3(4). A heavy application of tack coat shall be applied to all surfaces of existing pavement in the pavement repair area. Placement of the HMA backfill shall be accomplished in lifts not to exceed 0.35-foot compacted depth. Each lift shall be thoroughly compacted by a mechanical tamper or a roller.

Contractor shall conduct the excavation operations in a manner that will protect the pavement that is to remain. Any damages to the pavement areas not designated to be removed as a result of the Contractor's operations shall be repaired by the Contractor at no cost to the Contracting Agency.

Contractor shall provide road restoration with 2" Full Grind & Overlay HMA CL ½ inch as shown in the plans to restore existing road areas impacted by construction. Refer to trench patch detail.

Contractor shall provide an Asphalt Raised Edge to prevent surface water from escaping the storm system.

Contractor shall provide all traffic control, if needed, per the Manual of Uniform Traffic Control Devices (MUTCD) and the City's Right-of-Way Permit requirements.

Dumping or stockpiling of soil shall not be allowed on roadway surfaces.

The Contractor shall locate all underground utilities (both new and existing) prior to starting work and shall not disturb or damage them. Promptly notify the Engineer of any conflict between the proposed work and any obstructions. The Contractor shall be responsible for making any and all repairs for damage caused by his or her activities.

MEASUREMENT

No specific unit of measurement shall be provided for "Mobilization", "Clearing & Grubbing", Erosion Control & Water Pollution Prevention", "Trench Bluff Pillow", "Pipe Anchor System", "Pipe Diffuser Tee", and "Project Temporary Traffic Control" and will be measured by lump sum.

"Minor Changes" will be measured by Force Account (FA).

1-09.6 Force Account *(October 10, 2008 APWA GSP)*

Supplement this section with the following:

The Contracting Agency has estimated and included in the Proposal, dollar amounts for all items to be paid per force account, only to provide a common proposal for Bidders. All such dollar amounts are to become a part of Contractor's total bid. However, the Contracting Agency does not warrant expressly or by implication that the actual amount of work will correspond with those estimates. Payment will be made on the basis of the amount of work actually authorized by the Contracting Agency.

"Structure Excavation Class B Incl. Haul" will be measured neatline by the cubic yard (CY), measured as the total cubic yardage excavated within the limits of the trench.

"Seeding, Fertilizing, and Mulching" will be measured by the square yard (SY).

"Topsoil Type A" will be measured by the cubic yard (CY).

"CPEP Storm Pipe 12 In. Diam." will be measured by the linear foot (LF), measured from inside face of catch basins.

"Ductile Iron Sewer Pipe 12 In. Diam." will be measured by the linear foot (LF), measured from inside face of catch basins. CG 6-24-25

"Catch Basin Type 1" will be measured per each (EA).

"Concrete Inlet" will be measured per each (EA). CG 6-24-25

"Crushed Surfacing Top Course" will be measured by the ton (TN), measured as the total tonnage required to complete the installation as shown on the Plans.

"Quarry Spalls, 4"-8"" will be measured by the ton (TN), measured as the total tonnage required to complete the installation as shown on the Plans.

PAYMENT

"Minor Changes", per Force Account will be full compensation for the costs of all labor, tools, equipment and materials necessary for any unexpected changes uncovered during construction and will follow WSDOT 2023 Standard Specifications Section 1-09.6.

"Mobilization", per WSDOT 2023 Standard Specifications Section 1-09.7.

"Project Temporary Traffic Control," per WSDOT 2023 Standard Specifications Section 1-10.5(1).

"Erosion Control and Water Pollution Prevention", per lump sum. Items to be included in the bid price shall include, but shall not necessarily be limited to: all necessary labor, materials, and equipment necessary to meet the requirements of the standard specifications and these special provisions for straw wattles, erosion and water pollution control for stockpiled materials, and disposal of sediments and materials.

"Clearing and Grubbing" shall be per lump sum. Items to be included in the bid price shall include, but shall not necessarily be limited to: removal and disposal of all existing

vegetation, trees, roots, quarry spalls, and debris within the clearing and grubbing limits shown on the Plans and specified herein.

"Seeding, Fertilizing, and Mulching", per square yard shall be full pay for all costs necessary to scarify any disturbed grass areas to a depth of 1 foot, seed, cover with a 3" layer of compost, and furnishing all labor, tools, equipment, and materials necessary to complete the Work. No fertilizer is required for this Work.

"Topsoil Type A", per cubic yard shall be full pay for all labor, tools, equipment, and materials necessary to complete the work as specified, including haul, furnishing and mixing loam soil and compost, and placing the loam soil/compost mixture where shown in the Plans.

"Structure Excavation Class B, Incl. Haul", per WSDOT 2023 Standard Specifications Section 2-09.3(4).

"Shoring or Extra Excavation Class B", per square foot.

"Unsuitable Foundation Excavation, Incl. Haul", per cubic yard

"Potholing", per each

"Crushed Surfacing Top Course", per ton shall be full pay to complete the installation as shown on the Plans, including material, hauling, placement, compaction, and cleanup. This item shall include all crushed surfacing top course required.

"Crushed Surfacing Base Course", per ton shall be full pay to complete the installation as shown on the Plans, including material, hauling, placement, compaction, and cleanup. This item shall include all crushed surfacing base course required.

"Planing Bituminous Pavement", per square yard.
The unit Contract price per square yard for "Planing Bituminous Pavement" shall be full payment for all costs incurred to perform the Work described in Section 5-04.3(14).

"HMA Cl. 1/2 In. PG 58H-22", per ton.

"Ductile Iron Sewer Pipe 12 In. Diam.", per linear foot shall be full pay for all labor, materials, and equipment to complete the installation of the storm sewer including, but not limited to, laying and jointing pipe and fittings, connection to existing storm sewer pipe, and approved couplings and adaptors as shown in the Plans. The unit price also includes bedding material for installing the pipe.

"CPEP Storm Sewer Pipe 12 In. Diam." per linear foot shall be full pay for all labor, materials, and equipment to complete the installation of the storm sewer including, but not limited to, laying and jointing pipe and fittings, connection to existing storm sewer pipe, and approved couplings and adaptors as shown in the Plans. The unit price also includes bedding material for installing the pipe.

"Catch Basin Type 1" per each shall be full pay for all materials, tools, and labor to install the catch basin, including but not limited to, excavation, connection to pipes, watertight couplings, compaction, adjustment risers, frame and grate, grout, and all other materials and labor to construct a complete and function catch basin or manhole. Crushed surfacing top

course utilized for this item to be paid under the "Crushed Surfacing Top Course" item. The unit price also includes bedding material for installing the Catch Basin.

CG 6-24-25

"Concrete Inlet" per each shall be full pay for all materials, tools, and labor to install the catch basin, including but not limited to, excavation, connection to pipes, watertight couplings, compaction, adjustment risers, frame and grate, grout, and all other materials and labor to construct a complete and function catch basin or manhole. Crushed surfacing top course utilized for this item to be paid under the "Crushed Surfacing Top Course" item.

"New Pipe Connection to Existing Storm Drain Structure", per each

This is a Public Works Project which is subject to Prevailing Wages. 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.

The undersigned Bidder hereby certifies that they have examined the site of all the proposed work under this Contract and that they have read and thoroughly understand the Plans, Specifications and other Contract Documents pertaining to this Contract, that they are 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 **ten (10)** working days thereafter. This period shall be known as the "Contract Time" for the purposes of the project.

The schedule on the Proposal must be completed, or the Bid shall be considered non-responsive. Basis for award shall be total Bid for all items 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.

Project Contact:

Please contact Alex Johnson, Project Manager at (206) 249-5438 or amjohnson@desmoineswa.gov for any project related questions. Questions received less than two (2) days prior to the date of bid opening may not be answered.

Please Note:

Select Contractors who are currently registered and on the Municipal Research & Services Center (MRSC) Small Works Roster are being invited to bid based on the "Storm Drainage Construction" sub-category within "Storm Drainage Facility Construction, Repair, and

Maintenance" main category search as prescribed by RCW 39.04.155 Limited Public Works Projects.

The City of Des Moines hereby notifies all bidders that bids submitted in response to this invitation will not be subjected to discrimination on the grounds of race, color, creed, sex or national origin in consideration for an award.

The City reserves the right to reject any or all bids and to waive informalities in the bidding and to make the award as deemed to be in the best interest of the City. No bidder may withdraw his bid for a period of thirty days after the date set for the bid opening.

BID PROPOSAL

The following bid prices shall include all material, labor, tools, equipment and all taxes. The total bid price amounts shall be shown in both words and figures. In case of discrepancy, the amount shown in words shall govern.

Bid Item	ITEM DESCRIPTION	Total Qty	Unit	Unit Price	Total Price
1	Minor Changes	1	FA	5000	5000
2	Mobilization	1	LS	500	500
3	Project Temporary Traffic Control	1	LS	450	450
4	Erosion Control & Water Pollution Prevention	1	LS	500	500
5	Clearing and Grubbing	1	LS	1200	1200
6	Seeding, Fertilizing, and Mulching	30	SY	10	300
7	Topsoil Type A	7	CY	36	252
8	Structure excavation class B incl haul	158	CY	75	11,850
9	Shoring or extra excavation class B	935	SF	18	16,830
10	Unsuitable Foundation Excavation, Incl. Haul	63	CY	80	5,040
11	Potholing	2	EA	500	1,000
12	Crushed Surfacing Top Course	20	TON	35	700
13	Crushed Surfacing Base Course	40	TON	35	1,400
14	Planing Bituminous Pavement	655	SY	14	9,170
15	HMA Cl. 1/2 In. PG 58H-22	106	TON	237	25,122
16	Ductile Iron Storm Sewer Pipe 12 In. Diam.	24	LF	91.45	2194.80
17	Corrugated Polyethylene Pipe Storm Sewer Pipe 12 In. Diam.	172	LF	14.33	2464.76
18	Catch Basin Type 1	3	EA	800	2400
19	Concrete Inlet w/solid lid	2	EA	800	2400
20	Connect to Existing Drainage Structure	1	EA	1000	1000

Total Bid Price (in figures) $89,773.56

Total Bid Price (in words)

Eighty nine thousand SEVEN Hundred SEVENty-three dollors; 56/

Signed

Title Managing Member

Name of Bidder Interstate Excavating LLC

Date of Bid 6-23-25

BID PROPOSAL (Continued)

Registration or license, Division of Professional Licensing:

1. License Number INTEREL778ND
2. Date 6-23-25
3. Contractor's Signature [signature]
4. Title Managing Member

Address of Bidder: 3071 Brick mill Rd Ellensburg, WA 98926

Telephone Number of Bidder 253-670-1869
Office Home

Email Contacts CLINT@INTERSTATEEX.com
JASON@INTERSTATEEX.com
OFFICE@INTERSTATEEX.com

Non-Collusion Affidavit

CITY OF DES MOINES

STATE OF WASHINGTON)

) ss.

County of King)

Clint Goold, being first duly sworn on his oath, says he is Managing Member and that the bid above submitted is a genuine and not a sham or collusive bid, or made in the interest or on behalf of any person not therein named; and he further says that the said Bidder has not directly or indirectly induced or solicited any bidder on the above work or supplies to put in a sham quote, or any other person or corporation to refrain from quoting; and that said Bidder has not in any matter sought by collusion to secure to (her)(him)self an advantage over any other Bid or Bidder.

SIGNATURE

Subscribed and sworn to before me this 24th day

of June, 2025.

Notary Public in and for the State of Washington

Washington,

Residing at Bonney Lake, WA

My commission expires 09-08-2028

NOTARY PUBLIC
STATE OF WASHINGTON
SUDIN PAKWAN
MY COMMISSION EXPIRES
SEPTEMBER 08, 2028
COMMISSION NO. 20122352

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: June 23, 2025.

Signature: Clint Gould

Name/Title: Clint Gould - Managing Member

Contractor Name: Interstate Excavating LLC

Address: 3071 Brick Mill Rd

City/State/Zip: Ellensburg, WA 98926

Statement of Bidders Qualifications

Each Bidder submitting a proposal on this work shall prepare and submit as part of this bid the following schedule:

1. Name of Bidder: Interstate Excavating LLC

2. Business address and telephone number:
3071 Brick Mill Rd
Ellensburg, WA 98926
253-670-1869

3. How many years has said Bidder been engaged in the contracting business under present firm name:
2 years

4. Contracts now in hand (gross amount):
$ 250,000

5. General character of work performed by said company:
Under ground utilities, land clearing, site prep

6. List of more important projects constructed by said company, including approximate costs and dates:
Puyallup Tribe of Indians = $365K Dec 2023 - May 2024
University of Puget Sound = $350K May 2024 - Aug 2024
Devils Glen Golf Course = $100K Aug 2024 - Sept 2024
Pritchard Building State Capitol = $212,500 - Sept 2024
Commencement Bay Corrugated = $160K - Feb 2024

7. List of company's major equipment:
2015 Sany 135 excavator, 2016 Yanmar 55 excavator, 2012 ASV skid steer, 2007 Kenworth 5 yard dump truck, 2022 Ram pipe truck 5500, 2016 Ford F350 service truck Bomag 3.5 ton double drum Roller.

8. Bank references:
Solarity Credit Union, Ally Auto

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

INTERE*778ND

10. Dept. of Revenue registration number:

605 252 265

11. Construction method(s) of sidewalk repairs to be utilized as part of this Contract:

N/A For This project NO SIDEWALKS PRESENT ONSITE / WORK AREA

Name of Bidder: Interstate Excavating LLC

By: Clint Gould

Title: Managing Member

Date: 6-23-25

Statement of Proposed Subcontractors and Material Suppliers

Subcontractors Name, Address and Telephone Number	Description of Work
Asphalt Patch Systems 8812 Canyon Rd E Puyallup, WA 98371 253-535-2590	Paving

Material Suppliers	Material (major items only)
Core & Main	Pipe, CB's, TESC
Consolidated	Pipe, CB's, TESC
Miles Sand & Gravel	Crushed Rock
Calportland	Crushed Rock

Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date October 14, 2022 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.

Interstate Excavating LLC
Bidder's Business Name

Signature of Authorized Official*

Clint Goold
Printed Name

Managing Member
Title

6-23-25	Bonney Lake	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:

Washington State

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

Interstate Excavating LLC

** 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.*

Statement of Bidder Responsibility Criteria

I, by signing the proposal and this statement, hereby declare, under penalty of perjury
under the laws of the Unites 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: City of Des Moines 10th & 270th Project

Bidder's Business Name: Interstate Excavating LLC

Bidder's Name: Clint Grold

Bidder's Signature: [signature]

Bidder's Title: Managing Member

Date: 6-23-25

CONTRACT ADDENDUM NO. 1

City of Des Moines

10th and 270th Pipe Project

Date of Issue: June 20, 2025

Date of Opening **(has not changed): 5 PM on June 24th, 2025**

Notice to All Planholders:

This Addendum No. 1, containing the following revisions, additions, deletions and/or clarifications is hereby made part to the Plan and Contract Provisions (Contract Documents) for the above-named project. Bidders shall take this Addendum into consideration when preparing and submitting their bids and it shall be attached to the Contract Provisions.

Contractors shall acknowledge the receipt of this Addendum No. 1 in the place provided in the Proposal Signature Sheet. Failure to do so may disqualify the Bidder from consideration of its bid.

SPECIAL PROVISIONS

Item #1 Special Provisions: All references to "Brandon Pitts" have been amended to "Alex Johnson" to reflect the new City project manager for this project along with accompanying contact information.

Item #2 Special Provisions: "Catch Basin Type 1L" has been removed from "Measurement" and "Payment" Sections.

Item #3 Special Provisions: Bid tabs have been revised as follows:

~~18~~	~~Catch Basin Type 1~~	~~4~~	~~EA~~
~~19~~	~~Catch Basin Type 1L~~	~~1~~	~~EA~~
18	Catch Basin Type 1	3	EA
19	Concrete Inlet w/Solid Lid	2	EA

Item #4 Special Provisions: Added the following paragraphs to the "Measurement" Section: "Ductile Iron Sewer Pipe 12 in Diameter will be measured by the linear foot (LF), measured from inside face of catch basins" and "Concrete Inlet will be measured per each (EA)".

ALL OTHER REQUIREMENTS OF THE CONTRACT DOCUMENTS SHALL REMAIN IN EFFECT.

Date: 6/20/2025

Alex Johnson, Project Manager, City of Des Moines

Clint Goold

6-23-25

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Redondo Fishing Pier Replacement Project – Construction Contract and Consultant Services Agreements Awards

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: July 3, 2025

ATTACHMENTS:
1. CIP Budget Worksheet
2. Public Works Contract
3. Exeltech, a Bowman Company. Consultant Services Contract for Construction Administration and Inspection Services
4. Redside Construction LLC Bid Proposal Package
5. Engineers Recommendation

CLEARANCES:
[ ] City Clerk ____
[ ] Community Development ____
[ ] Courts ____
[ ] Director of Marina Redevelopment ____
[ ] Emergency Management ____
[X] Finance ____
[ ] Human Resources ____
[X] Legal /s/TG
[X] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[X] Public Works ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

The purpose of this agenda item is for City Council to direct administration to bring forward an amendment to the 2025-2030 Capital Improvement Plan and 2025 Capital Budget (Attachment 1), seek City Council approval of the Public Works Contract with Redside Construction LLC (Attachment 2), and seek approval of the Consultant Services Contract with Exeltech, a Bowman Company(Attachment 3) to provide Construction Administration and Inspection Services for the Redondo Fishing Pier Replacement Project.

Suggested Motions

Motion 1: "I move to direct administration to bring forward a budget amendment to the 2025-2030 Capital Improvement Plan and the 2025 Capital Budget to include the amended Redondo Fishing Pier Replacement Project as described herein, and include such amendment in the next available budget amendment ordinance."

Motion 2: "I move to approve the Public Works Contract with Redside Construction LLC, for the Redondo Fishing Pier Replacement Project in the amount of $3,773,986.34, authorize a project construction contingency in the amount of $566,000.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted."

Motion 3: "I move to approve the Consultant Services Contract with Exeltech Consulting Inc. to provide Construction Administration and Inspection Services for the Redondo Fishing Pier Replacement Project in the amount of $610,472.00, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted."

Background

The Redondo Fishing Pier has exceeded its expected service life and is currently closed to the public due to safety concerns. The pier is anticipated to be replaced as part of the City's Capital Improvement Plan (CIP). The pier was originally built in 1980 with a timber superstructure supported on timber substructure. The treated timer pilings are showing significant signs of internal and exterior deterioration and loss of structural capacity. During the fall of 2019, the City performed an on-site inspection and condition survey to evaluate the fishing pier structure. The inspection results identified the need for facility replacement in lieu of temporary repairs. The City Council was briefed on the short and long-term alternatives on September 5, 2019.

The Redondo Fishing Pier Replacement Project includes removing the existing pier, disposal of existing creosote treated timber and constructing a new fishing pier located at the same location and has the same footprint as the existing pier. Associated civil improvements adjacent to the fishing pier will also be installed, including new concrete traffic curb, gutter and sidewalk, as well as resurfacing the pavement of the entire Redondo Parking Lot. All required federal, state, and local permits to complete the project have been acquired.

At the June 25, 2020, City Council meeting, the City accepted a grant from the Washington State Department of Commerce in the amount of $339,500 to provide support for the design and permitting phase of the fishing pier.

At the June 8, 2023, City Council meeting, the City passed Ordinance No. 23-022 providing for the issuance, sale and delivery of limited tax general obligation bonds for the purpose of constructing public amenities and capital improvements. The Redondo Fishing Pier Project (MCCIP0012) was included in the bond.

At the September 14, 2023 City Council meeting, City Council authorized the acceptance of a Washington State Department of Commerce Grant in the amount of $1,852,000 for the construction of the Redondo Fishing Pier and Restroom Replacement Project.

On April 17, 2024, a bid opening was held for the combined Redondo Fishing Pier and Restroom Replacement Project. However, only one bid was received and it exceeded the engineering estimate. As a result, City Council directed staff to reject the bid.

At the January 23, 2025, City Council meeting, City Council approved an amendment to the On-Call General Civil Engineering Task Assignment with Exeltech to redesign different structural components of the fishing pier, modify the original project plans and specifications, and coordinate with environmental agencies on the changes needed for the existing environment permit to address the redesign.

Discussion

Budget Amendment (Motion #1)

The City Council approved a bond in the amount of $26 million for elements of Marina and Redondo redevelopment. At the February 6, 2025 City Council meeting, City Council directed staff to prioritize funding for the Redondo Fishing Pier project utilizing the bond proceeds. $2,711,000 of the bond proceeds will be allocated to the Redondo Fishing Pier Replacement Project. This allocation of the bond proceeds was not reflected on the 2025-2030 Capital Improvement Plan and 2025 Capital Budget.

The remaining funding from the Washington State Department of Commerce Grant in the amount of $200,000 will be transferred from the Redondo Restroom project to support the Redondo Fishing Pier Replacement Project.

The proposed CIP Project Worksheet (Attachment 1) for the Redondo Fishing Pier Replacement Project MCCIP0012 illustrates full funding for the proposed improvements based on the Responsive Low Bid Proposal (Attachment 4) as well as construction contingency.

Construction Contract (Motion #2)

The Redondo Fishing Pier Replacement was advertised for bids in accordance with state law, and requirements for competitive bidding of public works contracts. Three was received for the project. The bid was publicly opened and read out loud on July 1, 2025 by the City Clerk and summarized below.

BID RESULTS

Engineer's Estimate (including tax)	$4,367,697.75
Contractor Name	**Bid Proposal**
Redside Construction LLC	**$3,773,986.34 (Responsive Low Bid)**
Quigg Bros., Inc.	$4,353,968.94
American Construction Company	$5,927,459.64

The bid proposal and contractor qualifications have been reviewed and staff finds that the low bid is responsive and recommends award of the contract to Redside Construction LLC (Attachment 5).

Construction Administration and Inspections Services Task Assignment (Motion #3)

Engineering consultants are needed in order to supplement and expand the capability of City staff for Construction Administration and Inspection of the Project. In December of 2023, City staff prepared and advertised a Request for Proposal (RFP) for construction administration and inspection of the project. The City received three proposals from consulting firms that were reviewed and scored by a committee of City staff. Staff determined through this review process that Exeltech, a Bowman Company was best qualified to provide Construction Administration and Inspection Services and requested their services (Attachment 2).

The scope of work for Exeltech, a Bowman Company includes the following services: conducting a pre-construction conference involving key stakeholders; conduct weekly construction meetings; providing engineer of record services; working with property owners and businesses to coordinate construction and minimize impacts; providing special inspections for welding and pile driving activities, providing marine mammal monitoring per the environmental permitting requirements; preparing daily diaries documenting issues and progress; reviewing construction schedule commitments; review and approval of proposed material submittals; responding to contractor requests for information to clarify construction requirements; preparing change orders and work instructions; engineer solutions to unforeseen problems; conduct material testing to meet specifications; performing daily inspections to ensure quality workmanship, managing various environmental compliance commitments, and delivery of all construction documentation to the City meeting applicable Washington State Department of Transportation (WSDOT) Local Agency Guidelines (LAG) requirements.

Exeltech, a Bowman Company has demonstrated satisfactory qualifications for Construction Administration and Inspection services on other City projects such as the Redondo Boardwalk, the North Marina Bulkhead and Restroom Replacement Projects, and the Redondo Restroom Replacement Project.

Alternatives

(Motion #1) - Not Pursue Budget Amendment – Defer Project

The City Council could elect to not act on the motion, thereby deferring the project and rejecting all Bid Proposals. This is not recommended given the strategic partnerships with funding partners, the associated $4,477,000 in bond proceeds, busy current bidding climate, and expected future cost inflation.

(Motion #2) - Reject bid

The City Council could direct staff to reject the Bid Proposal and re-submit for construction bids at a later time. However, this would only delay the project and most likely result in higher construction cost due to inflation.

(Motion #3) - Not Approve Consultant Services Contract with Exeltech, a Bowman Company

The City Council could elect not to approve the Consultant Services Contract with Exeltech, a Bowman Company for Construction Administration and Inspection Services. The City does not have adequate resources to perform complete Construction Administration and Inspection in compliance with general project requirements. Council could direct staff to re-advertise for proposals, but this will cause project delay and potential need to re-bid the project.

Financial Impact

The City's amended CIP Budget Worksheets include revenues to accommodate full project funding for the Public Works Contract, Consultant Agreement for Construction Administration and Inspection, and project contingency

Recommendation

Staff recommends adoption of the motion(s) and also points out the important of timing this adoption due to permitting fish window requirements.

Council Committee Review

The Transportation and Municipal Facilities Committees have been routinely updated on the status of this project.

Attachment #1

CITY OF DES MOINES
2025-2030 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)

Redondo Fishing Pier	Project #	MCCIP0012
-	Previous Project #	310.079

CIP Category: Park Facility & Playground Projects

Managing Department: Plan, Build & PW Admin

Summary Project Description:
Replace Redondo Fishing Pier and remove existing timber piles.

Justification/Benefits: The fishing pier is now approximately 35 years old and the timber structure and substructure has reached the end of its useful life.

PROJECT SCOPE				*ANNUAL ALLOCATION*							
Expenditures	*Current Budget*	*Requested Change*	*Total Budget*	*Project to Date 12/31/23*	*Scheduled Year 2024*	*Plan Year 2025*	*Plan Year 2026*	*Plan Year 2027*	*Plan Year 2028*	*Plan Year 2029*	*Plan Year 2030*
Design	623	237	860	606	17	237	-	-	-	-	-
Land & Right of Way	-	-	-	-	-	-	-	-	-	-	-
Construction	3,257	1,694	4,951	-	-	3,540	1,411	-	-	-	-
Contingency	-	-	-	-	-	-	-	-	-	-	-
Total Expenditures	**3,880**	**1,931**	**5,811**	**606**	**17**	**3,777**	**1,411**	**-**	**-**	**-**	**-**

Funding Sources	*Current Budget*	*Requested Change*	*Total Budget*	*Project to Date 12/31/23*	*Scheduled Year 2024*	*Plan Year 2025*	*Plan Year 2026*	*Plan Year 2027*	*Plan Year 2028*	*Plan Year 2029*	*Plan Year 2030*
REET 2	858	-	858	77	-	781	-	-	-	-	-
Debt Proceeds	1,766	2,711	4,477	1,766	-	1,500	1,211	-	-	-	-
Department of Commerce Grant (Secured)	276	-	276	276	-	-	-	-	-	-	-
Washington State Appropriation (Secured)	980	(780)	200	-	-	-	200	-	-	-	-
Total Funding	**3,880**	**1,931**	**5,811**	**2,119**	**-**	**2,281**	**1,411**	**-**	**-**	**-**	**-**
Funding Shortfall/Excess	**-**	**-**	**-**								

Attachment #2

PUBLIC WORKS CONTRACT
between City of Des Moines and

Redside 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 Redside Construction LLC organized under the laws of the State of Washington, located and doing business at 600 Winslow Way E. Suit#237, Bainbridge Island WA 98110, 206-317-6400, Sam Berry (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.

Work to be performed under this contract is as follows:

This Contract provides for the improvement of City of Des Moines Redondo Fishing Pier Replacement. Work includes removing existing fishing pier, disposal of existing creosote treated timber, removing concrete curb and sidewalk and asphalt concrete pavement, constructing a new fishing pier, turbidity curtain, HMA Paving, slurry seal, paint line, illumination system, traffic control, cement concrete sidewalk, cement concrete traffic curb and gutter, cement concrete pedestrian curb, trash receptacles, timber guardrail, steel guardrail, stair assembly, field office building and other work.

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, <u>including APWA General Special Provisions, if they are included</u>,
5. Contract Plans,
6. Amendments to the Standard Specifications,
7. <u>WSDOT</u> Standard Specifications <u>for Road, Bridge and Municipal Construction</u>,
8. <u>Contracting Agency's Standard Plans (if any)</u>, and
9. <u>WSDOT</u> Standard Plans <u>for Road, Bridge, and Municipal Construction</u>.

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 within 110 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 $3,773,986.34, which includes 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 **$5,146.35 (compute the amount to be entered using the following formula 0.15 x original contract amount divided by original time for completion. Delete this after computing the amount to enter)**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, 294 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:	**CITY OF DES MOINES:**

By:_____ *(signature)* Print Name:_____ Its_____ *(Title)* DATE:_____	By:_____ *(signature)* Print Name: Katherine Caffrey Its City Manager *(Title)* DATE:_____ Approved as to Form: _____ City Attorney DATE:_____

NOTICES TO BE SENT TO: **CONTRACTOR:** Sam Berry Redside Construction LLC 600 Winslow Way E. Suit#237 Bainbridge Island WA 98110 206-317-6400 (telephone) sam@redside.biz (facsimile/email)	**NOTICES TO BE SENT TO:** **CITY OF DES MOINES:** Khai Le City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-870-6537 (telephone) kle@desmoineswa.gov (facsimile/email)

Attachment #3

CONSULTANT SERVICES CONTRACT
between the City of Des Moines and

Exeltech, a Bowman Company

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Exeltech, a Bowman Company organized under the laws of the State of Washington, located and doing business at 8729 Commerce Pl Dr NE, Suite A Lacey, WA 98516 (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

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

"Scope of Work for Construction Management and Inspection Services - Redondo Fishing Pier Replacement" attached hereto as Exhibit "A" is incorporated herin by reference.

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

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I within the time specified in each task order and as specified in Exhibit "A".

III. COMPENSATION.

A. The City shall pay the Consultant, based on time and materials, an amount not to exceed $610,472.00 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit "A" for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. LIMITATION OF ACTIONS. CONSULTANT MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONSULTANT'S ABILITY

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

VIII. TERMINATION. Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

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

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

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

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

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

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

XI. INSURANCE. The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

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

provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Consultant shall obtain insurance of the types and coverage described below**:**

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.

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

4. Professional Liability insurance appropriate to the Consultant's profession.

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

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $2,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $2,000,000 per claim and $2,000,000 policy aggregate limit.

C. Other Insurance Provisions.

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

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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

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

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

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

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

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

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

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

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

XV. WORK PERFORMED AT CONSULTANT'S RISK. Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant

shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XVI. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

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

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

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

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

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

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

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

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

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

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

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

CONSULTANT:	**CITY OF DES MOINES:**
By:_____ *(signature)* Print Name:_____ Its_____ *(Title)* DATE:_____	By:_____ *(signature)* Print Name: Katherine Caffrey Its City Manager *(Title)* DATE:_____ Approved as to form: _____ City Attorney DATE:_____

NOTICES TO BE SENT TO: **CONSULTANT:**	**NOTICES TO BE SENT TO:** **CITY OF DES MOINES:**
Kevin Weed Exeltech, a Bowman Company 8729 Commerce Pl Dr. NW, Suite A Lacey, WA 98516 425-359-6004 (telephone) kweed@xltech.com (fax/email)	Khai Le City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-870-6537 (telephone) kle@desmoineswa.gov (fax/email)

Scope of Services
City of Des Moines
Redondo Fishing Pier Replacement Project
Construction Management Services

June 2025

Prepared by:
Exeltech Consulting, Inc
8729 Commerce Pl Dr NE, Suite A
Lacey, WA 98516

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INTRODUCTION

Des Moines (hereinafter ("City") is the Contracting Agency for this Scope of Services. Exeltech Consulting, Inc (hereinafter "Consultant") will work under the City's Project Manager and will provide construction management and inspection services to support the City throughout the construction of the Redondo Fishing Pier Replacement Project (hereinafter "Project"). Services generally include project management, documentation control, inspection, materials testing, other project monitoring elements, and contract administration during the construction of the Project, as further detailed in this scope of services.

The Consultant's Construction Management Team for this scope of work will consist of Exeltech's Project Manager, Resident Engineer, Documentation Control and Field Inspector. Materials testing will be provided by MTC as a project expense. Geotechnical support will be provided by Shannon & Wilson. Other in-water habitat monitoring (forage fish, marine mammal, marble merlette, etc.) will be provided by a qualified Subconsultant (TBD).

The Consultant will act as the direct point of contact for correspondence sent to and received from the Contractor and will work to facilitate discussions between the Contractor and the City.

PROJECT DESCRIPTION

The proposed improvements to the City of Des Moines Fishing Pier Replacement Project will construct the following:

- Demolish and Removal of Existing Fishing Pier
- New Fishing Pier
- Site Civil Improvements

ASSUMPTIONS

1. The level of services is based on a Construction Contract is assumed to be 110 working days. The Consultant's Construction Management Team will begin pre-construction activities approximately one (1) month prior to construction and will continue to provide post-construction activities for approximately one (1) month after construction completion. The scope of services is therefore based on a duration of 110 working days during construction, plus two (2) weeks each of pre & post construction tasks as defined in the scope.

2. Contractor's work is anticipated to take place during daylight hours on a single shift of 8 to 10 hours per day, 4 to 5 days per week for 110 working

days; although it is possible that the tidal influence may potentially require some night work as allowed or approved by the City.

3. Services will be performed in accordance with the WSDOT Local Agency Guidelines (LAG) and the WSDOT Construction Manual.

4. Project construction is assumed to be continuous and without a suspension.

5. The Consultant's Construction Management Team is assumed to include the following labor resources (on average) during the duration of the construction contract:
   - One Project Manager, average 2 hrs per week during construction.
   - One Resident Engineer, average 26-30 hrs per week during construction.
   - One full time Inspector, average 45 hours per week
   - Document Control, average 20-24 hrs per week
   - Engineer of Record and Environmental Team Support
   - Materials Testing Firm (MTC)
   - Design Architect for lighting design support (Merrick Lentz)
   - Habitat Monitoring Support (TBD)

   Professional services will be limited to the assumed hours/costs established budget, unless additional services are authorized by the City.

   The project construction sequence is assumed to remain the same even if the duration of activities change.

6. To streamline communication, project direction from the City will be channeled through Consultant's Construction Management Team, who will also serve as the primary point of communication with the Contractor.

7. Exeltech's Project Manager will report directly to, and communication flow will be directly to/from the City's Project Manager.

8. Project documentation will be maintained in the Consultant's web-based documentation software and filed in accordance with standard filing protocol. At the completion of the project, the original project documentation will be transferred to the City.

9. Hazardous materials and or archaeological discoveries/conditions are not known to be present at the project site, but will be properly dealt with if encountered.

10. The Construction Management Team will have direct access to communicate with the EOR through the RFI process and will receive timely responses to requests.

11. The Consultant will lead the coordination between the Contractor's activities and the impacts to the community.

12. Construction surveying will be done by the Contractor.

13. Observations/Inspections by the Construction Management Team will not in any way relieve the Contractor from its obligations to perform the Work in accordance with the Contract Documents.

1. PROJECT MANAGEMENT

1.1 General Project Management

Throughout the duration of the project, the Project Manager's and Resident Engineer's activities will include coordination and oversight of the Construction Management Team's operations, including inspection, documentation control, answering questions regarding contract administration, and offering advice to the City on construction issues.

The Consultant will work with the City to develop and monitor the scope, schedule, and budget for the construction management services on the project. Any issues or changes that arise will be proactively communicated and documented with the City's Project Manager.

Consultant Resources: Project Manager, Resident Engineer

1.2 Monthly Invoices

The Consultant's monthly invoices for the services provided with this

Agreement will document the efforts of the Construction Management Team.

Prior to the first billing, the Consultant will coordinate with the City on an acceptable format for the Consultant's monthly Invoices.

Consultant Resources: Project Manager, Administration

Deliverables:

- Monthly Invoices and Progress Reports

2. PRE-CONSTRUCTION ACTIVITIES

2.0 Advertising Fishing Pier Project and Bid Support

The Consultant will assist the City in advertising the project for the Redondo Fishing Pier Replacement Project. Provide bid support and recommendation of the apparent low bid contractor.

Consultant Resources: Engineering of Record, Design Engineer, Landscape Architect, Environmental Scientist

Deliverables:

- Redondo Fishing Pier Replacement PS&E Package
- Bid Tabulation
- Record of Materials (ROM)

2.1 Construction Team Preparation

The Consultant will prepare a Construction Communications and Documentation Plan that will outline delivery strategy for coordinating the anticipated activities. This document will be reviewed in detail with the project team at a meeting shortly after Notice to Proceed (NTP).

Consultant Resources: Resident Engineer, Document Control

Deliverables:

- Construction Communication and Documentation Plan

2.2 Pre-construction Conference

The Consultant will participate in a Pre-construction Conference prior to the Contractor beginning work. The Consultant will assist in the development of an agenda, based on the City's template, and relevant project distribution information for the City's review and approval prior to the Conference. The

At the Pre-construction conference, the Resident Engineer along with the City will facilitate discussions with the Contractor concerning the plans, specifications, schedules, issues with utilities, unusual conditions, federal, state, and local requirements, EEO, DBE requirements, and any other items that will result in better project understanding among the parties involved.

Consultant Resources: Resident Engineer, Document Control, Inspector

Deliverables:

- Pre-construction Conference agenda and materials
- Pre-construction Conference meeting minutes

2.3 Pre-construction Photographs

The Consultant will take pre-construction photographs which will document the existing condition of the Project right-of-way, and relevant structures and appurtenances adjoining the site. Photos will be cataloged as to their location, date, and other relevant information. The Consultant will provide a copy of the pre-construction photographs to the City in digital format.

Consultant Resources: Inspector

Deliverables:

- Pre-construction Photographs

3. CONTRACT ADMINISTRATION FOR CONSTRUCTION

3.1 Project Meetings

The Consultant will attend various project related meetings with the Contractor (including weekly project meetings at the project site). The Consultant will prepare the agenda, keep meeting minutes, and the action item list for each of the weekly construction progress meetings.

Consultant Resources: Resident Engineer, Field Inspector, Document Control

Deliverables:

- Meeting Agendas and Minutes for weekly progress meetings

3.2 Project Communication

The City will carry the primary responsibility for public involvement/outreach. The Consultant will assist the City with responses to public inquiries about the project. The Consultant will provide project emails at the end.

The Consultant is the primary contact for any adjacent property owners and will remain in contact with them as necessary throughout the project.

Consultant Resources: Resident Engineer, Field Inspector

Deliverables:

- Emails

3.3 Submittal Management

Project submittals will be logged and tracked by the Consultant. The Consultant will coordinate and process the receipt, distribution, review and compilation of comments; and monitor and track the processing of RFI's, submittals, samples, change orders, payment requests, certified payrolls, and other submittals from the Contractor for compliance with the contract documents.

In cooperation with the City and the EOR, the Consultant will prepare a matrix that identifies key submittals that will be transmitted to the design engineer and/or the City for review and approval, and those that will be processed by the Consultant.

The Consultant will track and approve the processing of Request for Approval of Materials (RAM's) and review and distribute as necessary. Contractor submittals to City staff and/or EOR for will be submitted for approval, including proposed designs, construction methods and procedures for the various components of the structures, formwork and false work submittals, catalog cuts, and shop drawings for compliance with the Contract documents. The Consultant will seek technical expertise from the EOR when required for clarification or resolution of Contract drawings.

The Consultant will process the requests for sublet; and will review and approve the requests according to the specification 1-08.1.

The Consultant will review and respond on the SPCC / Erosion Control Plan and will monitor the Contractor's administration of the Plan.

Consultant Resources: Resident Engineer, Document Control.

Deliverables:

- Submittal Tracking Log
- Digital Copy of Contractor Submittals with Approvals (RAMs, RFIs, Submittals)

3.4 Inspection Services

The Consultant will inspect on-site construction methods, products, materials, and activities for conformance with the project plans, specifications, Contract documents, submittals and applicable codes and design standards with the ROM. Any non-conformances, deviations, defects or deficiencies observed will be documented and communicated to the City.

The Inspector will be the City's representative to coordinate and facilitate the Contractor's work with Utilities, and the adjoining property owners on the project.

The Consultant will track and inspect materials deliveries, storage and protection for compliance. The Consultant will coordinate the technical inspection and verify acceptance testing for project materials and constructed components as specified by the ROM.

The Consultant will document observed non-conforming work, and as necessary in conjunction with the design team make recommendations to the City for corrective measures. In addition, the Construction Management Team will notify the Contractor immediately and proactively work with the Contractor to resolve such issues. Resolution of nonconforming issues/items, will be tracked to ensure that corrective work is completed. As necessary, disputes will be elevated to the proper level.

The Consultant will prepare Inspector's Daily Reports (IDRs) by utilizing the Headlight program, documenting weather conditions, labor, equipment, and materials used, material and equipment deliveries to the site, phases of work being undertaken with start and stop times, work by bid item number, environmental permit compliance, Contractor contacts made, visitors to the site, quality of work, shortages, requests for change orders, engineer directives and/or clarifications, design issues, safety, traffic management, accidents, any notices received, interfaces with other agencies and government officials, identification of different site conditions and contaminated materials and the influence of external events such as weather and strikes which may affect the cost or completion schedule for the work.

The Consultant will provide daily reports on any Force Account items on the WSDOT 422-008 form, and document and calculate the amount to be paid for work performed on the force account.

The Consultant will use WSDOT form 422-635 to document and record field calculations and notes.

The Consultant will provide a weekly statement of working days to the Contractor and a copy to the file.

The Consultant will provide pictorial documentation through weekly progress photos during the construction period. The construction photographs will be in digital format and cataloged by date. Construction photographs will be posted on a weekly basis. On a routine basis there will be progress photos taken in the same location and angle as the pre-construction photos.

Consultant Resources: Resident Engineer, Inspectors, Document Control

Deliverables:

- Inspector Daily Reports w/ Construction Photographs
- Force Account Sheets
- Field Note Records

3.5 Claims/Change Order Administration

The Consultant will work to resolve day-to-day construction disputes which may occur during the course of the Project and will promptly inform the City of notices of changes or claims/issues raised by the Contractor.

The Consultant will assist and work on behalf of the City in preparing and negotiating claims, change order costs and time extensions by evaluating the Contractor's proposal and performing a preliminary evaluation of the contents of the change or claim and obtaining factual information concerning the change or claim to evaluate merit and entitlement. The Consultant will prepare independent cost estimates based on the alleged cause of claims or proposed changes submitted by the Contractor. Upon successful change order negotiations, the Consultant will prepare the final change order for execution by the City and the Contractor. Where applicable, the Consultant will prepare alternate estimates based on varying scenarios of the change or claim cause. These estimates will be transmitted to the City and will be used in claim or change order rulings and negotiations. delays and extra work will be monitored and tracked. The Consultant will advise the City of the acceptability of price and time extension prior to submittal to the Contractor for their signature.

The Consultant will coordinate with and obtain written concurrence from the EOR on the description of work for each change order, which will be included as an attachment to the change order.

The Consultant will prepare and maintain a Change Order Report which will be provided to the City on a weekly basis. The report will document and track change order information pertaining to proposed and executed change orders and their effect on the contract price as of the date of the report.

The Consultant will coordinate emergency change order work as directed by the City.

If necessary, the Consultant will provide dispute resolution procedures and expert witness deposition during litigation (associated time not included in current budget).

Minor items of work, per the contract bid item, will be approved by the City's Project Manager before the Consultant directs the Contractor to proceed with the work.

Consultant Resources: Resident Engineer, Document Control, Inspector, EOR

Deliverables:

- Change order with backup support
- Change Order tracking log

3.6 Monthly Construction Contract Schedule Review

The Consultant will perform an initial detailed schedule review of the Contractor provided CPM for conformance with the contract documents and will discuss related schedule issues or concerns with the City.

On a monthly basis, the Consultant will review and respond to the Contractor's updated construction schedule and compare with field-observed progress.

The Consultant will monitor and regularly report to the City regarding schedule compliance. If issues arise, the Consultant will report to the City with suggested resolutions, and coordinate with Contractor in the development of recovery schedules, as needed, to address delays caused by either events or issues within the Contractor's control or other events or issues beyond the Contractor's control.

The Consultant will advise the City and make recommendations for exercising the City's contract prerogatives, including giving the Contractor notice to accelerate the project progress, withhold payment for cause, and other prerogatives available in-an-effort to achieve contract and schedule compliance.

Consultant Resources: Resident Engineer, Document Control

Deliverables:

- Digital Copy of Contractor Provided Schedules

3.7 Prepare Monthly Contractor Payments

The Consultant will track installed quantities and prepare a monthly pay estimate for the City to make payment to the Contractor based on measured quantities of work performed for each bid item. The Consultant will have the Contractor review the estimate and resolve any discrepancies prior to sending it the City for processing. As necessary, the Consultant will prepare correspondence explaining payment recommendations.

Consultant Resources: Resident Engineer, Document Control, Inspector

Deliverables:

- Monthly Contractor pay estimate
- Backup Field Note Records

3.8 Document Reviews

The Consultant will conduct periodic internal quality documentation audits to monitor that documentation is complete and accurate. The audit will be conducted by the Project Manager. The Consultant's project team will then respond to findings and recommendations from the audit.

Consultant Resources: Project Manager

Deliverables:

- Document Review Memo

3.9 Record Drawings

The Contractor will maintain a set of red line drawings on a half or full-size plan sheet set that shows revisions to the plans that were constructed in the field. This will be provided to the City at the completion of the project. Inspector will review the Contractor record drawings status with each monthly progress payment.

Consultant Resources: Field Inspector

Deliverables:

- Red line Construction Record Drawings (from Contractor)

3.10 Materials Testing

The Consultant will coordinate and manage materials testing required on the Project. The Consultant will document and evaluate results of testing, and address deficiencies. The Consultant will use Materials Testing & Consulting (MTC) to perform necessary field and lab testing of granular materials, other materials requiring testing, and any other applicable special inspections.

Testing will be for those items requiring physical acceptance testing in accordance with the project plans and specifications. Testing will be done according to the Local Agency Guidelines (LAG) and the WSDOT Construction Manual (as modified by the LAG manual). Specifically, this includes Table 9-3.7 of the WSDOT Construction Manual as modified by Section 52.3 Quality Control of the LAG.

Consultant Resources: Resident Engineer, MTC, Document Control

Deliverables:

- Materials testing reports

3.11 Geotechnical Support

The Consultant will coordinate and manage Geotechnical support required on the Project, primarily with pile driving support. The Consultant will document and evaluate results of testing, and address deficiencies. The Consultant will use Shannon & Wilson to perform necessary field inspections and evaluations.

Consultant Resources: Shannon & Wilson, Document Control, Inspector

Deliverables:

- Pile driving reports
- Field reports

3.12 Habitat Monitoring Support

The Consultant will coordinate and manage habitat inspection as required on the Project. The Consultant will document and evaluate results and address as necessary to remain in compliance with the Project Documents. The Consultant will use a qualified Subconsultant to perform necessary field monitoring and evaluations.

Consultant Resources: Document Control

Subconsultants – Habitat Subconsultant (TBD)

Deliverables:

- Habitat Monitoring and Observation Reports

3.13 Engineer of Record

The Consultant will provide availability of the Engineer of Record and key design team members including the Architect to support the project during construction. Team members will be available to respond to design questions, RFI, RAM and Submittal reviews. Inspection support as needed.

Consultant Resources: Engineer of Record, EOR, Environmental

Subconsultants – Merrick Lentz Architect

Deliverables:

- RFI's, RAM's and Submittal Responses
- Attendance at meetings per request

3.14 Project Closeout

When appropriate, the Consultant will make a recommendation for issuance of construction Substantial Completion. The Consultant will coordinate with the City, the engineer of record, sub-consultants, Utilities, and other affected agencies to perform a project walk through and inspection and oversee production of a comprehensive list of deficiencies and punch list items to be completed by the Contractor. The punch list and Certificate of Substantial Completion will be prepared by the Consultant and issued by the City. The Consultant will sign-off on punch list work as it is completed in accordance with the Contract documents.

Following completion of punch list work, the Consultant will recommend that the City and/or Utilities accept the Project. Once involved entities have accepted the Project in writing, the Consultant will prepare a Certificate of Physical Completion, which will be issued by the City.

The Consultant will prepare and/or finalize necessary reports and documentation for the Project, including the final pay estimate, comparison of preliminary and final quantities, record of material samples and tests, material certifications, affidavit of wages paid, and affidavit of amount paid to DBE participants.

Upon completion of work on the Project, the Consultant will deliver Project documents to the City for permanent storage. Project documentation will be neatly organized and labeled in standard filing boxes. A copy of digital files related to the construction project, including e-mails, will be provided to the City on a mass storage device (thumb drive, or approved equivalent). The Consultant may keep a copy of the project documents for their records.

Consultant Resources: Resident Engineer, Document Control, Field Inspector

Deliverables:

- Certificate of Substantial Completion with punch list
- Physical completion letter and recommendation of final acceptance letter

- Post-construction Photographs
- Construction Record Drawings
- Project records at the completion of the contract

Fee Determination - Summary Sheet

Project Name: Redondo Fishing Pier Replacement Project — **Start Date**
Client Name: City of Des Moines
Task Description: Construction Management Services — **End Date**
Consultant Fee Determination: Exeltech
Project # 2440

Classification	Man Hours		Hourly Rate		Dollars
PiC / PM	52	x	$233.00	=	$12,116.00
Resident Engineer	772	x	$185.00	=	$142,820.00
Sr. Field Inspector	0	x	$0.00	=	$0.00
Field Inspector	1100	x	$147.00	=	$161,700.00
Document Control	596	x	$132.00	=	$78,672.00
Engineer of Record	130	x	$200.00	=	$26,000.00
Design Engineer	0	x	$162.00	=	$0.00
CADD Technician	72	x	$117.00	=	$8,424.00
Environmental Specialist	82	x	$232.00	=	$19,024.00
Administrator	12	x	$125.00	=	$1,500.00
Total Hours	**2,764**				
Total DSC				=	$450,256.00

Overhead (OH Cost - Including Salary Additives)

OH Rate x DSC	160.00%	x	=	N/A
Included in Hourly Rate				

Fixed Fee (FF)

FF Rate x DSC	30.00%	x	N/A
Included in Hourly Rate			

Reimbursables

Itemized	**Quantity**	**Units**		**Rate**		
MTC - Materials Testing	1		@	$33,000.00	=	$33,000.00
Shannon & Wilson	1		@	$25,000.00	=	$25,000.00
Habitat Monitoring	1		@	$40,000.00	=	$40,000.00
Merick Lentz	1		@	$3,000.00	=	$3,000.00
Mileage	12,800		@	$0.720	=	$9,216.00
Reimbursables Total						$110,216.00
Reserve	1		@	$50,000.00	=	$50,000.00
Grand Total						**$610,472.00**

7/2/2025

Bidder: Redside Construction LLC
600 Winslow Way E. Suite#237
Bainbridge Island, WA 98110

Attachment #4

City of Des Moines
Bid Enclosed for
Redondo Fishing Pier Replacement
City Hall
21630 11th Avenue S. Suite C
Des Moines WA 98198

JUL 0 1 2025

Redondo Fishing Pier Replacement

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 110 working days thereafter. This period shall be known as the "Contract Time" for the purposes of the project.

The project is subject to retail sales and use tax per WAC 458-20-170, commonly known as Rule 170. The Contractor shall collect from the Contracting Agency, retail sales tax on the full contract price. The Contracting Agency will automatically add the sales tax to each payment to the Contractor.

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.

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City of Des Moines

Redondo Fishing Pier Replacement

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

Item No.	Spec. Section	Item Description	Est. Qty.	Units	Unit Price	Amount
1	1-09.7	MOBILIZATION	1	L.S.	$288,000.00	$288,000.00
2	SP 2-02	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	1	L.S.	$20,000.00	$ 20,000.00
3	SP 2-02	REMOVING CEMENT CONC. PAVEMENT	90	S.Y.	$20.00	$1,800.00
4	SP 2-02	REMOVING CEMENT CONC. SIDEWALK	3,590	S.Y.	$ 4.00	$14,360.00
5	SP 2-02	REMOVING CEMENT CONC. CURB	120	L.F.	$15.00	$ 1,800.00
6	SP 2-02	REMOVING ASPHALT CONC. PAVEMENT	750	S.Y.	$6.00	$4,500.00
7	SP 8-31	RELOCATE AND PROTECT WIFI ANTENNA	1	L.S.	$ 500.00	$ 500.00
8	SP 2-02	REMOVING EXISTING FISHING PIER	1	L.S.	$280,000	$280,000
9	9-03	COMMON BORROW INCL. HAUL	15	C.Y.	$ 60.00	$900.00
10	7-05	CATCH BASIN TYPE 1	1	EACH	$1,600.00	$ 1,600.00
11	6-05	FURNISHING AND DRIVING STEEL TEST PILE	2	EACH	$ 4,500.00	$ 9,000.00
12	6-05	FURNISHING ST. PILING - 18" DIAM. (SCH 60)	1,095	L.F.	$190.00	$208,050.00
13	SP 6-05	FURNISHING ST. PILING - SHEET PILE (PZ27)	630	L.F.	$72.00	$45,360.00
14	6-05	FURNISHING ST. PILING - 18" DIAM. (SCH XS)	1,054	L.F.	$150.00	$ 158,100.00
15	6-05	DRIVING ST. PILE - 18" DIAM.	38	EACH	$6,500	$247,000

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Item No.	Spec. Section	Item Description	Est. Qty.	Units	Unit Price	Amount
16	6-05	DRIVING ST. PILE - SHEET PILE	18	EACH	$3,000.00	$54,000.00
17	6-05	FURNISHING STEEL PILE TIP OR SHOE, 18 IN. DIAM.	38	EACH	$600.00	$22,800.00
18	6-03	STRUCTURAL CARBON STEEL	1	L.S.	$ 723,000	$ 723,000
19	SP 6-03	STRUCTURAL LOW ALLOY STEEL - CAP BEAM A	1	L.S.	$ 325,000	$ 325,000
20	SP 6-03	STRUCTURAL LOW ALLOY STEEL - CAP BEAM B	1	L.S.	$ 300,000	$ 300,000
21	SP 6-09	PIER WALKWAY	5,010	S.F.	$26.00	$130,260.00
22	6-06	STEEL GUARDRAIL	576	L.F.	$180.00	$103,680.00
23	SP 6-06	TIMBER GUARDRAIL	260	L.F.	$ 90.00	$ 23,400.00
24	SP 6-02	PRECAST CONCRETE SLAB	1	L.S.	$14,000.00	$14,000.00
25	SP 6-02	SUSPENDED SLAB	1	L.S.	$ 24,000.00	$24,000.00
26	SP 6-09	STAIR ASSEMBLY	1	L.S.	$25,000.00	$25,000.00
27	SP 6-05	REMOVING PILE OBSTRCTIONS	1	F.A.	$20,000.00	$20,000.00
28	SP 6-09	ACCESS LADDER	1	EACH	$2,500.00	$2,500.00
29	4-04	CRUSHED SURFACING BASE COURSE	140	TON	$ 68.00	$9,520.00
30	5-05	CEMENT CONC. PAVEMENT	26	C.Y.	$1,350.00	$35,100.00
31	5-04	HMA CL. 1/2 IN. PG 64-22	8	TON	$600.00	$4,800.00
32	5-03	HMA SAWCUT AND SEAL	180	L.F.	$10.00	$1,800.00
33	2-09	SLURRY SEAL, TYPE 2	8,500	S.Y.	$ 4.00 ~~$0.50~~	$ 34,000.00 ~~$4,250.00~~
34	8-01	TURBIDITY CURTAIN	680	L.F.	$8.00	$5,440.00

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Item No.	Spec. Section	Item Description	Est. Qty.	Units	Unit Price	Amount
35	8-01	INLET PROTECTION	2	EACH	$75.00	$ 150.00
36	8-01	EROSION CONTROL AND WATER POLLUTION PREVENTION	1	L.S.	$ 18,000.00	$18,000.00
37	8-04	CEMENT CONC. TRAFFIC CURB AND GUTTER	150	L.F.	$45.00	$6,750.00
38	8-04	CEMENT CONC. TRAFFIC CURB	30	L.F.	$ 50.00	$ 1,500.00
39	8-22	PAINT LINE	3,400	L.F.	$ 2.00	$ 6,800.00
40	8-20	ILLUMINATION SYSTEM	1	L.S.	$ 110,000	$ 110,000
41	1-10	PROJECT TEMPORARY TRAFFIC CONTROL	1	L.S.	$ 18,000.00	$18,000.00
42	1-08	TYPE B PROGRESS SCHEDULE	1	L.S.	$ 500.00	$ 500.00
43	1-05	STRUCTURE EXCAVATION CLASS B INCL. HAUL	5	C.Y.	$150.00	$ 750.00
44	1-05	STRUCTURAL SURVEYING	1	L.S.	$14,000.00	$14,000.00
45	1-05	ROADWAY SURVEYING	1	L.S.	$6,000.00	$6,000.00
46	SP 8-26	BOLLARD TYPE 1	7	EACH	$1,600.00	$11,200.00
47	8-14	CEMENT CONC. SIDEWALK	450	S.Y.	$92.00	$41,400.00
48	7-05	CONNECTION TO DRAINAGE STRUCTURE	1	EACH	$ 800.00	$800.00
49	7-05	ADJUST CATCH BASIN	1	EACH	$ 600.00	$600.00
50	7-05	LOCKING SOLID METAL COVER AND FRAME FOR CATCH BASIN	1	EACH	$ 600.00	$600.00
51	1-04	MINOR CHANGE	1	CALC	$25,000.00	$25,000.00
52	SP 6-05	BUBBLE CURTAIN	1	EACH	$3,800.00	$3,800.00
53	SP 1-05	RECORD DRAWINGS (Min. Bid $2,500)	1	L.S.	$2,500.00	$2,500.00
54	SP 1-07	TURBIDITY MONITORING	1	L.S.	$ 2,500.00	$2,500.00

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Item No.	Spec. Section	Item Description	Est. Qty.	Units	Unit Price	Amount
55	SP 8-27	TRASH RECEPTACLES	3	EACH	$2,850.00	$ 8,550.00
56	8-20	NAVIGATION LIGHT	2	EACH	$500.00	$1,000.00
57	SP 5-32	INSPECTOR'S TRAILER AND SITE FIELD OFFICE BUILDING	1	L.S.	$5,000.00	$5,000.00

Schedule Subtotal:	$ 3,424,670
+ Sales Tax (10.2%)	$ 349,397.68
Schedule Total:	$ 3,774,067.68

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Proposal Form (Continued)

Total Bid Price (in figures) $ 3,774,067.62

Total Bid Price (in words) Three Million, Seven Hundred + Seventy Four thousand and Sixty Seven Dollars + Sixty Eight cents

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

Signed [signature]

Title Owner

Name of Bidder Redside Construction LLC

Registration or license, Division of Professional Licensing:

1. License Number REDSICL925PU
2. Date 6/30/25
3. Contractor's Signature [signature]
4. Title Owner

Address of Bidder: 600 Winslow Way E. Suite#237 (Street) Bainbridge Island (City) WA (Zip) 98110

Telephone Number of Bidder 206-317-6400 (Office) (Home)

Email Contacts sam@redside.biz

Date of Bid 7/1/2025

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Addenda Acknowledgement

Receipt is hereby acknowledged for the following Addenda:

Addendum No.	Date Received	Signature
Addendum#1	6/13/25	
Addendum#2	6/24/25	

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

Bid proposal to be submitted in a sealed envelope marked "Bid Enclosed" for **Redondo Fishing Pier Replacement**.

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Form of a Bid Bond

BID BOND DEPOSIT

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

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

Signature By: Redside Construction LLC

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, Redside Construction LLC, as Principal, and Western Surety Company, as Surety, are held and firmly bound unto the City of Des Moines, as Obligee, in the penal sum of Five percent (5%) of the total bid amount------- 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 Obligee shall make award to the Principal for the **Redondo Fishing Pier Replacement**, 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 Obligee 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 Obligee; or, if the Principal shall in case of failure so to do, pay and forfeit to the Obligee 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 Obligee, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS 9th DAY OF June, 20 25.

Redside Construction LLC

By: _____

Principal

Western Surety Company

By: Roxana Palacios

Roxana Palacios, Attorney-in-Fact

Surety

Received return of deposit in the sum of _____

Date _____

Signature _____

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Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Kathleen M Mitchell, Roxana Palacios, Holly E Ulfers, Scott Alderman, Debbie Lindstrom, Laura Kovarik, Jamie Armfield, Tara Koloski, Kathy Nye, Amber Engel, Tatiana Gefter, Kristine Santamaria, Marina Matyunin, Allison McClintock, Individually

of Seattle, WA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the Authorizing By-Laws and Resolutions printed at the bottom of this page, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 3rd day of March, 2025.

WESTERN SURETY COMPANY

Larry Kasten, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 3rd day of March, 2025, before me personally came Larry Kasten, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; 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 corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

March 2, 2026

M. BENT
NOTARY PUBLIC
SOUTH DAKOTA

M. Bent, Notary Public

CERTIFICATE

I, Paula Kolsrud, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Laws and Resolutions of the corporation printed below this certificate are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 9th day of June, 2025.

WESTERN SURETY COMPANY

Paula Kolsrud, Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above Bylaw to execute power of attorneys on behalf of Western Surety Company.

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, if you want to verify bond authenticity.

Form F4280-6-2023

Non-collusion Affidavit

City of Des Moines

STATE OF WASHINGTON)

) ss.

County of King)

Sam Berry, being first duly sworn on his oath, says he is Owner and that the bid above submitted is a genuine and not a sham or collusive bid, or made in the interest or on behalf of any person not therein named; and he further says that the said Bidder has not directly or indirectly induced or solicited any bidder on the above work or supplies to put in a sham bid, or any other person or corporation to refrain from bidding; and that said Bidder has not in any matter sought by collusion to secure to (her)(him)self an advantage over any other bidder or bidders.

Signature S Berry

Subscribed and sworn to before me this 30th day

of June, 2025.

K McCarthy

Notary Public in and for the State of Washington

Port Orchard, WA

Residing at

My commission expires September 16, 2028

KAREN JOHANNA MCCARTHY APPOINTMENT EXPIRES NOTARY PUBLIC COMM # 156007 STATE OF WASHINGTON

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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: Redside Construction LLC

2. Business address and telephone number:

   600 Winslow Way E. Suite#237

   Bainbridge Island WA 98110

   206-317-6400

3. How many years has said bidder been engaged in the contracting business under present firm name:

   17+years

4. Contracts now in hand (gross amount):

   $ 28,887,184.29

5. General character of work performed by said company:

   Marine Contractor and Heavy Civil

6. List of more important projects constructed by said company, including approximate costs and dates:

   See attached current/past projects reference list

7. List of company's major equipment:

   See attached equipment list

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8. Bank references:

Umpqua Bank

AJ Miller 253-305-1526

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

165,870

10. Dept. of Revenue registration number:

557492-00-8

Name of Bidder Redside Construction LLC

By [signature]

Title Owner

Date 6/30/25

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Statement of Proposed Subcontractors and Material Suppliers

Subcontractors Name, Address and Telephone Number	Description of Work
Self-Performed - Redside Construction	Plumbing
None	HVAC
APEX ELECTRICAL	Electrical
Redside Construction / Nucor Rebar Fab	Structural Steel Installation & Rebar Installation

Material Suppliers	Material (major items only)
N.W. STEEL	Metal Fabricator
PIPE + PILE SUPPLY	Pipe Piles / Sheet Piles
Asphalt Patch Systems	Asphalt Paving

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Certification of Compliance with Wage Payment Statues

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date July 1, 2025, 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.

Bidder's Business Name

Sam Berry

Signature of Authorized Official*

Sam Berry

Printed Name

Owner

Title

6/30/25 | Bainbridge Island | 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:

Washington

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.*

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Statement of Bidder Responsibility Criteria

I, by signing the proposal and this statement, hereby declare, under penalty of perjury under the laws of the Unites 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: Redondo Fishing Pier Replacement

Bidder's Business Name: Redside Construction LLC

Bidder's Name: Sam Berry

Bidder's Signature: S Berry

Bidders Title: Owner

Date: 6/30/25

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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 wheres/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: 6/30/25

Signature: Sam Berry

Name/Title: Sam Berry / Owner

Vendor Name: Redside Construction LLC

Address: 600 Winslow Way E. Suite#237

City/State/Zip: Bainbridge Island WA 98110

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CURRENT / PAST PROJECTS REFERENCE LIST

Company/Client Name	Project Title	Contract #	Contract Value	Description of Scopes of Work	Type of Contract	Estimated Completion Date	Point of Contact (POC)	POC Telephone #	Company Performing Work
City of Bainbridge Island	Eagle Harbor (Cooper Creek) Fish Passage		$2,334,836.00	The project involves replacing the existing 30-inch concrete culvert with a new box culvert to restore the stream's natural flow, reconnecting 9,000 square feet of intertidal salt marsh to regular and complete tidal flows, and eliminating the predator trap currently created by the culvert.	Public Works	CURRENT, 10/2025	Nick Rasor	206-780-3745	REDSIDE CONSTR.
City of Lakewood	Wards Lake Park Phase 1 & 2 Improvements	2024-226	$3,247,839.00	A redevelopment of portions of Wards Lake Park. This work will include temporary erosion control, clearing/grubbing, excavation, pavement demolition, temporary erosion control, crushed aggregate, cement concrete paving, asphalt paving, curbing, trail development, rockery, play equipment, prefabricated restroom installation, prefabricated bridge installation, prefabricated shelter installation, handrails, storm drainage improvements, utility improvements, precast pump track, topsoil, irrigation, landscaping, restoration plantings and all other work necessary to complete the project	Public Works	CURRENT, 10/2025	Stacey Reding	253-983-7852	REDSIDE CONSTR.
City of Bainbridge Island	Winslow Water Tank Replacement		$16,197,199.00	This project will demo the existing 1 MG reservoir and construct a new 2 MG elevated tank reservoir just north of the existing reservoir site. All site work, appurtenances, etc.	Public Works	CURRENT, 2025	Chris Munter	206-842-2016	REDSIDE CONSTR.
City of Olympia	Grass Lake Nature Park Trail	PRJ-22-000006	$2,541,112.00	This project provides the construction of a 1.1 mile long paved trail and a 365 foot boardwalk between Kaiser Road and Harrison Avenue in Olympia. Wetland impacts from the boardwalk wetland crossing require mitigation efforts that include in kind vegetation replacement, 0.5 acre of wetland creation, wetland buffer enhancements, wetland/buffer plantings, and placement of 13 snag trees. A new 11 stall parking lot with bus parking will be provided at the Kaiser Road trailhead. Frontage improvements including road widening, new concrete sidewalk, concrete ramps, stormwater facilities, and road striping will be provided at both the Kaiser Road and Harrison Avenue trailhead locations. Signage will be provided throughout the site. The project also includes the installation of three sculptures to be provided by a local artist.	Public Works	CURRENT, 2025	Neal Grassburn	360-570-5834	REDSIDE CONSTR.
City of Bremerton	Kitsap Lake Park Renovation	59163	$1,133,661.00	Schedule A.1 – Demolition, earthwork, curbing, concrete walkways, concrete slabs, block walls, asphalt pavement, striping, signing, steel piles, fishing float, prefabricated fixed pier and gangway, and outdoor shower. Schedule A.2 – Demolition, earthwork, infiltration trench, concrete walkways, concrete slabs, asphalt pavement, striping, signing, and pre-engineered owner provided picnic shelter. Schedule B – Demolition, earthwork, curbing, concrete walkways, concrete slabs, asphalt pavement, striping, boat ramp, boat ramp float, and steel piles. Schedule C – Earthwork, storm berm, storm sewer and treatment vault. Schedule D – Demolition, earthwork, construction of subdrains, curbing, concrete walkways, concrete slabs, stairs, and seat wall.	Public Works	4/28/2025	Colette Berna	360-473-5429	REDSIDE CONSTR.
Army Corps of Engineers	LWSC Spillway Safety Barrier	W912DW24P0016	$268,500.00	Replace the Spillway Safety Barrier at Lake Washington Ship Canal (LWSC)	Federal	4/10/2025	Slava Govorushkin	206-764-6748	REDSIDE CONSTR.
City of Bremerton	Pine Road Basin Stormwater Improvements Marine Impact Basin	870	$883,910.00	Replacement of the stormwater energy dissipator structure, beach restoration, and landscape and pavement restoration. Work includes installation and maintenance of erosion and sediment controls; flow bypassing; marine water management; excavation and temporary shoring; sawcutting, removal, repair, and installation of asphalt pavements; planting; and temporary traffic control	Public Works	10/16/2024	David Dinkuhn	360-473-5331	REDSIDE CONSTR.
WSDOT	Southworth Ferry Timber Deck & Roof Repair	XE3522	$409,854.00	Improvement of the Southworth Ferry Terminal in Kitsap County, to remove timber decking that is covered in Asphalt or concrete and replace with steel pan decking and cast-in-place concrete. Additionally, the single ply roofing of the terminal building will be replaced with a new single-ply roof membrane and other work.	Public Works	6/28/2024	Tom Castor	206-515-3727	REDSIDE CONSTR.

City of Renton	Gene Coulon Memorial Park North Water Walk	CAG-22-014	$4,232,000.00	Removal of the existing concrete deck and replacing with light-penetrating grated decking supported on new steel girders, replacing picnic floats, replacing grated gangways and timber step runs with light-penetrating grated decking, replacing all treated timber components with recycled plastic lumber, wrapping piles for corrosion protection, minor repairs to existing pile caps, and related site work..	Public Works	8/7/2023	Betsy Severtsen	425-757-6657	REDSIDE CONSTR.
University of Washington	APL Floating Dock Restoration		$2,697,000.00	Procurement of the float modules, steel access bridge, crane, new concrete abutment, Design and engineering	Public Works	11/7/2023	Steve Robert	206-523-0024 ext 138	REDSIDE CONSTR.
Port Gamble S'Kallam Tribe	South Boat Ramp Replacement	G&O 15614.01	$3,770,350.50	The project will consist of demolishing and wastehauling of the existing boat ramp and construction a pile supproted dual lane ramp with center floating dock	Public Works	11/10/2022	Barry Baker	360-454-5490	REDSIDE CONSTR.
Town of Friday Harbor	Sewer Outfall Replacement	Wilson engineering	$3,131,563.00	Furnishing all labor, equipment and materials necessary for installing new 18-inch diameter HDPE pipe via directional drilling and placement on sea bed, connecting upland end to existing sewer outfall piping, and related work	Public Works	3/17/2022	Michael Matthes	360-733-6100 Ext.1235	REDSIDE CONSTR.
Port of Poulsbo	Port of Poulsbo Boat Launch Replacement		$595,821.25	Replacement of the Boat Launch Ramp, repair of the dock bulkhead, replacement of the boarding float and piling, cast in place abutment and stairs, and stormwater/upland improvements	Public Works	7/30/2021	John Piccone	360-337-0029	REDSIDE CONSTR.
Port of Tacoma	WUT Fender System Replacement	71421	$1,711,100.00	Demolition of the existing fender systems including the precast concrete, fender piles, steel walers, chains, cables, and arch fenders. Installation of new fender systems that include cone fenders, UHMW-PE faced steel fender panels, chains, and anchorages. Repairing damaged concrete bullrail and water vault.	Public Works	11/17/2021	Elly Bulega	253-428-8638	REDSIDE CONSTR.
Metro Parks Tacoma	Dickman Mill Expansion and Head Saw	202071J	$1,611,124.00	The Dickman Mill Park Expansion and Head Saw Project consists of driving 52 steel piling, demo, new upland pile supported wood decking plazas;grated ramps to the upland plaza; additional guard railings; restoration ofthe historic mill pulley on placed wood decking; restoration of the historicmill head saw placed on a new base and supported on steel piles;restoration of the historic mill log carriage on existing in-water foundations and steel piles; a grated overwater walkway andoverwater view point with wood decking; etc.	Public Works	7/1/2021	Kristi Evans	253-305-1054	REDSIDE CONSTR.
Washington State Parks and Recreation	Wave Attenuator Emergency Repairs	SW-DA951	$130,115.37	Emergency Repairs to floating Wave Attenuator.	Public Works	5/4/2021	Larry Mallo	360-725-9758	REDSIDE CONSTR.
Army Corps of Engineers	Alki Seawall / Coastal Erosion Control Project	W912DW-19-C-0033	$3,198,600.00	The work includes construction of a new soldier pile and precast concrete seawall waterward of the existing seawall, including work around an existing 54" outfall pipe owned by King County	Federal	3/15/2021	Jenna Cunningham	253-363-0721	REDSIDE CONSTR.
Chelan County PUD#1	Park Moorage Dock Replacement	20-04	$721,525.00	Replace Moorage docks at three parks on the columbia river. New docks and pile driving	Public Works	2/28/2021	Court Hill	509-661-4143	REDSIDE CONSTR.
PME / Department of the Navy	BFHF7M Shoreline Remedy Repairs at BNC Bremerton Naval Complex	8004	$292,650.00	All Labor, Material and Equipment for a complete installation of shoreline remedy repairs. Includes all marine equipment and transportation; including but not limited to a crane barge, a deck barge and marine tug support as necessary for transport & installation of 300 tons small armor, filter & rat rock for shoreline rock	Federal	1/1/2021	Seth Tinkham	360-598-9310	REDSIDE CONSTR.
City of Bellevue	Midlakes Pump Station Capacity Improvements	19022	$5,772,179.00	Demolition of existing pump station; Demolition on an existing building; Excavation and installation of new gravity sewer, deep manholes, and.force main under artesian conditions; Installation of new pump station, wet well, valve vault, meter vault,(under artesian aquifer conditions) control building, standby gene rator, RTU equipment, electrical and mechanical components; Groundwater Control during construction using dewatering.	Public Works	1/1/2021	Vanaja Rajah	425-452-5286	REDSIDE CONSTR.
Boat Street Marina	Boat Street Marina Phase II		$336,850.95	Demolition and disposal of existing approximately 3250 sq. ft. wharf including the removal of 41 piles. Construction of new 725 sq. ft. grated pier including the installation of 16 steel piles.	Public Works	3/15/2021	Steven Agnew	206-634-2050	REDSIDE CONSTR.
Port of Keyport	Port of Keyport Boat Launch Reconstruction Project		$536,346.49	The project generally consists of the removal and replacement of the existing concrete boat launch, pier renovations, and upland improvements. Upland improvements generally include but are not limited to new concrete slabs, demolition of the existing abandoned pump house, installation of a new low-pressure sanitary sewer service, and asphalt resurfacing.	Public Works	3/27/2020	John Piccone	360-337-0029	REDSIDE CONSTR.

Army Corps of Engineers	LWSC ECS Crane Replacement	W912DW-17-C-0008	$5,225,820.00	Demolition and removal of the existing derrick crane, will require cutting the boom, mast, and stifflegs into easilyhandled sections for transport and disposal. These components are coated with paint that contains lead. The Contractor shall cut the crane components into sections utilizing a combination of flame cutting and mechanical cutting tools. The crane is centered 12 feet from the waterway. Conduct activities in a manner to preclude lead from escaping the control area and entering waterway.	Federal	3/30/2020	Michael Bondor	206-764-3533	REDSIDE CONSTR.
City of Seattle	SCWQP- Ballard Early Work Package	2017-026	$9,285,044.85	This project consists of the following elements of work: Removal and replacement of existing Combined Sewer Overflow (CSO) Outfall; Removal and replacement of existing timber pier.; Remediation of contaminated site soils, including shoring, dewatering, soil excavation, transport, and disposal.; Installation of temporary electrical services for future project.; Relocation of existing water lines and other utilities to support outfall removal, temporary electrical service installation, and soil remediation.	Public Works	1/17/2020	Cynthia Blazina	206-684-5080	REDSIDE CONSTR.
City of Edmonds	Five Corners Reservoir Recoating	E5KA/c473	$2,822,374.00	The project entails complete recoating the 1.5 MG and 3.0 MG welded steel reservoirs and seismic upgrades to the 1.5 MG reservoir. Related work includes installation of overflow piping with air gap structure, roof vent hood assembly repl acement, ladder fall protection systems, manway retr ofits and cathodic protection (as an additive alternate) for both reservoirs; roof access hatch and landing for the 1.5 MG reservoir; and miscellaneous yard piping	Public Works	5/1/2019	Henry Schoder	425-771-0220	REDSIDE CONSTR.
City of Bainbridge Island	Waterfront Park Bridge Repair		$141,536.50	Construction of bridge improvements including, without limitation, demolition of the existing bridge decking, railings, and lighting, and replacement with new decking, railings, and lighting. Work includes: demolition, including debris containment and removal; installation of new decking, guardrails, and\ lighting; and associated work.	Public Works	3/1/2019	Mark Epstein	206-780-3721	REDSIDE CONSTR.
Kitsap County Public Works Wastewater Division	Manchester Pump Stations and Beach Lines Rehabilitation	KC-496-16	$5,268,656.39	construction include: Pump station rehabilitations including new; submersible wastewater pumps, wet wells, valve/meter vaults, and onsite piping at three existing pump station sites. New MCC and main control panels at all three pump stations. New standby generators at all three pump stations. Elevated concrete slabs, steps and handrails at all three pump stations. Associated site work and surface restoration at all three sites. Decommissioning and removal of three existing pump stations. Shoreline stabilization at two sites. Cured-in-place pipe (CIPP) beach line sewer rehabilitation and Coating..	Public Works	9/24/2018	Floyd Bayless	360-337-5631	REDSIDE CONSTR.
Port of Seattle	Terminal 5 Pile Removal & Disposal		$2,679,000.00	Demolition of existing timber piers 23, 24, 25, and 26 and Shipway north of the Inner Harbor Line. This includes the demolition of creosote piles to the mud line, timber deck, miscellaneous abandoned utility lines, and miscellaneous steel items: saddles, tie straps, latter sect. Other work includes the demolition of existing steel sheet pile wall to the existing mud line. Regrade the site behind the demolished wall and installation of rip-rap along the slope.	Public Works	2/15/2018	John H. Van Deursen	206-384-0613	REDSIDE CONSTR.
City of Bainbridge Island	City Dock Improvements		$2,033,771.05	Construction of dock improvements including, without limitation, demolition of the existing city dock and pilings, and replacement with new pilings, floats, utilities, and amenities. Work includes demolition, including underwater debris removal; installation of new floats; water, fire, sewer, and electrical lines; concrete launch ramp extension; gate and fencing; dock appurtenances; and associated work.	Public Works	3/31/2018	Mark Epstein	206-780-3721	REDSIDE CONSTR.

Kitsap County Public Works Roads Division	NE West Kingston Road Carpenter Creek Culver Replacement	KC-461-16	$3,697,426.44	This contract provides for the improvement of NE West Kingston Road by constructing a Bridge over Carpenter Creek in the Kingston vicinity of northern Kitsap County. The work proposed consists of three schedules, Roadway Improvements, Sanitary Sewer and Water Main. Schedule A, Roadway Improvements consists of Preparation, Grading, Drainage, Storm Sewer, Surfacing, Cement Concrete Bridge Structure, Coating, HMA Pavement, Erosion \ Water Pollution Control, Traffic Safety and Control, Cement Concrete Traffic Curb and Gutter and Sidewalks, Gravity Block Wall and other work. Schedule B Sanitary Sewer consists of HDPE Sewer Pipe and Pipe Casing. Schedule C - Water Main consists of HDPE Pipe for Water Main.	Public Works	4/30/2018	Floyd Bayless	360-337-5631	REDSIDE CONSTR.
Bureau of Reclamation	Cle Elum Radial Gate Modification	R15PC00143	$2,343,818.00	Removal of corrosion prevention coating on portions of the radial gates; Handling and disposing of the removed coating; Removal of steel expanded metal and angle supports at top of radial gates 1through 5; Removal of the ports installed in radial gate 1; Surface preparation of portions of the gates, prior to welding; Furnishing and installing fabricated metal components on five radial gates; Furnishing and installing fabricated metal components to fill temporary ports in radial gate 1; Furnishing and installing aluminum skin plate on downstream side of five radial gates; Replacing rubber side seals on five radial gates; Spot repair coatings on five radial gates; Coating new metalwork on the radial gates; Overcoating existing metal handrails and hoist mounts.	Federal	3/31/2017	Veniamin (Ben) Radchuk	208-378-5116	REDSIDE CONSTR.
Chelan County PUD#1	Rocky Reach Dam Steel Floating Caission Rehabilitation	1463	$856,250.00	A very complex Project requiring removal of a 600 ton floating caisson from the water, demolition and disposal of all existing internal mechanical piping, installation of all new mechanical internal piping systems including large valves and valve stems for internal piping system, demo and replacement of major internal structural steel members, installation of a very large temp work platform structure including a fully contained shrink wrap system and environmental controls to facilitate lead & PCB abatement work, surface prep & re-coating of the caisson with high performance coatings including tenting the caisson & all necessary environmental controls, and then safely & efficiently re-launching of the caisson back into the Columbia River.	Public Works	5/29/2015	Scott Tidd	509-661-4050	REDSIDE CONSTR.
City of Bainbridge Island	Eagle Harbor Waterfront Park		$1,610,411.15	Construction of park improvements including, selective tree removal pruning, clearing and grubbing, grading, concrete paths and walls, rockeries, decomposed granite plaza, pavers, asphalt parking lot, sidewalks, stormwater systems and rain gardens, water and electrical services, lighting, planting, site furnishings, and other related ancillary items.	Public Works	3/15/2017	Mark Epstein	206-780-3721	REDSIDE CONSTR.
City of Tacoma	Potlatch Transmission Lines North Bay Crossing Rebuild	4600009345	$1,934,000.00	Intertidal Replacement of Tacoma Power's Potlatch Transmission Lines North Bay Crossing with a new foundation, structure, conductors, and capping. Work included heavy pile driving from crane barge, technical marine demolition & disposal by barge of 6 marine foundations contaminated with lead paint in the middle of the bay, assembly and erection of a 165' tubular steel double circuit structure, forming and pouring major over water pile supported concrete cap usign barges / spud barges working around fluctating tides.	Public Works	10/18/2014	James Blessing	253-502-8045	REDSIDE CONSTR.
WA State Department of Natural Resources	South Lake Shoreline Restoration	DNR 13- E09	$2,397,400.00	Work included Marine capping & placement of 33,000 tons of shoreline restoration aggregates/sand under water along to create remediate a polluted shallow water habitat at Boeings Renton Plant. All work performed from multiple spud & deck barges using precision GPS Dredgepack Systems amd long reach excavators. Marine demolition including removal of PCB laden dredge spoils, dangerous waste / creosote, 2 derelict marine outfalls, removal of 1,00 feet of outer abandoned marine flume sheet pile walls, retoration 2.9 acres of wetland, removal of nonnative invasive plants from the 3 acre upland property, furnish and install 2 large marine outfalls, diving, tugboating, with fluctuating water levels.	Public Works	9/1/2015	Monica Shoemaker	206-799-2949	REDSIDE CONSTR.
Douglas County PUD	Construct Carpenter Island Public Boat Launch	14-12-W	$2,396,400.00	Site Demolition and Construction of Roadways, Parking Lots, Guardrails, Permanent Signage, Stormwater Detention Ponds, Restrooms, Boat Launch, New Boat Ramp, handling floats, concrete abutments, steel pile driving and navigation channel dredging	Public Works	5/31/2016	Shane Phillips	425-778-5763	REDSIDE CONSTR.

Hoffman Construction / City of Seattle	Henderson CSO Underwater Pipeline Construction	PW#212-010AC	$778,000.00	Marine Dredging and Marine Outfall Installation from Spud Barge. Work included underwater placement of fish mix, pipe bedding, aggregrate underwater while workign from Spud Barges. Sedeminent Remediation, removal, & export of invasive species laden marine sediment was all performed via barges to facilitate upland landfill of disposal of sedimante / spoils. Work also included Diving and Survey. All of the aggregate material was purchase from Cal Portland	Public Works	12/18/2015	Tony Kidd	206-793-5519	REDSIDE CONSTR.
Chelan County PUD#1	Lincoln Rock & Daroga State Park Dock and Pile Replacement	1451	$1,099,144.00	Spud Barge & deck barge project. Removing and Disposing of existing docks and wood piles, furnishing and installing new docks, gangways, and new steel piles. Technical Marine logistically challenging project in non-navigable waters with fluctuating water levels	Public Works	12/16/2014	Court Hill	509-661-4143	REDSIDE CONSTR.
Army Corps of Engineers	LWSC Tainter Gates & Trunnion Replacement	W912DW-14-P-0010	$637,000.00	Heavy Civil Spud barge / Crane Barge Project. Remove 6 ea existing 20 ton spillway tainter gates, trunnions, and anchor bolts using spud barge. Fabricate new trunnions, recoating, repair concrete over water with environmental controls, install 6 new gates and anchorages from spud barge in fluctuating water levels.	Public Works	8/14/2014	Peter Krembs	(425) 649-7242	REDSIDE CONSTR.
Army Corps of Engineers	LWSC Monolith Erosion & Scour Repair	W912DW-12-C-0002	$1,558,000.00	Work required barge import and in water placement of 26 million pounds of restoration aggregates under water in teh spillway using GPS / precision long reach excavators working from spud barges around fluctuating tides day and night. The project was to remediate excessive environmental scour below the spillway and the Ballard Locks monolith to protect against future environmental scour damage & seismic events. The work also included technical diving, furnishing and driving underwater sheet Piles by barge, underwater concrete placement, environmental controls, and multi-beam survey.	Federal	3/16/2012	Peter Krembs	206.400.7408	REDSIDE CONSTR.
Army Corps of Engineers	LWSC Pintle Bearing Repair	W912DW-12-C-0001	$409,138.00	Major spud barge / crane barge project removing the 400ton upstream service gates at the Ballard Locks for ACOE. Prep Ballard Lock Gates for removal including diving, coating, transport to drydock for repair and re-install gates and pintles	Federal	10/31/11- 12/22-11	Peter Krembs	206.400.7408	REDSIDE CONSTR.
Department of Ecology	Northlake Shipyard Sandblast Grit Interim Removal	C1400116	$1,519,571.00	MTCA cleanup action project dredging, disposing, and capping of 12,500 tons of extremely contaminated sediment and sand blast grit in Northlake Shipyard, Seattle. Arsenic, Heavy Metals, PCB, Heavy Environmental Pollution. Work site was 2.5 acres of undewater lake bottom at Northlake Shipyard. All sediment remediation work and marine cap material placement peformed using deck barges and spud barges, dredging machines using RTK positioning, multi-beam bathymetric survey controls, water quality monitoring with telemetry, Cat345CL long reach excavator and crane barge. Water levels fluctuated during construction.	Public Works	5/14/2014	Libby Goldstein	(425) 649-7242	REDSIDE CONSTR.
City of Bainbridge Island	Rockaway Beach Dam Termpary Service Gate Rehabilitation		$1,056,432.00	Marine Shoreline Restoration Project to remediate a large slide into the intertidal area of Bainbridge Island. Construction, Installation 350 feet soldier pile wall in intertidal zone including Drilled Shafts & Soldier pile on beach, Work included beach nourishment and remediation mateiral placed in teh intertidal, intertidal Wet Excavation, Beach Nourishment Sand Installation, Dewatering, Intertidal CIP concrete placement, intertidal rock placement & geowall, **precast concrete panels** for marine seawall. Work occured 24hrs days and nights and Labor Day working around tides. Project successfully performed on extremely tight 5 week schedule to meet a fisheries closure.	Public Works	6/12/2014	Chris Hammer	206-780-3740	REDSIDE CONSTR.
Mukilteo Water & Wastewater District	Big Gulch WWTF Outfall Replacement	8586	$615,393.00	Large Marine Outfall w/ Concrete Anchors Installation in Puget Sound. All work performed using multiple Spud & deck barges. Also included multi-beam hydrographic surveying support, technical diving, working around tides / fluctuating water levels.	Public Works	8/1/2013	Harry Seller	206-284-0860	REDSIDE CONSTR.
City of Lynnwood	WWTF Outfall Diffuser Replacement	2040	$390,630.00	36" dia Marine Outfall w/ Concrete Anchors Installation in Puget Sound using Barges & Divers. Work required precision GPS locating from barges, contaminated materials removal and disposal of old marine piping (lead), intertidal material placement, hydrographic surveying	Public Works	9/20/2011	Brian Delp	425-670-5224	REDSIDE CONSTR.
University of Washington	WAC Float Replacement	203205	$333,000.00	Spud barge / barge project. Demo and Disposal of existing timber floats, floatation; Furnishing and installing new timber floats and pile hoops	Public Works	8/1/2013	Don Romain	206-221-4396	REDSIDE CONSTR.

Hat Island Community	Hat Island Marina Expansion		$2,800,000.00	50,000cy's dredging & dewatering of a major boat basin using multiple pump, construction of new pile breakwaters at marina entrance channel with steel pipe & sheet piles, new rock jetties, new concrete boat ramp & bulkhead, maintenance and repair of rock breakwater and bulkhead, maintenance dredging of marina basin and entrance channel. Multiple crane barges and 5 excavators used for the work.	Private	3/1/2013	Chuck Motson	360-444-6611	REDSIDE CONSTR.
Western Washington University	Lakewood Dock Replacement		$366,351.00	a. Spud barge project in a freshwater lake. New Main Pier/Ramp/Dock - The removal of the existing Main pier, ramp and dock together with associated support piles and the replacement with new piles, pier, ramp, and dock. b. West Launch Pier/Ramp/Dock - The shortening of the existing West Launch pier together with the removal of four timber piles and the installation of new pier decking, ramp, dock and associated piles. c. East Launch Pier/Ramp/Dock - The repair of four existing East Launch ramp/dock timber piles (steel sleeve); and the repair of two existing east launch pier timber piles (fiberglass jacket).	Public Works	3/31/2013	Mike DiSpigno	253-383-2740	REDSIDE CONSTR.
Marine Floats Corporation	Girl Scouts Camp Pile Removal and Pile Driving		$52,175.00	Puget Sound Project working in fluctuating water levels, intertidal areas, included Pile Removal, Disposal, and Pile Driving	Private	2/7/2013	Logan Brown	253-383-2740	REDSIDE CONSTR.
Marine Floats Corporation	Pleasant Harbor Marina Pile Removal and Pile Driving		$77,600.00	Puget Sound Project working in fluctuating water levels, intertidal areas, included Pile Removal, Disposal, and Pile Driving	Private	1/21/2013	Logan Brown	253-383-2740	REDSIDE CONSTR.
City of Gig Harbor	Maritime Pier, Ramp and Float		$534,677.00	Demolition of existing creosote timber pier, and replace with a new fixed timber pier supported by steel pipe piles, A new timber float, anchored with steel pipe piles; Installation of a new aluminum gangway from the end of the fixed pier to a new timber float, HDPE utilities, and signage.	Public Works	10/15/2012	Marcos McGraw	253-853-2647	REDSIDE CONSTR.
Port of Port Angeles	Tumwater Creek Bridge Replacement		$828,696.00	Work included demolition and removal of mulitiple bridges in intertidal and replacement of a timber bridge at the mouth of Tumwater Creek where it meets Port Angeles Harbor. Work will include driving steel piles, replacing sheet pile wall with rip rap, and installation of a sheet pile wall behind an existing sheet pile wall that would then be removed.	Public Works	5/16/2012	Chris	360/417-3446	REDSIDE CONSTR.
Kitsap County Public Works	NW Stavis Bay Bridge Replacement	3640	$721,048.00	Bridge replacement in Stavis Bay. Work Included Rivirine Excavation, In-water Excavation and fish mix placement on shoriline, dewatering, driving Steel Piling, installation of ELJ's in intertidal, Furnishing,Installing and Grouting Prestressed Concrete Voided Slabs, Surfacing, various Concretes Class 4000, various HMA Pavements, Erosion Control and Planting, Traffic Safety and Control and related work.	Public Works	12/19/2011	Jacques Dean	360-337-4693	REDSIDE CONSTR.
HDB Marine	25 Mile Creek Guard Station Dock & Boathouse		$183,000.00	Spud barge project 25 miles up Lake Chelan. Technical Marine Logistics, included Pile Driving of 24"steel pile, Installation of Boathouses and Pier	Subcontract	8/16/2010-9/30/2010	Martin McDonald	P)208-689-3248 F)208-689-3636	REDSIDE CONSTR.
City of Wenatchee	Wenatchee Day Use Moorage Facility Design / Build Project	804	$641,252.00	Spud Barge Project / technical marine project using barges in high current and fluctuating water level area of the Columbia River. Work inlcuded very technical in-river Marine Rock Drilling, Tugboat Support, Design / Engineer / Build Boarding Float System Complete, Install Elevated Steel Transition platform & 2 ea 6'x80' design / build / engineer gangways, electrical, landscaping, signage, irrigation & paving	Public Works	7/09-12/09	Gary Owen(PM), Carl McNabb (PND Engineer)	509-888-3204 Gary, 206-624-1387 Carl	REDSIDE CONSTR.
Department of Natural Resources (WSDNR)	Marine Station and Squaxin Island Dock Removals	10-E39	$233,000.00	Removed and dispose of 2 ea major creosote treated piers, pilings, dolphins, and associated structures at two intertidal locations in Puget Sound. Work inlcuded removal and remediation of underwater pollution and marine sediments including diving.	Public Works	2/7/11-3/14/11	Monica Shoemaker	(206) 799-2949 monica.shoemaker@ dnr.wa.gov	REDSIDE CONSTR.
Max Kuney Construction	WSDOT SR-285 George Sellar Bridge	7677	$42,000.00	Spud barge project. Barge, Tugboat, & Marine Installation of Main Steel Bridge Beams under Major Bridge	Subcontract	10/10/19-11/15/09	Michael Grimes/Kevin Carroll	509-535-0651	REDSIDE CONSTR.
WSDOT	Bremerton Ferry Terminal Slip 1 Seismic Retrofit	00-0844	$60,270.00	Spud barge project, included working around tides in intertidal zone to install a seismic retrofit & new fenderign of the Slip bridge seat at the Bremerton Ferry Terminal, and other work	Public Works	5/11/2011	Mike Morrow	206-515-3944	REDSIDE CONSTR.
South Puget Sound Salmon Enhancement Group (SPSSE)	Squaxin Island Bulkhead Removal		$81,869.00	Shoreline Remediation Project performed using spud barges and deck barges. Included shoreline excavation & in-water Excavation and new beach nourishment material placement in the intertidal using excavators and barges.	Public Works	3/16/11-3/29/11	Brian Combs	P)360-412-0808 ext 2 F)360-412-0809	REDSIDE CONSTR.
City of Portland Bureau of Purchases	Riverplace Breakwater Dock Repair	110221	$377,242.00	Marine Project in Major River in Urban Area similar to Duwamish location. Marina Dock Float Renovation & Repairs, Electrical, & Marine HDPE Utilities	Public Works	5/09- 10/09	Susan Watt	503-823-5593	REDSIDE CONSTR.

Washington State Parks and Recreation	Jones and Sucia Islands State Parks-ADA Moorage: In-water Improvements	NW-C3805	$371,360.22	Spud barge project, intertidal project working in Puget Sound fluctuating water levels, included major demolition and disposal of existing pier / creaosote structures, Pile Driving, Installation of Floats and Gangways, constructing new concrete abutments	Public Works	9/11-1/11	Phillip Jensen	P)360-755-5262 F)360-428-1094	REDSIDE CONSTR.
Triton Logging Inc	PSE Project Marine Mob/Demo Logistical Support Services		$49,650.00	Technical Marine Mobilization/Demobilization of Spud Barge, and Marine Support	Private Contract	11/10-12/10	Andrew Walker	P)604-414-7888	REDSIDE CONSTR.
Cape George Colony Club	George Marina Pile Sleeving		$28,394.00	Dredging, Sleeving & Grouting MarinaPiling in interdidal zone	Private	2/1/11-2/11/11	Art Burke	360-385-1177 manager@ capegeorge. Org	REDSIDE CONSTR.
Razz Construction, Inc	Anacortes/Guemes Island Pile Driving		$35,390.00	Intertidal project working in Puget Sound fluctuating water levels buiding a new ferry terminal, Pile Driving from spud barges.	Subcontract	1/27/11-2/3/11	Dave Rasmussen	P)360-319-5739 F)360-752-0099	REDSIDE CONSTR.
Port of Orcas	North Outfall Drainage Improvements		$150,649.00	Interdidal project requiring relocation of an existing Marine Outfall, New pipe anchor system using driven steel piles on the beach in intertidal zone, 30" HDPE Outfall Repair and Demolition of Ex'g Concrete Anchoring System, New Metal Fabrications, Earthwork, Storm Drainage Utilities. Work included fish mix placement on beach in intertidal for shoreline rehabilitation.	Public Works	1/1/2010	Bea von Tobel, Port manager David Williams, Engineer	360-376-5285 Bea 425-951-4876 David Williams	REDSIDE CONSTR.
Port of Bremerton	Port Orchard Building Pile Repair		$97,733.00	Spud barge project. Intertidal pier rehabilitation project working from barges in Puget Sound fluctuating water levels.	Public Works	8/09-10/09	Steve Slaton (Owner), David Pierce (PND Engineer)	360-674-2381 Steve, 206-624-1387 David	REDSIDE CONSTR.
Riptide Condominium	Riptide II Slope Stabilization Project		$363,972.00	Intetidal Wall Project and sediment remediation to repair an environmental slope failure on to Puget Sound Beaches. Intertidal / marine Installation of Soldier Piling & Precast Concrete Panel Wall, Marine Drilled Concrete Shafts Install, Intertidal Excavation, Barge Transport & Marine Placement for Slope Stabilization, HDPE Utilities, Drainage Correction	Private	2/09-4/09	Sharon Schrader	360-373-9608	REDSIDE CONSTR.
Driftwood Key Club	Marina Renovation & Waler Replacement Project		$202,000.00	Marina Refurbishment Contract, Waler Replacement, Float Utilities, Float Misc Structural Steel, Marina Floats Refurbishment	Private	1/09-4/09	Bill Buegel	360-638-2077	REDSIDE CONSTR.
Port of Port Townsend	Quilcene Marina Dredging Project		$178,850.00	Sediment Dredging and barge Disposal of 3,500cy of Sediment using a 62' long reach excavator w/built-in GPSspud working from spud barge using deck barges for material export. Work included in-water placement of new marine sediment / rock to stabilize wing walls at marina entrance. Work included hydrograhic surveying.	Small Works	7/15/2010-8/7/2010	Jim Pivarnik	360-385-0656	REDSIDE CONSTR.
City of Seattle	Chester Morse Lake Outlet Channel Deepening O&M	PW#2010-041R	$235,607.00	Long reach excavator in-water dredging from a spud barge to remediate a blocked exit channel for SPU Utilities. Project required precision GPS dredging, bathymetric survey, spud barges, extremely high level environmental controls because Chester Morse watershed provided drinking water to 3million people in King County.	Public Works	7/15/2010-8/15/2010	John Summers	206-684-5074	REDSIDE CONSTR.
City of Seattle	Wheeler / Nob Hill Erosion Repair	2009-038	$132,087.00	Installation of Soldier Piling & Structural **Precast Concrete Panel** Wall, Drilled Concrete Shafts Install, CIP Concrete, Erosion Control Structures, Earthwork, CB's & Stormwater Utilities, **curb and sidewalk**, 8" HDPE pipe Outfall System	Public Works	6/09-10/09	Joe Carter	206-684-5070	REDSIDE CONSTR.
King County	Marine Bulkhead Restoration-Bunker Trail Vashon Island	C00358C09	$50,788.00	Intertidal Marine Construction using spud barges and excavators to perform interdidal shoreline restroatio. Mobilized Rock to Island for Bulkhead repair, TESC, Sewer Force Main on beach & Utilities protection & Environmental protection	Public Works	8/1/09-8/15/09	Derren Chernick	206-263-9321	REDSIDE CONSTR.
Port of Orcas	Eastsound Outfall Emergency Repair Project		Appx. $250,000	Intertidal project. Spud Barge Project. 1100ft 12" HDPE Outfall Pipe, Concrete Anchoring System Diffuser Outlets, Excavation and upland 12" Steel Stormwater Piping	Public Works		Roy Light	360-376-2720	REDSIDE CONSTR.

***NOTE: THE FOLLOWING PROJECTS WERE PERFORMED UNDER OTHER CORPORATE ENTITY TITLES AND WERE MANAGED BY THE FAMILY TEAM OF SAM BERRY, PRESIDENT OF REDSIDE CONSTRUCTION, LLC AND FATHER DAVID BERRY * NOTE: NOT ALL PROJECTS ARE LISTED, ADDITIONAL PROJECTS LISTS AVAILABLE UPON REQUEST: SAM BERRY AND DAVID BERRY (FATHER & SON) HAVE PERFORMED OVER 550 PUBLIC WORKS CONSTRUCTION CONTRACTS AND HUNDREDS OF PRIVATE CONSTRUCTION PROJECTS UNDER VARIOUS COMPANY ENTITY'S SINCE 1984.**

Company / Client Name	Project Title	Contract Value	Description of Work	Period of Performance
Weston Solutions, Inc.	MEC Laboratory & outfall repair	$880,000.00	HDPE Seawater Intake and Outfall	2006/2007
Southwest Suburban Sewer District	Miller Creek Outfall	$750,000.00	36" dia Marine HDPE pipe in place Connection to existing outfall	2003
Driftwood Key Club	Driftwood Key Club Maintenance Dredging	$877,200.00	Install 12" Steel Piling, Intertidal Maintenance Dredging	11/1/07-2/14/08
Bridgehaven Community Club Association	Bridgehaven Dredging	$230,757.00	Intertidal Maintenance Dredging	10/1/08-12/09

Hat Island Community Association	Hat Island Dredging	$42,000.00	Intertidal Maintenance Dredging	7/5/2008-9/20/08
Arrowhead Pt. Sewer Main North Shore Utility District	Arrowhead Sewer Replacement	$880,000.00	HDPE Sewer force main in lake	2002
Immunex-Amgen	Immunex-Amgen Campus Project	$750,000,000.00	Construction of Campus for Immunex Corporation, Including Central Utility Plant, Utilidor, Bridge and Seven Multi-Story Campus Buildings	2000-2002
Mukilteo School District	Odyssey Elementary School	$13,000,000.00	Complete Construction of Elementary School and School Campus	2002
Sound Transit/PCL Construction	Central Link Light Rail C755	$6,300,000.00	24" X 200' Long Steel Piling Installation, Temporary Shoring, Rebar & Concrete	6/24/05 - 3/31/06
US Army Corps of Engineers	Ballard Locks Renovation	$1,714,738.00	Marine Construction including Timber Pile Driving, Replacement of Treated Timber Pier Faces, Demolition	1998-2000
US Army Corps of Engineers	Snohomish Sheet Pile / Ebey Slough	$705,176.00	Installation of Sheet piling at Dike District #2	2000
US Army Corps of Engineers	Deep Water Slough	$400,000.00	Marine Construction including suspension bridge cabling and piling, design/build bridge, 15k tons rock transport across river	1998-1999
City and Borough of Yakutat	City and Borough of Yakutat HDPE Fuel Float Dock	$352,750.00	Furnish / Install Floating Fuel Dock	7/24/08-10/23/08
University of Washington Board of Regents	Boat Street Marina Reconstruction	$2million	Marine Demolition, Install 12"-14" dia Steel Piling, Marina Floats, HDPE Utilities, Sitework	9/1/07 - 10/1/08
Washington State Department of Transportation/ Mowat Construction	Eagle Harbor Maintenance Facility	$721,810.50	Pile Stubbing, Marine Structural Retrofit, Pile Driving, Heavy Civil	12/08-12/09
Pacific Seafoods	New Pen Anchor System Design / Build / Construct Project	$185,000.00	Design / Build Pile Supported Net Pen Anchoring System & Pile Driving in Columbia River	7/1/2009-10/1/09
USCG	U.S. Coast Guard Dock Design/Build/Engineer 8'x8'x100' Concrete Float for USCG "Osprey" Moorage	$350,000.00	Replacement of USCG Concrete Float Dock	5/07-10/07
City of Medina	Medina Beach Park Shoreline Restoration	$580,000.00	8" Dia Piling, Pier, Rock Bulkhead & Shoreline Restoration	6/25/07-11/15/07
Department of Natural Resources	Port Townsend Waterfront/Pile Demolition	$200,000.00	Demolish & Dispose Creosote Structures & Piling	3/1/07 - 4/15/07
Washington State Department of Transportation	Eagle Harbor Seep Remediation Project	$145,479.00	Shoreline Excavation & Reconstruction, Hazmat Remediation of Beach Sediments	6/26/06-12/15/06
NW Maritime Center	Northwest Maritime Center Dock	$1,400,000.00	New 24" Piling, Construct New Pier & Floats	10/31/03 - 4/30/04
Aqua Express	Kingston Passenger Only Ferry Terminal	$535,000.00	24"-36" Steel Piling and Passenger Terminal & Walkway	11/1/04 - 2/15/05
Huffaker Management Group	Port Orchard Marina	$490,000.00	Marina Demolition, 24" Pile Installation, New Floats & new HDPE Fire & Water Utilities	7/1/2006
Island Construction	Port Townsend Plaza	$162,800.00	New Sea Wall Construction & Sheet Pile Driving	7/2006 - 9/2006
City of Seattle	Washington Park Arboretum Project	$950,000.00	24" dia Auger Cast Concrete Piling, Bridge, Foundations, Park Improvements	2005 THRU 2006
City of Seattle	Luna Park Seawall	$842,112.00	Steel Piling, Elevated Pre-cast Concrete Pier	THRU 12/1/04
Queen City Yacht Club	Queen City Yacht Club	$45,000.00	New 12" Steel Piling	2003 - 2004
City of Marysville	Lagoon Partitions	$1,800,000.00	Partition Piling/ Pre-cast Concrete Panels	2002
City of Seattle	Magnolia Park Slide Repair / Retaining Wall	$500,000.00	Soldier Pile Retaining Wall, Lagging, Drilled Shafts	2002 THRU 2003
University of Washington Board of Regents	Old Oceanography Dock Repair	$450,000.00	Remove & Replace Existing Dock	10/23/03 - 2004
Central Kitsap School District	Central Kitsap High School Façade Renovation	$700,000.00	Drilled Shaft / Foundation Underpinning, Façade Renovation	1999-2001
Port of Seattle	T-91 Test Pile Installation	$167,786.99	Furnish / Install Steel Test Piling	02-08-01 THRU
US Navy	Caisson Mooring - Bangor Naval Base	$1,200,000.00	STEEL PILING, PIER FOR CAISSON TO TRIDENT SUBMARINE DRYDOCK	1997
City of Seattle	Fire Station #5, Pier 51	$520,000.00	DRILLED SHAFT STEEL PILING FOR FIRE BOAT	1997
City of Seattle	Fire Station #5, Pier 51	$680,000.00	DRILLED SHAFT CONCRETE PILE UNDER PIER	1996
PSNS	Inactive Submerging Mooring Facility	$875,000.00	MOORING DOLPHINS	1996
Port of Kalama	Lay Berth Facility	$1,800,000.00	MOORING PILE / DOLPHINS FOR ASIAN FREIGHTERS	DATED
	.....and many more....			

EQUIPMENT LIST

Equipment Description & Specifications (incl. Attachment Description, if applicable)	Manufacturer	Model # or Serial Number	Year
150-300 CFM Compressor	Various	150-300cfm	
20' Pacific Skiff (incl 90 hp 4-stroke Yamaha)	Custom	Pacific Skiff	2005
20' Tilt Trailer	Lodr	Tilt Trailer	
40' Tug 'Resolute'	Custom	500HP Cummins	rebuilt 2017
40'-60' Snorkelift	GENIE		
500 gal fuel tank (incl BFP, Dispenser), Fuel Tanks	Ace Tank	New	2010
Bobcat E-50 Mini-Excavator	Bobcat	E-50	2023
Bucket Attachment	Custom	2cy bucket or broom	
Cat 950 Loader	CAT	980	
Cat 336 GL Excavator (90,000lb)	CAT	345CL	
Chevy Silverado	Chevy	Silverado	2018
GMC Sierra	GMC	Sierra	2024
Dodge Ram 1500 4 X 4 Truck	Dodge	1500	2020
Dredgepack GPS System	Hypack	Custom	
Ford F700 Flatbed Truck	Ford	F700	1993
Furukawa Skid Steer Mini-Ex Combo Breaker	Furukawa	K-FX45ACP-QA	
Grove 2009 Hydraulic Mobile RT Lift Crane 50t	Grove	RT-600E	2006
Honda 5hp Gensets & Trash Pumps	Honda	5hp	2018
Husqvarna Concrete Saw 11-13 HP	Husqvarana	FS400	2006
JLG Forklift			
Lincoln LN-25s	Lincoln	LN-25	2014
M1100 Manitowoc 110 ton crane	Manitowoc	M1100-1	2010
Magnum Light Tower / Light Tree	Magnum	5hp	2017
Mid Size Equip: Plate Compactors / Jumping Jacks / Saws			2013
Miler Trailblazer Welder	Miller	25hp	2007
Miller 400 amp Blue Box welder(s)	Miller	bobcat-400 amp	2017
Mitsubishi Fuso	Mitsubishi	Fuso	2015
Ride-on Street Sweeper		Ride On	2014
Telehandler Forklift 1 (11,000#)	JLG / Skytrack	10054E	2012
Telehandler Forklift 2 (10,000#)	JLG / Skytrack	10054	
Torch Sets			2006
Vac Pump	Gorman		

SAMUEL W. BERRY- PROJECT MANAGER / OWNER

8598 Belle Hill Rd, Bainbridge Island, WA 98110• 206-780-6915

EDUCATION

UNIVERSITY OF WASHINGTON
1998-2002 (3.42 GPA)
Degree 1: Bachelor of Science in Construction Management - 2002
Degree 2: Bachelor of Arts in Architecture - 2001
Honors Student; Member: Sigma Lambda Chi Honors Society in Construction - 2002
ASC Div. 7 Design-Build Student Competition Championship Team - 2002

SANTA CLARA UNIVERSITY
Fall 1991-Spring 1993 Communications Major

EXPERIENCE

REDSIDE CONSTRUCTION LLC: OWNER / PRESIDENT

President / Owner: Redside Construction: 2008-present

-Owner / Founder of a Redside Construction LLC, a General Marine Construction Company specializing in heavy civil and marine public works construction projects.

- Experience in public works construction since 15 years of age, worked for multiple contractors from large to small on over 200 projects ranging from $50k to the $750 million

-Learned the fundamental principles of building construction, engineering, and design at an early age while helping to build, manage, and maintain a sustainable family business.

GLOBAL AQUA LLC: FLOAT MANUFACTURING: SENIOR PROJECT MANAGER CAICOS CORPORATION: GENERAL / MARINE CONSTRUCTION: PROJECT MANAGER

President / Owner: Redside Construction
VP / Project Manager: Caicos Corp / Global Aqua (2004-2008)
Superintendent of small public works: (June 2000-2001)
Labor Foreman: (July 1997-June 2000)
Carpenter/Laborer: (summers 1984-1993)

- Managed all aspects of hundreds of projects from conception & bidding to final completion including all elements of business management, financial management, contracting, bidding, budgeting, scheduling, and construction management.

ALDRICH & ASSOCIATES INC:

Project Engineer: (June 2002-March 2004)

- Project Engineer & Estimator in the office for commercial & high-end residential projects.
- Responsibilities performed include estimating, scheduling, RFI's, change orders, submittals, meeting minutes, subcontractor coordination, field team management, procurement, closeout, CAD detailing of all wood & masonry walls, and small projects management.

SKANSKA USA:
Project Engineer: (Sept 2002-June 2002)

- Project Engineer during Phase 1 of the $750 Million Immunex Helix Project.
-Successfully handled work responsibilities while studying in 2 degree programs at the UW.

MACLEOD DESIGNS, LTD:
Draftsman: (summer 2001)

-Learned the fundamental principles of architectural drafting and design practice.
-Created contract drawings and managed high-end residential projects during construction.

ODWALLA INC.
Area Business Manager-Eugene, Or. (May 1996-June 1997)
Route Sales (1993-1995)

-Learned to manage people, budgets, time, merchandise, and sales.
-Helped to create business operations in Bellingham, Seattle, and Eugene markets.

SPECIAL PROJECTS

UNIVERSITY OF WASHINGTON
Design Build Program: Cuba & Mexico 2001.

-Participant in the complete design & construction of a children's library in Cuernvaca Mexico and social club for a farmer's cooperative in Havana, Cuba.

DAVID S. BERRY – SENIOR SUPERINTENDENT

9600 Summerhill Lane; Bainbridge Island, WA 98110

INTRODUCTION

Chief Superintendent of Redside Construction public works since inception. Previous construction experience includes Founder / Owner of 3 major marine construction company's since 1984. Functioned as President, Senior Project Manager, Project Superintendent, and Chief Estimator on over 450 public and private works projects between $100,000-$10 million in value since moving to Seattle in 1980. Experience includes President / Owner of general marine construction company and two private works construction company's including a marine float manufacturing business & a high end residential construction company. Also, a Senior board member for American Marine Bank for almost 2 decades.

EXPERIENCE

REDSIDE CONSTRUCTION LLC: MARINE CONSTRUCTION;
GENERAL MARINE CONSTRUCTION OPERATIONS MANAGER / SUPERINTENDENT OF PUBLIC WORKS

2008-Present – ***General Marine Construction Manager***
Field Superintendent of Public Works
Port Gamble, WA

Chief Superintendent of general marine construction and public works for Redside Construction since the company's inception. On-site Field Manager of all field and marine construction operations for Redside major public works marine projects. Has operated as a member of a family business team with son Sam in general marine construction and heavy civil public works construction since 1984, completing over 450 public works projects as a father and son team.

PACIFICA, LLC: RESIDENTIAL CONSTRUCTION; *OWNER / PRESIDENT*
GLOBAL AQUA, LLC: FLOAT MANUFACTURING; *P.M. / OWNER*
CAICOS CORPORATION: MARINE CONSTRUCTION; *P.M. / OWNER*

1984-2008 ***Owner / Senior Project Manager – Caicos Corporation***
Bainbridge Island Wa; Port Gamble Offices, WA

Owner, Senior Project Manager, Project Superintendent, and Chief Estimator for over 450 major projects ranging up to $10M in value. The majority of projects have been performed for public entities such as counties, cities, port districts, state, federal, and government agencies.

25 years experience in marine construction, including expertise in construction logistics, equipment, scheduling, estimating, field management, safety, technology, management, and materials procurement. Specialized knowledge & experience in pile driving construction on land, over water, and marine applications; including expertise in driven steel, wood, and

concrete piling up to 4'-0" diameter and over 200' in length. This includes extensive use of all pile driving techniques and equipment configurations available including vibratory, hydraulic, and diesel hammers, flying and fixed lead systems, and cranes up to 200 ton capacity.

Also has performed field and project management services for a variety of private and commercial owners for building construction, general marine construction projects, infrastructure improvements, and professional consultation services.

PACIFICA CONSTRUCTION, LLC:

2005-Present ***Owner / Senior Project Manager- Pacifica Construction***
Port Gamble Office, WA

Builder & developer of many residences, including high end custom residential projects since the late 1970's. Started Pacifica to construct several residential high end homes and custom remodels ranging from $750,000 - $3 million.

1981-1985 ***Vice President, Blossom Construction Co.***
Bainbridge Island, WA
Managed general construction activities for general and underground utilities contractor. Duties included estimating & project management.

COMMUNITY AFFILIATIONS

Member of Board of Directors, American Marine Bank
Chairman of Board of Community Mortgage
Bainbridge Island Harbor Commissioner
Member Near Shore Policy Group
Married, two sons, two daughters

Attachment #5

July 2, 2025

Mr. Khai Le, PE
City of Des Moines
21650 11th Avenue South
Des Moines, WA 98198-6317

RE: Redondo Fishing Pier Replacement Project Award Recommendation

Dear Mr. Le:

We recommend the approval of award to Redside Construction LLC for the Redondo Fishing Pier Replacement Project, based on the following:

- All Bids have been reviewed against the Lag Manual requirements (46.26) and WSDOT Standard Specification Division 1.
- During review of the submitted bid proposal by Redside Construction LLC on July 1, 2025, an error was found in the sales tax price calculations. We notified Redside Construction LLC of the apparent error, and they have accepted the error. Sales Tax amount and Schedule Total has been updated in the Bid Tabulation spreadsheet.
- Bid Tabulation and Redside Construction LLC Bid Package are included with this letter.

Based on the Corrected total we recommend accepting the Redside Construction LLC Bid Price including tax in the amount of $3,773,986.34.

If you have any further questions, please contact me.

Sincerely,

Jasmine Aryana
Sr. Project Manager

JFA:jc

Enclosure

2127 5th Ave., Seattle, WA 98121
P: 206.623.9646
xltech.com | bowman.com

Job No. Redondo Fishing Pier Replacement Project

Des Moines WATERLAND CITY — **City of Des Moines**

Bid Date: 7/1/2025

Bid Tabulation

TOTAL CONSTRUCTION COST ESTIMATE

				Engineer's Estimate		Apparent Low		Other Bidders		Other Bidders		Other Bidders		Other Bidders	
						Redside Construction LLC		Quigg Bros., Inc.		American Construction Company		Contactor Name		Contactor Name	
Item No.	Description	Total Quantity	Unit	Unit Price	Extended	Unit Price	Extended	Unit Price	Extended	Unit Price	Extended	Unit Price	Extended	Unit Price	Extended
1	MOBILIZATION	1	L.S.	$ 360,311.64	$ 360,311.64	$ 288,000.00	$ 288,000.00	$ 390,000.00	$ 390,000.00	$ 525,000.00	$ 525,000.00	$ -	$ -	$ -	$ -
2	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	1	L.S.	$ 25,400.00	$ 25,400.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 250,000.00	$ 250,000.00	$ -	$ -	$ -	$ -
3	REMOVING CEMENT CONC. PAVEMENT	90	S.Y.	$ 80.00	$ 7,200.00	$ 20.00	$ 1,800.00	$ 35.00	$ 3,150.00	$ 35.00	$ 3,150.00	$ -	$ -	$ -	$ -
4	REMOVING CEMENT CONC. SIDEWALK	3590	S.Y.	$ 25.00	$ 89,750.00	$ 4.00	$ 14,360.00	$ 10.00	$ 35,900.00	$ 7.00	$ 25,130.00	$ -	$ -	$ -	$ -
5	REMOVING CEMENT CONC. CURB	120	L.F.	$ 20.00	$ 2,400.00	$ 15.00	$ 1,800.00	$ 10.00	$ 1,200.00	$ 20.00	$ 2,400.00	$ -	$ -	$ -	$ -
6	REMOVING ASPHALT CONC. PAVEMENT	750	S.Y.	$ 15.00	$ 11,250.00	$ 6.00	$ 4,500.00	$ 20.00	$ 15,000.00	$ 7.50	$ 5,625.00	$ -	$ -	$ -	$ -
7	RELOCATE AND PROTECT WIFI ANTENNA	1	F.A.	$ 5,000.00	$ 5,000.00	$ 500.00	$ 500.00	$ 3,000.00	$ 3,000.00	$ 5,000.00	$ 5,000.00	$ -	$ -	$ -	$ -
8	REMOVING EXISTING FISHING PIER	1	L.S.	$ 215,000.00	$ 215,000.00	$ 280,000.00	$ 280,000.00	$ 200,000.00	$ 200,000.00	$ 350,000.00	$ 350,000.00	$ -	$ -	$ -	$ -
9	COMMON BORROW INCL. HAUL	15	C.Y.	$ 60.00	$ 900.00	$ 60.00	$ 900.00	$ 100.00	$ 1,500.00	$ 300.00	$ 4,500.00	$ -	$ -	$ -	$ -
10	CATCH BASIN TYPE 1	1	EACH	$ 3,000.00	$ 3,000.00	$ 1,600.00	$ 1,600.00	$ 3,000.00	$ 3,000.00	$ 4,000.00	$ 4,000.00	$ -	$ -	$ -	$ -
11	FURNISHING AND DRIVING STEEL TEST PILE	2	EACH	$ 20,000.00	$ 40,000.00	$ 4,500.00	$ 9,000.00	$ 35,000.00	$ 70,000.00	$ 50,000.00	$ 100,000.00	$ -	$ -	$ -	$ -
12	FURNISHING ST. PILING - 18" DIAM. (SCH 60)	1095	L.F.	$ 276.60	$ 302,877.00	$ 190.00	$ 208,050.00	$ 120.00	$ 131,400.00	$ 185.00	$ 202,575.00	$ -	$ -	$ -	$ -
13	FURNISHING ST. PILING - SHEET PILE (PZ27)	630	L.F.	$ 70.00	$ 44,100.00	$ 72.00	$ 45,360.00	$ 70.00	$ 44,100.00	$ 82.00	$ 51,660.00	$ -	$ -	$ -	$ -
14	FURNISHING ST. PILING - 18" DIAM. (SCH XS)	1054	L.F.	$ 187.08	$ 197,182.32	$ 150.00	$ 158,100.00	$ 100.00	$ 105,400.00	$ 140.00	$ 147,560.00	$ -	$ -	$ -	$ -
15	DRIVING ST. PILE - 18" DIAM.	38	EACH	$ 20,000.00	$ 760,000.00	$ 6,500.00	$ 247,000.00	$ 6,000.00	$ 228,000.00	$ 30,000.00	$ 1,140,000.00	$ -	$ -	$ -	$ -
16	DRIVING ST. PILE - SHEET PILE	18	EACH	$ 3,000.00	$ 54,000.00	$ 3,000.00	$ 54,000.00	$ 3,000.00	$ 54,000.00	$ 2,200.00	$ 39,600.00	$ -	$ -	$ -	$ -
17	FURNISHING STEEL PILE TIP OR SHOE, 18 IN. DIAM.	38	EACH	$ 1,250.00	$ 47,500.00	$ 600.00	$ 22,800.00	$ 450.00	$ 17,100.00	$ 450.00	$ 17,100.00	$ -	$ -	$ -	$ -
18	STRUCTURAL CARBON STEEL	1	L.S.	$ 401,040.00	$ 401,040.00	$ 723,000.00	$ 723,000.00	$ 1,050,000.00	$ 1,050,000.00	$ 700,000.00	$ 700,000.00	$ -	$ -	$ -	$ -
19	STRUCTURAL LOW ALLOY STEEL- CAP BEAM A	1	L.S.	$ 134,779.20	$ 134,779.20	$ 325,000.00	$ 325,000.00	$ 190,000.00	$ 190,000.00	$ 100,000.00	$ 100,000.00	$ -	$ -	$ -	$ -
20	STRUCTURAL LOW ALLOY STEEL- CAP BEAM B	1	L.S.	$ 201,996.00	$ 201,996.00	$ 300,000.00	$ 300,000.00	$ 260,000.00	$ 260,000.00	$ 180,000.00	$ 180,000.00	$ -	$ -	$ -	$ -
21	PIER WALKWAY	5010	SF	$ 72.00	$ 360,720.00	$ 26.00	$ 130,260.00	$ 35.00	$ 175,350.00	$ 35.00	$ 175,350.00	$ -	$ -	$ -	$ -
22	STEEL GUARDRAIL	576	L.F.	$ 160.00	$ 92,160.00	$ 180.00	$ 103,680.00	$ 320.00	$ 184,320.00	$ 535.00	$ 308,160.00	$ -	$ -	$ -	$ -
23	TIMBER GUARDRAIL	260	L.F.	$ 92.00	$ 23,920.00	$ 90.00	$ 23,400.00	$ 120.00	$ 31,200.00	$ 400.00	$ 104,000.00	$ -	$ -	$ -	$ -
24	PRECAST CONCRETE SLAB	1	L.S.	$ 16,733.22	$ 16,733.22	$ 14,000.00	$ 14,000.00	$ 35,000.00	$ 35,000.00	$ 25,000.00	$ 25,000.00	$ -	$ -	$ -	$ -
25	SUSPENDED SLAB	1	L.S.	$ 23,860.70	$ 23,860.70	$ 24,000.00	$ 24,000.00	$ 50,000.00	$ 50,000.00	$ 60,000.00	$ 60,000.00	$ -	$ -	$ -	$ -
26	STAIR ASSEMBLY	1	L.S.	$ 34,000.00	$ 34,000.00	$ 25,000.00	$ 25,000.00	$ 30,000.00	$ 30,000.00	$ 75,000.00	$ 75,000.00	$ -	$ -	$ -	$ -
27	REMOVING PILE OBSTRUCTIONS	1	F.A.	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ -	$ -	$ -	$ -
28	ACCESS LADDER	1	EACH	$ 8,000.00	$ 8,000.00	$ 2,500.00	$ 2,500.00	$ 6,000.00	$ 6,000.00	$ 10,000.00	$ 10,000.00	$ -	$ -	$ -	$ -
29	CRUSHED SURFACING BASE COURSE	140	TON	$ 80.00	$ 11,200.00	$ 68.00	$ 9,520.00	$ 85.00	$ 11,900.00	$ 400.00	$ 56,000.00	$ -	$ -	$ -	$ -
30	CEMENT CONC. PAVEMENT	26	C.Y.	$ 800.00	$ 20,800.00	$ 1,350.00	$ 35,100.00	$ 900.00	$ 23,400.00	$ 775.00	$ 20,150.00	$ -	$ -	$ -	$ -
31	HMA CL. 1/2 IN. PG 58-22	8	TON	$ 500.00	$ 4,000.00	$ 600.00	$ 4,800.00	$ 550.00	$ 4,400.00	$ 900.00	$ 7,200.00	$ -	$ -	$ -	$ -
32	HMA SAWCUT AND SEAL	180	L.F.	$ 30.00	$ 5,400.00	$ 10.00	$ 1,800.00	$ 40.00	$ 7,200.00	$ 50.00	$ 9,000.00	$ -	$ -	$ -	$ -
33	SLURRY SEAL, TYPE 2	8,500	S.Y.	$ 9.00	$ 76,500.00	$ 4.00	$ 34,000.00	$ 8.00	$ 68,000.00	$ 12.00	$ 102,000.00	$ -	$ -	$ -	$ -
34	TURBIDITY CURTAIN	680	L.F.	$ 30.00	$ 20,400.00	$ 8.00	$ 5,440.00	$ 60.00	$ 40,800.00	$ 100.00	$ 68,000.00	$ -	$ -	$ -	$ -
35	INLET PROTECTION	2	EACH	$ 144.00	$ 288.00	$ 75.00	$ 150.00	$ 300.00	$ 600.00	$ 500.00	$ 1,000.00	$ -	$ -	$ -	$ -
36	EROSION CONTROL AND WATER POLLUTION PREVENTION	1	L.S.	$ 15,000.00	$ 15,000.00	$ 18,000.00	$ 18,000.00	$ 5,000.00	$ 5,000.00	$ 7,500.00	$ 7,500.00	$ -	$ -	$ -	$ -
37	CEMENT CONC. TRAFFIC CURB AND GUTTER	150	L.F.	$ 62.00	$ 9,300.00	$ 45.00	$ 6,750.00	$ 70.00	$ 10,500.00	$ 72.00	$ 10,800.00	$ -	$ -	$ -	$ -
38	CEMENT CONC. TRAFFIC CURB	30	L.F.	$ 62.00	$ 1,860.00	$ 50.00	$ 1,500.00	$ 70.00	$ 2,100.00	$ 72.00	$ 2,160.00	$ -	$ -	$ -	$ -
39	PAINT LINE	3400	L.F.	$ 1.00	$ 3,400.00	$ 2.00	$ 6,800.00	$ 3.00	$ 10,200.00	$ 12.00	$ 40,800.00	$ -	$ -	$ -	$ -
40	ILLUMINATION SYSTEM	1	L.S.	$ 70,000.00	$ 70,000.00	$ 110,000.00	$ 110,000.00	$ 100,000.00	$ 100,000.00	$ 90,000.00	$ 90,000.00	$ -	$ -	$ -	$ -
41	PROJECT TEMPORARY TRAFFIC CONTROL	1	L.S.	$ 15,000.00	$ 15,000.00	$ 18,000.00	$ 18,000.00	$ 75,000.00	$ 75,000.00	$ 110,000.00	$ 110,000.00	$ -	$ -	$ -	$ -
42	TYPE B PROGRESS SCHEDULE	1	L.S.	$ 2,000.00	$ 2,000.00	$ 500.00	$ 500.00	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ -	$ -	$ -	$ -
43	STRUCTURE EXCAVATION CLASS B INCL. HAUL	5	C.Y.	$ 100.00	$ 500.00	$ 150.00	$ 750.00	$ 50.00	$ 250.00	$ 500.00	$ 2,500.00	$ -	$ -	$ -	$ -
44	STRUCTURE SURVEYING	1	L.S.	$ 30,000.00	$ 30,000.00	$ 14,000.00	$ 14,000.00	$ 20,000.00	$ 20,000.00	$ 7,500.00	$ 7,500.00	$ -	$ -	$ -	$ -
45	ROADWAY SURVEYING	1	L.S.	$ 5,000.00	$ 5,000.00	$ 6,000.00	$ 6,000.00	$ 10,000.00	$ 10,000.00	$ 6,000.00	$ 6,000.00	$ -	$ -	$ -	$ -
46	BOLLARD TYPE 1	7	EACH	$ 2,000.00	$ 14,000.00	$ 1,600.00	$ 11,200.00	$ 2,000.00	$ 14,000.00	$ 1,500.00	$ 10,500.00	$ -	$ -	$ -	$ -
47	CEMENT CONC. SIDEWALK	450	S.Y.	$ 100.00	$ 45,000.00	$ 92.00	$ 41,400.00	$ 150.00	$ 67,500.00	$ 160.00	$ 72,000.00	$ -	$ -	$ -	$ -
48	CONNECTION TO DRAINAGE STRUCTURE	1	EACH	$ 2,000.00	$ 2,000.00	$ 800.00	$ 800.00	$ 3,000.00	$ 3,000.00	$ 4,500.00	$ 4,500.00	$ -	$ -	$ -	$ -
49	ADJUST CATCH BASIN	1	EACH	$ 1,500.00	$ 1,500.00	$ 600.00	$ 600.00	$ 2,000.00	$ 2,000.00	$ 2,000.00	$ 2,000.00	$ -	$ -	$ -	$ -
50	LOCKING SOLID METAL COVER AND FRAME FOR CATCH BASIN	1	EACH	$ 1,000.00	$ 1,000.00	$ 600.00	$ 600.00	$ 1,500.00	$ 1,500.00	$ 1,200.00	$ 1,200.00	$ -	$ -	$ -	$ -
51	MINOR CHANGE	1	CALC	$ 25,000.00	$ 25,000.00	$ 25,000.00	$ 25,000.00	$ 25,000.00	$ 25,000.00	$ 25,000.00	$ 25,000.00	$ -	$ -	$ -	$ -
52	BUBBLE CURTAIN	1	EACH	$ 45,000.00	$ 45,000.00	$ 3,800.00	$ 3,800.00	$ 20,000.00	$ 20,000.00	$ 10,000.00	$ 10,000.00	$ -	$ -	$ -	$ -
53	RECORD DRAWINGS (MIN. BID $2,500)	1	L.S.	$ 2,500.00	$ 2,500.00	$ 2,500.00	$ 2,500.00	$ 3,000.00	$ 3,000.00	$ 5,000.00	$ 5,000.00	$ -	$ -	$ -	$ -
54	TURBIDITY MONITORING	1	L.S.	$ 20,000.00	$ 20,000.00	$ 2,500.00	$ 2,500.00	$ 30,000.00	$ 30,000.00	$ 40,000.00	$ 40,000.00	$ -	$ -	$ -	$ -
55	TRASH RECEPTACLES	3	EACH	$ 1,900.00	$ 5,700.00	$ 2,850.00	$ 8,550.00	$ 4,000.00	$ 12,000.00	$ 3,000.00	$ 9,000.00	$ -	$ -	$ -	$ -
56	NAVIGATION LIGHT	2	EACH	$ 4,000.00	$ 8,000.00	$ 500.00	$ 1,000.00	$ 2,000.00	$ 4,000.00	$ 1,600.00	$ 3,200.00	$ -	$ -	$ -	$ -
57	INSPECTOR'S TRAILER AND SITE FIELD OFFICE BUILDING	1	L.S.	$ 20,000.00	$ 20,000.00	$ 5,000.00	$ 5,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ 20,000.00	$ -	$ -	$ -	$ -
				Sub-Total	$ 3,963,428	Total	$ 3,424,670.00	Total	$ 3,950,970.00	Total	$ 5,378,820.00	Total	$ -	Total	$ -
			Sales Tax	10.2%	$ 404,270		$ 349,316.34		$ 402,998.94		$ 548,639.64		$ -		$ -
				Contract Total	$ 4,367,697.75	Total	$ 3,773,986.34	Total	$ 4,353,968.94	Total	$ 5,927,459.64	Total	$ -	Total	$ -

I reviewed the bid tabs and corrected math errors

x_____

Jasmine Aryana, Sr. Project Manager, Exeltech, a Bowman company

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: City Council Protocol Manual Update and Adoption

ATTACHMENTS:
1. Draft Resolution No. 25-074
2. Updated City of Des Moines City Council Protocol Manual

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: July 1, 2025

CLEARANCES:
[X] City Clerk
[ ] Community Development ____
[ ] Courts ____
[ ] Emergency Management ____
[ ] Finance ____
[ ] Human Resources ____
[X] Legal /s/TG
[ ] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider updates to the *City of Des Moines City Council Protocol Manual.* The Council has previously reviewed these updates over the course of several meetings.

Suggested Motion

Motion: "I move to pass Draft Resolution No. 25-074, updating the City of Des Moines City Council Protocol Manual."

Background

Pursuant to Section 9.01 of the Protocol Manual, "the City Council will review and revise the City Council Protocol Manual every two years, or as needed." In April of 2025, the City Council began reviewing the Manual and proposing updates and amendments. Over the course of the next several months, the Council debated and voted on a number of amendments to the Manual. These amendments have been compiled and are reflected in Attachment 2 to this Agenda Item.

Discussion

The purpose of this item is to formally adopt the amendments the Council has previously discussed. These amendments are reflected in Attachment 2.

There is one outstanding question that has been identified that was not addressed during deliberations of the Protocol Manual. The Council voted to extend the adjournment time to 10PM. However, given that the Council Committees are not meeting frequently, there is an option to have the official start time of City Council meetings moved up to 5PM. This would allow the meetings to continue to end at 9PM while also providing for 4 hour meetings if necessary.

Any necessary Committee meeting, including the Committee of the Whole, could meet from 4PM-5PM. If the Council was interested in this approach, the official start time of City Council meetings would need to be updated in the DMMC. If the Council elects to have their meetings run from 6PM-10PM, no further action is necessary other than voting to approve Draft Resolution No. 25-074.

Alternatives

The alternative would be to not adopt the updated Manual, or to consider additional amendments.

Financial Impact

None.

Recommendation

N/A.

Attachment #1

CITY ATTORNEY'S DRAFT 6/28/2025

DRAFT RESOLUTION NO. 25-074

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, updating the *City of Des Moines City Council Protocol Manual.*

WHEREAS, DMMC 4.12.10 provides that "rules of procedure governing and regulating meetings of the City Council shall be adopted in resolution form, and shall have the force of law," and

WHEREAS, in June of 2023, the City Council passed a resolution adopting the *City of Des Moines City Council Protocol Manual,* and

WHEREAS, pursuant to Chapter 9.01 of the Manual, the "City Council will review and revise the City Council Protocol Manual every two years, or as needed," and

WHEREAS, in April of 2025, the City Council began reviewing the Manual and proposing updates and amendments, and

WHEREAS, over the course of the next several months, the Council debated and voted on a number of amendments to the Manual

WHEREAS, these amendments have been compiled and are reflected in the attached document entitled *City of Des Moines City Council Protocol Manual,* now therefore,

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

Sec 1. The attached document entitled *City of Des Moines City Council Protocol Manual,* is hereby adopted as the official City Council rules of procedure governing and regulating meetings of the City Council substantially in the form as attached and is effective immediately upon adoption.

Sec 2. All prior versions of the *City of Des Moines City Council Protocol Manual* are repealed.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2025 and signed in authentication thereof this ____ day of _____, 2025.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

CITY OF
DES MOINES
CITY COUNCIL PROTOCOL MANUAL

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12.04 Government Finance Officers Association [(312) 977-9700] 35
12.05 Municipal Research & Services Center of Washington [(206) 625-1300] 35

CITY OF

DES MOINES

OATH OF OFFICE

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I do solemnly swear that I will faithfully and impartially discharge the duties of this office as prescribed by law and to the best of my ability, and that I will support and maintain the Constitution of the State of Washington and the United States of America.

Signed _____

Term of Office:
Month day, year - Month day, year

Subscribed and sworn to before me this

_____ day of_____,_____.

_____
(Name)

Attest:

_____
(Name)
City Clerk

Foreword

In the course of serving as a public official, there are a myriad of issues with which you will become involved. This protocol manual attempts to centralize information on common issues related to local government and your role as a member of the Des Moines City Council.

The issues that are addressed in this publication are often complex and subjective. This manual is intended to be a guide and is not a substitute for the counsel, guidance, or opinion of the City Attorney in accordance with the Revised Code of Washington (RCW).

The protocols included in this reference document have been formally adopted by the City Council. Provisions contained herein will be reviewed as needed.

Mission

Des Moines is a waterfront community committed to maintaining a safe, sustainable environment, while ensuring a high quality of life for all to live, work and play.

Vision

To be the premier waterfront destination in the Pacific Northwest.

Values

Core Values of the City of Des Moines are:

- Safety
- Sustainability
- Integrity
- Transparency
- Innovation

CHAPTER 1
INTRODUCTION AND OVERVIEW

As a City Councilmember, you not only establish important and often critical policies for the community, you are also a Board Member of a public corporation having an annual budget that may exceed one hundred million dollars.

1.01 Council-Manager Form of Government

The City of Des Moines is a Council-Manager form of government. As described in the Municipal Code and Revised Code of Washington, certain responsibilities are vested in the City Council and the City Manager. This form of government establishes that a City Council's role, in this specific form of government is that of a legislative policy-making body which determines not only the local laws that regulate community life, but also determines what public policy is, and gives direction to the City Manager to administer the affairs of the City government.

1.02 Purpose of City Council Protocol Manual

The City of Des Moines has prepared its own protocol manual to assist the City Council by documenting accepted practices and clarifying expectations. This Manual has been formally adopted by the City Council and is binding on all Councilmembers.

1.03 Association of Washington Cities and Municipal Research & Services Center of Washington

The Code City Handbook, Report No. 37, published by the Municipal Research & Services Center (MRSC), provides a wealth of general information on the major functions of a Councilmember's job as a locally elected official. Another publication from MRSC that goes hand in hand with the handbook is, Knowing the Territory. This report discusses basic powers; basic duties, liabilities, and immunities of officers; conflict of interest and appearance of fairness; prohibited uses of public funds, property, or credit; competitive bidding requirements; the Open Public Meetings Act; Open Government-Public Records-Freedom of Information; and immunities from tort liability. These two documents have been included as resources in creating this protocol manual.

1.04 Overview of Basic City Documents

This protocol manual provides a summary of important aspects of City Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of the City Council. Many other laws, plans, and documents exist which bind the City Council to certain courses of action and practices. The following is a summary of some of the most notable documents that establish City Council direction.

A. *Revised Code of Washington*

The state laws contain many requirements for the operation of city government and administration of meetings of city councils throughout the state. Des Moines is an "optional code city," which means it operates under the general laws of the state. As an optional code city of the State of Washington, Des Moines is vested with all the powers of incorporated cities as set forth in the Revised Code of Washington (RCW), Constitution of the State of Washington, and Des Moines Municipal Code.

B. *Des Moines Municipal Code*

The municipal code contains local laws and regulations adopted by ordinances. Titles 2 and 4 of the code address the role of the City Council, describes the organization of City Council meetings and responsibilities and appointment of certain City staff positions and advisory boards and commissions. In addition to these administrative matters, the municipal code contains a variety of laws including, but not limited to, zoning standards, health and safety issues, traffic regulations, building standards, and revenue and finance issues.

C. *Vision/Mission Statement*
Vision, Mission & Business Plan - City of Des Moines, WA (desmoineswa.gov)

D. *City Budget*
The budget is the primary tool and road map for accomplishing the goals of the City. The budget document is the result of one of the most important processes the City undertakes. By adopting the annual budget, the City Council makes policy decisions, sets priorities, allocates resources, and provides the framework for government operations.

Please note: The City Manager is required, by state statute, to present a recommended budget to the City Council in October of the preceding year of the budget. The City Council must hold at least two public hearings on the budget before they can approve the budget with any adopted changes.

E. *Annual Comprehensive Financial Report (ACFR)*
The annual financial report includes the financial statements of the City for a calendar year. It includes the financial condition of the City as reflected in the balance sheet, the results of operations as reflected in income statements, an analysis of the uses of City funds, and related footnotes. The annual financial report includes statements for the various groups of funds and a consolidated group of statements for the City as a whole.

F. *Comprehensive Plan*
A state-mandated comprehensive plan addresses the City's long-range planning needs relative to land use, transportation, economic development, and other planning elements such as employment and residential growth targets. The City's comprehensive plan, *Imagine Des Moines...* is reviewed on an ongoing basis, but may only be revised once a year, except as provided by State law.

G. *Six-year Capital Improvement Program*
The Six year Capital Improvement Program serves as a guide for determining priorities, planning, financing, and constructing capital projects which add to, support, or improve the physical infrastructure, capital assets, or productive capacity of city services.

1.05 Orientation of New Members

It is important for the members of the City Council to gain an understanding of the full range of services and programs provided by the City. As new members join the City Council, the City Manager and City Clerk provide an orientation session for new members to meet with key staff within the first quarter of taking office.

Another training opportunity for new members is the Association of Washington Cities-sponsored newly elected officials' orientation. At any time, if there are facilities or programs about which you would like more information, arrangements will be made to increase your awareness of these operations.

1.06 Medical and Religious Exemptions

The City complies with all requirements of the Americans with Disabilities Act (ADA). Accordingly, exceptions to these Protocols may be granted in accordance with the ADA. A Councilmember who believes he or she needs a reasonable accommodation in order to perform the essential functions of his or her (role as a Councilmember) must submit a request for a reasonable accommodation to the City's Human Resources Department. This request will be processed in accordance with the City Personnel Manual.

A Councilmember, who holds a "sincerely held religious belief, practice or observance" that conflicts with the Protocol requirements, may request a reasonable accommodation. Upon notice of the request, the City will process in the same manner as a reasonable accommodation request as defined by the ADA.

CHAPTER 2
DES MOINES CITY COUNCIL: GENERAL POWERS AND RESPONSIBILITIES

2.01 City Council Generally

Fundamentally, the powers of the City Council are to be utilized for the good of the community and its residents; to provide for the health, safety and general welfare of the citizenry. The City Council is the policy-making and law-making body of the City. State law and local ordinances grant the powers and responsibilities of the Council.

In carrying out their public role and in representing the positions of the Council body, Councilmembers should respect adopted Council policy. In turn, it is staff's responsibility to ensure that the policy of the Council is appropriately executed.

A. Council Non-Participation in Administration
RCW 35A.13.120 specifically prohibits interference by Councilmembers in the City's administrative service, including the hiring, firing, and work of city staff, with the exception of the City Manager.

B. Code of Conduct/Ethics Code DMMC 2.44
Chapter 2.44 CODE OF ETHICS (codepublishing.com)

2.02 Role of Councilmembers

Members of the Des Moines City Council are collectively responsible for establishing policy, adopting an annual budget, and providing vision and goals to the City Manager. The following outline is a brief description of the various duties of Councilmembers. The description is not intended to be comprehensive, but rather is an effort to summarize the primary responsibilities of the Council.

Summary of Council Duties and Responsibilities as provided in, but not limited to, the Washington Administrative Code and Revised Code of Washington:

A. Establish Policy:
1. Adopt goals and objectives
2. Establish priorities for public services
3. Approve/amend the operating and capital budgets
4. Approve contracts over $50k
5. Adopt resolutions

B. Adopt City Ordinances

C. Appoint City Manager:
1. Evaluate performance of City Manager

D. Boards and Commissions:
1. Establish advisory boards and commissions
2. Approve appointments to advisory bodies
3. Provide direction to advisory bodies

E. Provide Public Leadership:
1. Communicate the City's vision and goals to constituents
2. Represent the City's interest at regional, county, state, and federal levels through participation in regional boards and commissions, as appointed by Mayor or Council.
3. Call special elections as necessary
4. Constituent communication to City Manager

F. Decision-Making:
   1. Participate in assigned committees
   2. Study problems
   3. Review alternatives
   4. Determine best course of public policy

2.03 Role of Mayor

A. Presiding Officer:
The Mayor serves as the presiding officer and acts as chair at all meetings of the City Council. The Mayor may participate in all deliberations of the Council in the same manner as any other members and is expected to vote in all proceedings, unless a conflict of interest exists. The Mayor does not possess any power of veto.

B. Ceremonial Representative:
Responsibility to act as the City Council's ceremonial representative at public events and functions has been assigned to the Mayor. The Mayor shall have no regular administrative or executive duties.

C. Proclamations:
The Mayor is vested with the authority to initiate and read and sign Council approved proclamations.

D. See also Section 5.04:
Chapter 5.04 GENERAL PROVISIONS

2.04 Role of Deputy Mayor

In case of the Mayor's absence or temporary disability, the Deputy Mayor shall act as Mayor during the continuance of the absence. When the Deputy Mayor acts as Mayor by participating in preparation of a council meeting agenda or study session worksheet, or by presiding at a meeting of the Council, the Deputy Mayor shall have authority only to approve the Council meeting agenda or study session worksheet as to form, without introducing or deleting items of business, and to preside at the meeting by following the approved agenda or study session worksheet as written.

2.05 Acting Mayor

When both the Mayor and Deputy Mayor are absent, the Council may choose from among its members a person to serve with the powers of the Deputy Mayor.

2.06 Election of Officers

Procedures for electing officers are as follows:

A. Biennial Election of Mayor and Deputy Mayor
Biennially, at the first meeting of the new Council, Councilmembers will choose a presiding officer from their number who will have the title of Mayor. In addition to the powers conferred upon them as Mayor, they will continue to have all the rights, privileges and immunities of a member of the Council. If a permanent vacancy occurs in the Office of Mayor, the members of the Council at their next regular meeting will select a Mayor from their number for the unexpired term. Following the election of the Mayor, if the Deputy Mayor is selected as the new Mayor, there will be an election for Deputy Mayor. The term of the Deputy Mayor will run concurrently with that of the Mayor.
   1. Nominations
   The election for Mayor shall be conducted by the City Clerk. The City Clerk shall call for nominations. Each member of the City Council shall be permitted to nominate one (1) person who has previously served on the Council for a minimum of two years, and nominations shall not require a second. A nominee who wishes to decline the nomination shall so state at this time. Nominations

are then closed. The election for Deputy Mayor shall be conducted by the newly-elected Mayor, and nominations shall be made in the manner previously described for the election of the Mayor. Candidates for Deputy Mayor shall have previously served on the Council for a minimum of one year. The minimum experience condition for candidacy for Mayor or Deputy Mayor may be waived by a vote of five Councilmembers.

B. Casting Ballots
Except when there is only one nominee, election will be by audible vote; each Councilmember declaring a vote into the record. The City Clerk will publicly announce and record the results of the election in the official minutes, stating the name of each voting Councilmember and the manner in which the Councilmember voted. Once a nominee receives a majority vote of the members present, the nominee is declared elected to the position.

C. Unable to Agree
In the event that the Council is unable to agree on a Mayor by majority vote of the members present, the Office of Mayor shall be temporarily filled by an Acting Mayor. The Acting Mayor shall be the Councilmember who just previously served as Mayor; or if such person is not a member of the Council, the Councilmember who just previously served as Deputy Mayor; or if such person is not a member of the Council, the Councilmember with the highest seniority as determined by the City Attorney.

In the event that the Council is unable to agree on a Deputy Mayor, the appointment of Deputy Mayor shall be filled in the same manner as described above.

The Acting Mayor and Acting Deputy Mayor shall continue in office and exercise such authority as is described in Chapter 35A.13 RCW until the members of the Council agree on a Mayor, at which time the Office of Acting Mayor and Acting Deputy Mayor shall cease and terminate.

D. Resignation of Mayor or Deputy Mayor
If the Mayor or Deputy Mayor resign, the City Council will appoint a new Mayor or Deputy Mayor using the procedure outlined above, as soon as practical.

2.07 Appointment of City Manager
The City Council is responsible for appointing one position within the City organization, the City Manager. The City Manager serves at the pleasure of the Council.

2.08 Council Board and Committee Service
A. Committees of the Council:
Committees of the Council are comprised of a collaboration of Councilmembers and Staff, and are designed to review, discuss, and vet potential plans and decisions that may come before the Council body. These committees may make recommendations on proposed ordinances, resolutions, or motions within their area of expertise.

The procedures governing all committees of the Council shall be as follows:
1. The following standing committees shall consist of three members of the Council appointed by the Mayor in January following an election, or at such time as new standing committees are authorized; Environment, Municipal Facilities, Public Safety and Emergency Management, Transportation, and Economic Development.
2. In addition to standing advisory committees, special purpose or Ad Hoc committees and task forces may be appointed by the Mayor to address issues of interest or to conduct background work on technical or politically sensitive issues. Special or ad-hoc committees will be dissolved upon completion of the intended task.
3. Minutes shall be shall be kept of each City Council standing and special committee meeting, listing discussion topics, a summary of key points made, without attribution to individuals and any final

recommendations.

4. ~~Standing~~ Staffed and appointed committees of the Council are open public meetings, shall be noticed to the public, and be recorded and available to the public for viewing.
5. During the appropriate portion of the regular City Council meeting, the Committee Chair shall report back to the Council regarding items of discussion, progress, or plans.
6. Councilmembers may be appointed or removed by the Mayor.

Councilmembers shall not serve on appointed City Advisory Bodies concurrent with their term of office as Councilmember.

However, at the discretion of the Mayor, Councilmembers may be appointed as liaison to one or more Council-established Citizen Advisory Bodies or other Community agencies/organizations. In their capacity as a Council liaison, a Councilmember shall:

1. Attend meetings on time and conduct themselves with respect, honoring the chair and members of the appointed or community body.
2. Participate only as requested by the Chair in answering questions or representing the will or opinion of the Council as a whole, and shall not interact as a member of the body by engaging with questions, discussion, or voting.
3. Report back to Staff and/or Council as appropriate with updates, progress and/or questions posed by community members. This should be done in a timely manner and may be done from the dais during Board and Committee Reports as appropriate.

B. Regional Boards and Committees:
Members of the City Council are often requested to serve on outside boards, councils, commissions, or committees. This type of representation serves to facilitate communication and provide interaction with other governmental bodies.

1. Membership appointment to these groups shall be made, or authorized by the Mayor for a 2-year period. If more than one Councilmember desires to serve as a member of a particular outside group, the member will be appointed by the Mayor.
2. Where applicable, the Mayor will appoint an alternate to attend outside boards, councils, commissions, or committees. The main delegate will notify the alternate as soon as possible after they realize they will be unable to attend an upcoming meeting of the outside group.
3. Councilmembers participating in policy discussions at regional meetings will represent the consensus of the Council, except where regional appointment requires regional opinion. Personal positions, when given, will be identified and not represented as the position of the City.
4. Assignment and direction of staff in relation to regional meetings are at the discretion of the City Manager.

2.09 Citizen Advisory Bodies

The Council policy regarding Citizen Advisory Bodies is found in DMMC Title 4:
Title 4 COUNCILS AND APPOINTIVE COMMITTEES (codepublishing.com)

2.10 Incompatibility of Offices

Councilmembers shall not simultaneously hold any other elected position, an incompatible public office or employment within the City government except as permitted under the provisions of RCW 42.23, 35A.12 and 35A.13.

CHAPTER 3
SUPPORT PROVIDED TO CITY COUNCIL

3.01 Staff

The use of City staff to provide support for a Councilmember is limited to that which is authorized by the City Manager.

Councilmembers are responsible to keep their own calendars and make their own appointments.

3.02 Electronic Devices

A computer and phone will be provided to each Councilmember for the conducting of City business. The IT staff will ensure that all appropriate software is installed and will also provide an orientation in the use of computers and related software. While staff will maintain those computer applications related to City affairs, staff cannot provide assistance for personal computer applications. Personal media and programs cannot be stored on City computers. Councilmembers must adhere to all policies under the City of Des Moines IT Security Polices.

Throughout Councilmember terms, City equipment is subject to audit. Virus protection software must not be disabled at any time on City equipment and non-city programs or media found during audits will be removed. When individual Councilmembers have completed their term of office, IT staff will retrieve City computers, software, and phones.

3.03 Mail and Deliveries

Members of the City Council receive mail and other materials that are delivered through the use of mailboxes located at City Hall. Councilmembers are encouraged to check mailboxes often.

CHAPTER 4
FINANCIAL MATTERS

4.01 Council Compensation

The municipal code provides for payment of a stipend to members of the City Council. A seated City Council may not increase or decrease its own compensation. Councils may only pass an ordinance to adjust the compensation of a future City Council. Currently, Council salaries are set as provided in chapter 4.08 DMMC or RCW 35.21.015.

4.02 Business, Education and Travel

When determined by the City Council to be in the best interests of the City, Councilmembers may attend conferences and workshops, take part in educational or leadership opportunities, and conduct City business which may require travel, tuition, fees, or registration costs. Councilmembers may be reimbursed for these expenses under the following guidelines:

A. The Administration will keep account of Councilmember expenses.

B. When the Councilmember makes arrangements or incurs eligible expenses as determined by the Council, the Councilmember shall provide receipts for reimbursement.

~~B.~~C. Any expenses exceeding $1200 for any councilmember in a calendar year must be approved by the Council majority prior to any additional expenses incurred. Failure to follow this stipulation will require the Councilmember to be responsible for all additional expenses. The City Manager has the authority to pause any requests outside the normal expenses and bring before the Council for approval.

4.03 Financial Disclosure

Candidates for the office of Councilmember shall file a financial disclosure statement with the State Public Disclosure Commission in accordance with State law. When appointed to fill a vacancy on the Council, the appointee shall file a financial disclosure statement with the Commission, covering the preceding 12-month period, at least two weeks prior to appointment. Councilmembers are required to file a financial disclosure statement with the Commission on an annual basis after January 1 and before April 15 of each year covering the previous calendar year. Councilmembers whose terms expire on December 31 shall file the statement for the year that ended on that December 31. Statements filed in any of the above cases will be available for public inspection.

Failure to timely file a financial disclosure statement with the State Public Disclosure Commission in accordance with the requirements of State law, or filing a false or incomplete financial disclosure statement, if done knowingly, is a Class 1 Misdemeanor. There are also civil penalties for violations.

CHAPTER 5
COMMUNICATIONS

5.01 Overview

~~Perhaps the most fundamental~~An important role of a Councilmember is communication. This is essential to engage with the public to assess community opinions and needs, and to share the vision and goals of the City with constituents. In addition, connection with the staff provides policy direction and assists in understanding the implications of various policy alternatives.

Because the City Council performs as a body, based on the will of the majority as opposed to individuals, it is important that general guidelines be understood when speaking for the Council. Equally important, when members are expressing personal views and not those of the Council, the public must be advised.

5.02 Councilmember Contact and Information

A page on the City of Des Moines website will display information about each councilmember for community reference, which will include:

A. A color photo

B. A short biography/resume

C. List of assignments or designations

D. Phone number and email

5.03 Correspondence from Councilmembers

Councilmembers are committed to open communications in their capacity as elected officials. Individual Councilmembers use a variety of methods to communicate with the public, stakeholders, partners, and the media. Social media platforms offer a way to deliver public information and customer service to constituents and give community members another means to interact with their government.

The purpose of this policy is to establish standards for Council communication with the public, when Councilmembers are acting in their official capacity or commenting on City government matters, either through traditional media outlets or the use of social media platforms or personal accounts or pages.

The Council believes that the following standards will provide consistency in procedures and allow for use of more tools to communicate with the public.

A. The content and tenor of all public communications shall model the same professional behavior displayed during Council meetings and community meetings, and reflect well on the individual Councilmember, the Council as a whole, and the community.

B. The following disclaimer~~s~~ shall be included in whole or referenced with a link to the disclaimers for all communications initiated by Councilmembers in open forums:

1. ~~The views expressed represent the views of the author and may not reflect the views of the City of Des Moines or the Des Moines City Council.~~ "The following is my opinion alone and may or may not reflect the views of the City of Des Moines or the City Council."

Responses to ~~this~~ communications by other Councilmembers may be limited by the provisions of the Open Public Meetings Act under which a policy discussion or other action taken must be held in an open public meeting if a quorum of the Council participates. Comments posted in response to a Councilmember-initiated communication may be subject to public disclosure under chapter 42.56 RCW, the Public Records Act.

C. Media outlets such as newspapers, radio and television news coverage may be used as communications medium by individual Councilmembers provided that the communication clearly states that the views expressed do not represent those of the City Council or the City of Des Moines, but the views of the individual Councilmember.

D. Communications initiated by Councilmembers. Guest editorials, letters to the editor and blog posts published by Councilmembers should be provided to the full Council at the same time they are delivered to the media outlet. Drafts of guest editorials, letters to the editor or blog posts which may be submitted on behalf of the Council as opposed to an individual Councilmember may not be circulated for comment to a quorum of the Council prior to publication as this may violate the Open Public Meetings Act.

E. Use of Social Media. Posts to social media sites such as, blogs, Facebook, and Twitter may be used by individual Councilmembers to communicate with the public provided the following guidelines are used:

1. Blog posts or other posts to social media sites should include, or reference a link which includes the disclaimers listed in Section 5.03.B.
2. Social media sites are not to be used for the conduct of Council business other than to informally communicate with the public. Public notices, items of legal or fiscal significance that have not been released to the public, and discussion of quasi-judicial matters may not be included in Councilmembers social media posts. Councilmembers are encouraged to maintain social media sites with settings that can restrict users' ability to comment in order to avoid inadvertent discussions of these items. Unsolicited public comments on quasi-judicial matters must be placed on the record by the Councilmember at the time the matter is before the Council for consideration.
3. In order to demonstrate openness and a willingness to listen to the entire community, Councilmember posts on social media sites should be made through a public-facing page or by marking individual posts as available to the public as a whole.
4. When commenting on a post or an article published by someone other than a Councilmember, a link to the standard disclaimers in Section 5.03.B should be included within the thread.

F. If a Councilmember makes a factual error in a public communication, it should be corrected as soon as the error is discovered. Blog posts may be corrected by amending a previous post with a note that a correction was made.

G. Councilmembers shall not take actions, in writing, speaking, or otherwise, outside the public meeting(s) that undermine the decisions of the body.

5.04 Council Representation

To promote a favorable image of the City and pursue resources or relationships that will benefit the community, the Mayor, or another Councilmember designated by the Council, may take the lead in representing the City of Des Moines to other partners and representatives including, but not limited to; businesses, other local governments, regional agencies and organizations, and state, federal and internationals governments.

A. Councilmembers shall not conduct communication or business in this manner without the authorization of the Administration or the City Council.

B. Neither the Mayor, nor a Councilmember, can commit the City without authorization of a majority of the City Council.

C. The Mayor, or another Councilmember designated by the City Council, shall be the spokesperson about actions taken by the Council. On behalf of the City Council, the Mayor or designated Councilmember may inform the public, media, and staff about issues affecting the community.

5.05 State Public Disclosure Act

The City Council is bound by State Public Records Act and City records policies. Please refer to Resolution No. 1185 **142.pdf (civiclive.com)**

5.06 Open Public Meetings Act

The City Council is bound the State Open Public Meetings Act. More information can be found at **Open Government Training | Washington State**

5.07 Communication with the public

A. If a Councilmember receives communication from a member of the community conveying a concern, complaint, or administrative issue, the Councilmember shall cc the City Manager in their response. ~~not attempt to address it or resolve it individually but will refer that matter directly to the City Manager for their review and/or action.~~ It will be up to the City Manager's discretion as to further dissemination of the information, and ~~T~~the ~~individual~~ Councilmember may request to be informed of ~~the~~ actions or response made to the complaint.

~~A.~~B. If a Councilmember wishes to respond to a communication that has been addressed to the entire Council, they shall cc the City Manager in their response in order to eliminate redundancy and create accountability. It will be up to the City Manager as to further dissemination of the information.

~~B. Written Communications:~~
~~Letters, correspondence, and memoranda received by the City, addressed to a Councilmember or the Council as a body, shall be provided to all City Councilmembers.~~

C. E-mail:

1. If a community member sends an e-mail to a Councilmember and requests that it be included in the record of a particular public hearing, the Councilmember will forward said e-mail to the City Clerk.
2. If a Councilmember wishes that an e-mail be distributed to a City staff member, the Councilmember will forward said e-mail to the City Manager.
3. E-mail communications that are intended to be shared among four or more Councilmembers, whether concurrently or serially must be considered in light of the Open Public Meetings Act. If the intended purpose of the e-mail is to have a discussion that should be held at an open meeting, the electronic discussion may not occur. Further, the use of e-mail communication to form a collective decision of the Council is illegal.
4. E-mail should be used cautiously when seeking legal advice or if discussing matters of pending litigation or other "confidential" City business. In general, e-mail is discoverable in litigation, even

deleted e-mail is not necessarily removed from the system, and councilmembers may not delete official email in violation of the Open Public meetings Act. Confidential e-mail communications should not be shared with individuals other than the intended recipients, or the attorney-client privilege protecting the document from disclosure may be waived:

a. E-mail between Councilmembers, and Councilmembers and staff shall not be transmitted to the public or news media unless a public disclosure request has first been filed with the City Clerk.
b. City email shall not be used for personal communication.

5. When an email is received by a Councilmember at a City email address, whether addressed to the Council as a whole or to the individual Councilmember, the Councilmember shall allow time for staff to respond. To ensure transparency, any Councilmember responding must use their City email. Personal email cannot be used as a substitute. Any email that constitutes a public record under RCW 42.56.010 shall be sent via a City email address.
6. Any email using a personal email address with any official City designation or associated with a campaign address i.e. identifying as a Councilmember and giving the inference of a response in any official capacity is not permitted. If any such email were to occur, the Councilmember shall forward a copy to the City Clerk.

~~b~~c.

CHAPTER 6
CONFLICTS OF INTEREST, APPEARANCE OF FAIRNESS DOCTRINE, AND LIABILITY OF ELECTED OFFICIALS

6.01 Conflicts of Interest

In the course of conducting City business, it is essential that Councilmembers understand and are able to identify if and where they may have conflicts of interest. If there is ever a question, Councilmembers should consult with the City Attorney before the meeting at which the issue may be considered.

City Councilmembers are bound by the Conflict of Interest provisions of chapter 2.44 DMMC as well as chapter 42.23 RCW.

6.02 Appearance of Fairness Doctrine

Appearance of Fairness Doctrine and its Application.

A. Appearance of Fairness Doctrine Defined. "When the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must *appear* to be so. It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows: Would a disinterested person, having been apprised of the totality of a Boardmember's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided." Zehring v. Bellevue, 99 Wn.2d 488 (1983).

B. Types of Hearings to Which Doctrine Applies. The appearance of Fairness Doctrine shall apply only to those actions of the Council, which are quasi-judicial in nature. Quasi-judicial actions are defined as actions of the City Council, which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents of the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. RCW 42.36.010. Some examples of quasi-judicial actions, which may come before the Council are: rezones or reclassifications of specific parcels of property,

appeals from decisions of the Hearing Examiner, substantive appeals of threshold decisions under the State Environmental Protection Act, subdivisions, street vacations, and special land use permits. City staff is advised to notify the City Council upon receipt of an application or decision, which will result in an action before the City Council that is quasi-judicial in nature.

C. Obligations of Councilmembers, Procedure.

1. Councilmembers should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve the Councilmember or a Councilmember's business associate or a member of the Councilmember's immediate family. It could involve ex parte communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Councilmember's employer with the proponents or opponents, announced predisposition, and the like.

Prior to any quasi-judicial hearing, each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such facts to the City Manager who will seek the opinion of the City Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists. The City Manager shall communicate such opinion to the Councilmember and to the Presiding Officer.

2. Anyone seeking to disqualify a Councilmember from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been made known prior to the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the Councilmember shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on the record, or ex parte contact. Should such challenge be made prior to the hearing, the City Manager shall direct the City Attorney to interview the Councilmember and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the Presiding Officer shall call a recess to permit the City Attorney to make such interview and render such opinion.

3. The Presiding Officer shall have sole authority to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. Further, if two (2) or more Councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Presiding Officer or other Councilmembers shall give due regard to the opinion of the City Attorney.

4. Notwithstanding the request of the Presiding Officer or other Councilmembers, the Councilmember may participate in any such proceeding.

D. Specific Statutory Provisions.

1. Candidates for the City Council may express their opinions about pending or proposed quasi-judicial actions while campaigning. RCW 42.36.040.
2. A candidate for the City Council who complies with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from accepting campaign contributions to finance the campaign, including outstanding debts. RCW 42.36.050.
3. During the pendency of any quasi-judicial proceeding, no Councilmember may engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Councilmember: (a) places on the record the substance of such oral or written communications; and (b) provides that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where action is taken or considered on the subject. This does not prohibit

correspondence between a citizen and his or her elected official if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. RCW 42.36.060.

6.03 Liability

The City must always approach its responsibilities in a manner that reduces appropriate risk to all involved. Nevertheless, with such a wide variety of high profile services (i.e., police, parks, roads, land use), risk cannot be eliminated. To better manage insurance and risk, the City participates in risk- and loss-control activities.

It is important to note that violations of certain laws and regulations by individual members of the City Council may result in the member being personally liable for damages which would not be covered by the City's insurance.

DMMC 2.24.030 identified the exclusions to insurance coverage as follows:

The obligations assumed under this chapter by the city and the city attorney shall not apply to:

A. Any dishonest, fraudulent, criminal, or malicious act of any official or employee;

B. Any act of an official or employee, which is not performed on behalf of the city;

C. Any act which is outside the scope of an official's or employee's service or employment with the city; or

D. Any lawsuit brought by or on behalf of the city.

The determination of whether an official or employee is entitled to a defense by the City under shall be made by the City Attorney. There shall be no appeal from such determination, except to the superior court by means of an action for declaratory judgment.

For more information, see Chapter 2.24 DMMC.

CHAPTER 7
INTERACTION WITH CITY STAFF/OFFICIALS

7.01 Overview

City Council policy is implemented through dedicated and professional staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so policies and programs may be implemented successfully. To support effective relationships, it is important that roles are clearly recognized.

The employment relationship between the City Council and City Manager honors the fact that the City Manager is the chief executive of the City. All dealings with the City Manager, whether in public or private, should respect the authority of the City Manager in administrative matters.

7.02 City Manager Performance Evaluation

In accordance with DMMC 2.04.050, all members of the City Council will be required to participate in a review of the City Manager.

Prior to the process, the City Attorney will distribute evaluation forms to all Councilmembers for review, completion, and return within 14 days of receipt. The forms will be collated into one document for review before the evaluation date.

The members of the Council will use the collated document to review the City Manager during Executive Session.

7.03 City Council/City Clerk Relationship

The City Clerk is appointed by the City Manager. The City Clerk shall keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, including a specific action item section, and shall perform such other and further duties in the meeting as may be required by the Council, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager shall appoint a replacement to act as Clerk of the Council.

7.04 City Council/City Attorney Relationship

The City Attorney is the legal advisor for the Council, its committees, commissions and boards, the City Manager, and all City officers and employees with respect to any legal question involving an official duty or any legal matter pertaining to the affairs of the City.

It is important to note that the City Attorney does not represent, or advise, individual members of Council, but rather the City Council as a whole.

7.05 Non-Interference

In accordance with RCW 35A.13.120, the City Council is to work through the City Manager when dealing with administrative services of the City. In no manner, either directly or indirectly, shall a Councilmember become involved in, or attempt to influence or criticize personnel matters or individual staff members, who are under the direction of the City Manager.

Any criticism of staff by Councilmembers shall be directed to the City Manager. It is inappropriate and unethical for Councilmembers to publicly criticize individual staff members.

Individual Councilmembers may not intervene in staff decision-making, the development of staff recommendations, scheduling of work, or executing department priorities. Following this RCW is necessary in order to protect staff from undue influence and pressure from individual Councilmembers, and to allow staff to execute priorities given by management and the Council as a whole without fear of reprisal.

The City Council shall not be involved in, or influence, the purchase of any supplies beyond the requirements of the City procurement code/procedures.

If a Councilmember wishes to influence the actions, decisions, recommendations, or priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy.

7.06 Access to Information

The City Manager is the information liaison between Council and City staff. Requests for information from Councilmembers are to be directed to the City Manager. The information requested will be copied to all members of Council so that each member may be equally informed.

There are limited restrictions when information cannot be provided. The City is legally bound to protect certain confidential personnel information. Likewise, certain aspects of police department affairs (i.e., access to restrict or confidential information related to crimes) may not be available to members of the City Council.

No Councilmember shall request or direct the City Manager, ~~or~~ Department Directors staff or outside entity to initiate any action or prepare any report, or initiate any project or study without the consent of a majority of the Council.

The full City Council retains the authority to accept, reject, or amend the staff recommendation on policy

matters.

7.07 Staff Roles

The Council recognizes the primary functions of staff as executing Council policy and actions taken by the Council. Staff is directed to reject any attempts of individual Councilmembers to unduly direct or otherwise pressure them into making, changing, or otherwise influencing recommendations.

7.08 Councilmember Relationship with Staff

Staff support and assistance may be provided to advisory boards, commissions, and task forces. Advisory bodies, however, do not have supervisory authority over City employees. While staff may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and, ultimately, the City Manager. Councilmember interaction with staff, including the City Manager, shall be in a respectful and professional manner at all times.

When Councilmembers are acting as Liaisons they shall not direct staff.

CHAPTER 8
CITY COUNCIL MEETINGS

The City Council's collective policy and law-making powers are put into action exclusively at the council meetings. It is here that the Council conducts its business. The opportunity for community members to be heard, the availability of local officials to the public, and the openness of council meetings all lend themselves to the essential democratic nature of local government.

8.01 Meeting Schedule

Council business meetings are generally held the first, second, and fourth Thursdays of each month, convening at 6:00 p.m., in the Council Chambers at Des Moines City Hall, 21630 11th Ave S, Suite C, Des Moines WA, 98198. The first Thursday is intended to be reserved as a study session.

If Council Meetings are moved to alternate location or conducted remotely they will be noticed publicly at least 24 hours in advance in accordance with the State law.

8.02 Public Notice of Meetings and Hearings

Pursuant to RCW 35.22.288, cities are charged with establishing a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. The procedure followed by the City of Des Moines is as follows:

A. Open to the Public**:**
All meetings of the City Council and of committees thereof shall be open to the public, except as provided for in RCW 42.30.110 or RCW 42.30.140.

B. Notices of Public Hearing:
Except where a specific means of notifying the public of a public hearing is otherwise provided by law or ordinance, notice of upcoming public hearings before the City Council shall be given by public notice containing the time, place, date, subject, and body before whom the hearing is to be held, using the City's official notification process at least ten (10) days before the date set for the hearing.

C. Preliminary Agenda of Council Meeting:
The public shall be notified of the preliminary agenda for the forthcoming regular City Council meeting by posting a copy of the agenda in the following public places in the City at least 24 hours in advance of the meeting:

Des Moines City Hall
21630 11th Ave So
Des Moines, WA 98198
Website: The City's Official Website: desmoineswa.gov
Des Moines Libraries
Des Moines Marina
Redondo

8.03 Special Meetings

It is the intent of the Des Moines City Council that the procedures of this Council Rule 8.03 are enforceable to the same extent as RCW 42.30.080, as the City's implementation of the Open Public Meetings Act special meeting requirements set forth at RCW 42.30.080. Procedures for setting a special meeting are as follows:

A. A special meeting may be called by the Mayor or any four members of the Council.

B. Notice of the special meeting shall be prepared in writing. The notice shall contain the following information about the meeting: time, place, duration of meeting, and business to be transacted. The notice shall be reviewed by the City Attorney for proper legal form. After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Special Council Meeting, except in case of an emergency.

C. The notice shall be posted on the City's website and Councilmembers will be notified via email of the special meeting. The notice must be delivered at least twenty-four (24) hours prior to the meeting.

D. When email notice is given to Councilmembers, the City Clerk shall provide confirming follow up of such email notice by making a personal telephone call directly to each Councilmember who has not acknowledged receipt of the email. The City Clerk shall document the date and time of such follow up telephone call.

E. The notices provided in this section may be dispensed within the circumstances provided by RCW 42.30.080.

8.04 Placing Items on the Agenda

The Presiding Officer, three Councilmembers, or the City Manager may introduce a new item to the preliminary agenda.

The Presiding Officer shall have the option of postponing any item on the agenda until the next regular Council meeting, unless it was introduced by three Councilmembers.

The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare a preliminary agenda for the Council.

After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Regular Council Meeting, except in case of an emergency.

Emergency items may be added to an agenda in accordance with state law.

8.05 Recording and Broadcast of Meetings

The City Clerk, or designee, shall make and keep audio recordings, and video when possible, of all standing

committee and business meetings of the Des Moines City Council, except those meetings or portions of meetings conducted in Executive Session.

Recordings and related records of all City Council meetings, except as referenced above, shall be retained by the City in accordance with the Washington State Records Retention Schedule.

All public meetings of a quorum of the City Council not exempt from the Open Public Meetings Act held in the Des Moines City Hall at 21630 11th Avenue South should be video recorded and broadcast within the City.

8.06 Order of Business – Regular Meetings

The City Council, by adoption of this manual, establishes the general order of meetings. This section details the order of meeting components and gives direction for their conduct. The Presiding Officer may, during a Council meeting, rearrange items on the agenda to conduct the business before the Council more expeditiously. Any ruling by the Presiding Officer relative to rearrangement of items on the agenda may be overruled by a vote of a majority of members present.

The components of business and their order are as follows:

A. Call to Order and Pledge of Allegiance
B. Roll Call
C. Correspondence not Previously Received by Council
D. Comments from the Public
E. Committee Chair Reports
F. City Manager Report/Presentations/Briefings
G. Consent Agenda
H. Ceremonial Matters, Proclamations (reading)
I. Public Hearings
J. Unfinished Business
K. New Business
L. New Agenda Items for Consideration
M. Councilmember Reports
N. Presiding Officer's Report
O. Executive Session (as required)
P. Next Meeting Date
Q. Adjournment
R. Meeting Materials -

Conduct of Business:

A. Call to Order/Pledge

B. Roll Call:
   1. (For procedure to excuse an absence see 8.09.E)

C. Correspondence not previously received by Council.

D. Comments from the Public:
   Public Comments are encouraged and appreciated. All Public Comment will be recorded and become part of the Public Record, which is available to the Public on the City website. Public comment is provided as an informational and educational tool for the Council. The information and advice received from citizens helps the City Council make the best possible decisions. Public comment is for the benefit of the Council, and is not provided as an opportunity to speak to, inform, or educate the community.

   The following rules have been established in order to ensure that all individuals wishing to address the City Council are fairly heard:

a. The following language will be added to the published agenda under Public Comment: “During this item, the Presiding Officer will invite public comment. Those testifying or providing public comment will be limited to three minutes. Citizens representing a group will be allowed up to five minutes to speak. No speaker may convey or donate their time for speaking time to another speaker.
b. Persons wishing to address the Council, who are not specifically scheduled on the agenda shall first fill out a sign-in sheet, stating their name, City of residence, and public comment topic, and the sign-in sheet shall be submitted to the City Clerk prior to the start of Public Comment.
c. Citizens who have signed in will be invited by the Presiding Officer to the podium. Speakers will first state their name and City of residence and be allowed three minutes to speak.
d. Except where permission is granted by the Presiding Officer, all remarks shall be made only from the designated podium and addressed to the Council as a body, and not to individual members, the audience, or the cameras.
e. No person other than the Council and the person having the floor will be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer.
f. The Presiding Officer or designee shall notify the individual when the allotted time has expired and the speaker shall promptly conclude their remarks. All speakers are encourage to submit supplemental or detailed written remarks for Council consideration.
g. Public comments with regard to subjects of a Public Hearing must be made during the Public Hearing portion of the meeting. If information pertaining to a public hearing is presented during the general comment period, the speaker will be ruled, “Out of Order” by the Presiding Officer and asked to save their comments for the Public Hearing.
h. Any person or speaker who engages in behavior that disrupts the meeting so that it may not continue may be ordered to leave the meeting. The Presiding Officer has the authority and duty to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disrupting the meeting and to enforce these rules.
i. At the pleasure of the Presiding Officer or by a motion and agreement of a Council majority, following a public comment, a matter may be placed on a future agenda, or be referred to the administration or a council committee for investigation and report. A vote of a Council majority may also overrule the decision of the Presiding Officer in this case.
j. Residents are encouraged to supplement correspondence through written submittals. Written correspondence may be submitted to the Council at any time by email, citycouncil@desmoineswa.gov or mailing or otherwise delivering to the City Clerk, 21630 11th Ave So, Des Moines, WA 98198. A copy of all correspondence will be distributed to each Councilmember and will be made part of the public record, but will not be read aloud.

E. Committee Chair Reports:
This is a three-minute opportunity for Chairs of standing committees of the Council to update the Council on Board and committee activities, work plans, and other items of interest.

F. City Manager Report/Presentations/Briefings:
The City Manager’s report is an opportunity for the City Manager to brief the Council on the progress or plans with regard to items, projects, issues, relationships, or events of significant interest.

G. Consent Agenda:
The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Agenda which are considered to be of a routine and non-controversial nature. The individual items on the consent agenda shall be approved, adopted, or enacted by one motion of the Council. Any item may be removed from the Consent Agenda on the request of a single Councilmember. It will be considered at its regular place in the agenda OR It will be considered immediately after the Consent Agenda.

No discussion shall take place regarding any item on the consent agenda beyond asking questions for

simple clarification.

H. Ceremonial Matters, Proclamations, Recognitions:
   1. Proclamations:
      The Mayor and the Council have authority to introduce proclamations for a variety of purposes, as approved by the Council. No proclamation shall constitute official City actions unless approved or authorized by a majority of the City Council.

I. Public Hearings – The procedures of a public hearing are as follows:
   1. Prior to the start of the "Comments from the Public" portion of the public hearing, the Presiding Officer may require that all persons wishing to be heard shall sign in with the Clerk, giving their names City of residence, the agenda item, and whether they wish to speak as proponent, opponent, or otherwise. Any person who fails to sign in shall not be permitted to speak until all those who signed in have done so. At any public hearing all persons who have signed in and wish to be heard shall be heard. However, the Presiding Officer shall be authorized to establish speaker time limits and otherwise control presentations to avoid repetition. In public hearings that are not of a quasi-judicial nature, the Presiding Officer, subject to concurrence of the majority of the Council, may establish time limits and otherwise control presentations. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings (i.e. proponents, opponents, adjacent owners, vested interests, etc.).
   2. The Presiding Officer introduces the agenda item, opens the public hearing, and provides a summary of the following Rules of Order and/or advises the public that they may have a copy of such rules, which shall be available with other agenda materials regularly made available to the public at each Council meeting:
      a. All comments by proponents, opponents, or the public shall be made from the speaker's rostrum and any individual making comments shall first give their name and city of residence. This is required because an official recorded transcript of the public hearing is being made. If there is any appeal to King County Superior Court, the court must make its decision on the basis of what was said here.
      b. It is not necessary to be a proponent or opponent in order to speak. If you consider yourself neither a proponent nor opponent, please speak during the proponent portion and identify yourself as neither a proponent nor an opponent
      c. No comments shall be made from any other location, and anyone making "out of order" comments shall be subject to removal from the meeting.
      d. There will be no demonstrations during or at the conclusion of anyone's presentation
      e. These rules are intended to promote an orderly system of holding a public hearing, to give every person an opportunity to be heard, and that every individual who speaks can do so without ridicule or intimidation.to ensure that no individual is embarrassed by exercising their right of free speech.
   3. When Council conducts a hearing to which the Appearance of Fairness Doctrine applies (Rule 6.2, and Parliamentary Procedure 11.06B) the Presiding Officer will ask if any Councilmember knows of any reason which would require such member to excuse themselves pursuant to Rule 6.2. The suggested form of the announcement is as follows:
      “All Councilmembers should now give consideration as to whether they have: (1) a demonstrated bias or prejudice for or against any party to the proceedings; (2) a direct or indirect monetary interest in the outcome of the proceedings; (3) a prejudgment of the issue prior to hearing the facts on the record; or (4) ex parte contact with any individual, excluding Administrative staff, with regard to an issue prior to the hearing. If any Councilmember should answer in the affirmative, then the Councilmember should state the reason for their answer at this time so that the Chair may inquire of Administration as to whether a violation of the Appearance of Fairness Doctrine exists.”
      a. When Council conducts a “quasi-judicial” hearing, the Presiding Officer may require that all persons wishing to provide testimony during the course of such hearing provide an oath, on

the record, affirming the truth of their testimony. The suggested form and process for such oath is as follows:

"The Presiding Officer asks all possible speakers to raise their right hand, asks such individuals to consider the following question and respond "I do", and inquires:

"Do you affirm under penalty of perjury under the laws of the State of Washington that the testimony you are about to provide is true and accurate to the best of your knowledge?"

4. At the outset of each public hearing or meeting to consider a zoning amendment or zoning reclassification the Presiding Officer will call upon City Administration to describe the matter under consideration, including legal standards for approval of the item before the Council, and ask the parties to limit their presentations to information within the scope of the Council standards.
5. The Presiding Officer calls for proponents in quasi-judicial proceedings (and for speakers in non-quasi-judicial proceedings).
6. The proponents now speak. (Note: If the City of Des Moines is the proponent, a member or members of the administration shall be designated to give proponent and rebuttal testimony).
7. The Presiding Officer calls for additional proponents or speakers three times.
8. In non-quasi-judicial proceedings refer to Public Hearing Rule 10a, otherwise the Presiding Officer calls for opponents by announcing the following:
   "At this time the opponents will have an opportunity to speak. Should any opponent have questions to ask of the proponents, ask the questions during your presentation. The proponents shall note the question asked, and answer such questions when the proponent speaks in rebuttal. The proponent shall be required to answer any reasonable question, provided that the Presiding Officer reserves the right to rule any question out of order."
9. Opponents speak.
10. The Presiding Officer calls for additional opponents three times.
11. The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new material. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.
12. The Presiding Officer announces:
    "At this time I will inquire of the administration as to whether there have been any mis-statements of fact or whether the administration wishes to introduce any material as to subjects raised by the proponents or opponents or alter in any regard its initial recommendations."
13. The Presiding Officer inquires as to whether any Councilmembers have any questions to ask the proponents, opponents, speakers, or administration. If any Councilmember has questions, the appropriate individual will be recalled to the podium.
14. The Presiding Officer closes the public hearing.
15. After a public hearing is closed, no member of the public shall be permitted to address the Council or the staff. In fairness to members of the public, the City Council shall be considered to be in deliberations from that point forward. Continuance of the item shall place it on the "unfinished business" portion of any forthcoming agenda. Additional public testimony either that evening or at a future meeting would be precluded until public hearing notification procedures required by the Des Moines Municipal Code are concluded.
16. The Presiding Officer inquires if there is a motion by any Councilmembers. If a motion is made, it shall be in the form of an affirmative motion. Following the motion and its second, discussion occurs among Councilmembers. The Presiding Officer may call on individual Councilmembers in the discussion.
17. The Presiding Officer inquires if there is any further discussion by the Councilmembers.
18. The Presiding Officer inquires if there are any final comments or recommendations from administration.
19. The Presiding Officer inquires of the Councilmembers as to whether they are ready for the question.
20. The Clerk shall conduct a roll call vote.
21. The Presiding Officer directs administration to prepare findings consistent with the action.

J. Unfinished Business.

K. New Business - The following are types of business conducted by the City Council:

1. Ordinances, Resolutions, Proclamations, Contracts:
   All Ordinances, Resolutions, Proclamations and Contracts shall, before presentation to the Council, have been approved as to form and legality by the City Attorney, the applicable Department Head(s), and the City Manager.
2. Draft Preparation:
   Ordinances and resolutions shall be prepared by the City Attorney and presented to the full Council for consideration. Prior to final passage of all ordinances, resolutions or motions, such documents or proposals shall be designated as DRAFTS as follows:
   a. Proposed Drafts shall contain the name of the group, organization, committee or individual originating, initiating or sponsoring the proposal prior to the first presentation to the City Council where a vote is taken directing some official action or further consideration.
   b. Council Drafts shall be documents or proposals which have been presented in open session and voted on by the City Council when the resultant Council action was other than passage or a vote to cease further consideration.

3. Ordinances:
   The procedure for ordinances is as follows:
   (a) All ordinances shall have two separate readings. An ordinance passed to a second reading shall be placed on the consent calendar of the next available City Council meeting or as soon as scheduling allows.
   (b) If a Motion to pass an ordinance to a second reading fails, the ordinance shall be considered lost.

   An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. Council action shall be taken by ordinance as required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty. If a Councilmember requests that the entire ordinance, certain sections, or the title be read, such requests shall be granted.

~~3.~~4. Resolutions:
   An enacted resolution is an administrative act which is a formal statement of policy concerning matters of special or temporary character. Council action shall be taken by resolution as required by law and in those instances where an expression of policy more formal than a motion is desired.

~~4.~~5. The title of each resolution shall in all cases be read prior to its passage; provided, should a Councilmember request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting.

~~5.~~6. Contracts:
   Refer to Addendum B, ~~Resolution No. 1118~~ Resolution 1485, policies governing City Council participation in public contracts.

~~6.~~7. Motions:
   A motion is a formal procedure for taking action. To make a motion, a Councilmember must first be recognized by the Mayor.

L. New Agenda Items for Consideration:
This portion of the meeting allows a Councilmember to present an idea to their colleagues for consideration in placing the item on a future agenda:

1. A presenter should come to the dais prepared with research and answers to questions, and offer a specific, concise request.
2. It is not a time for discussion, deliberation, presentation, or research – other than the minimum amount of information necessary to gain needed support.
3. A minimum of three Councilmembers must agree in order for the item introduced to be placed on a future agenda.

M. Councilmember Reports:
This is an opportunity for Councilmembers to comment on agenda items and update each other regarding community events, activities, or notable regional issues:
1. Reports shall be limited to four minutes, unless extended time is granted by the Presiding Officer. The Presiding Officer shall notify the Councilmember when the allotted time has expired. Discussion or voting during this time will not be considered a part of their time limit.

N. Presiding Officer's Report:
In addition to any special board or committee reports, the Presiding Officer may give a report on any activity participated in as part of the official duties of the Mayor.

O. Executive Session (as needed):
At the call of the presiding officer, or with a majority vote, the City Council may recess to Executive Session to privately discuss and consider matters of confidential concern to the well-being of the City. The purposes for which an Executive Session or Closed Session may be held are identified in RCW 42.30.110 and RCW 42.30.140.

The City Council may also hold an Executive Session to receive confidential advice from the City Attorney under the attorney-client privilege.

Before convening in Executive Session or Closed Session, the presiding officer shall publicly announce the purpose for excluding the public from the meeting place, and the time when the Executive Session/Closed Session will be concluded. ~~An Executive Session/Closed Session may be extended to a stated later time by announcement of the Presiding Officer.~~ If the Executive Session runs long, the presiding officer must come back to the location of the regular meeting and announce the new time the open session will reconvene.

Participants in an executive session have a duty under the Open Public Meetings Act to keep information from the session confidential, Pursuant to Attorney General Opinion (AGO 2017 No. 5), disclosure of confidential information from an executive session by a municipal officer violates RCW 42.23.070(4) and accordingly may result in the sanction or censure of the violating party.

P. Next meeting date announced by Presiding Officer.

Q. Adjournment. No meeting shall be permitted to continue beyond ~~9~~10:00 p.m. without approval of three-fourths of the Councilmembers who are present and eligible to vote. A new time limit must be established before taking a Council vote to extend the meeting. In the event that a meeting has not been closed or continued by Council vote prior to ~~9~~10:00 PM, the items not acted on shall be deferred to the next regular Council meeting as unfinished business, unless the Council, by a majority vote of members present, determines otherwise.

R. Meeting Materials - Following each meeting, public comment and any materials included at the meeting, which were not in the original packet, will be posted on the City website with a notification.

8.07 Order of Business - Study Sessions
The study session is the forum used by Council to review forthcoming programs of the City, to receive progress reports on current issues, or to receive similar information from the City Manager and others. The purpose of Study Sessions is to allow Councilmembers to do concentrated preliminary work with administration on single subjects of time consuming, complex matters (i.e., budget, complex legislation or reports, research, etc.)

Study Sessions need have no formal agenda and may be conducted informally so long as such informality

is not in conflict with these rules. These conditions will allow the Councilmembers to communicate informally about these impending issues. The Presiding Officer retains the option of assuming the function of the Moderator in order to keep the discussion properly focused.

No final Council action on ordinances or resolutions may be taken during a Study Session.

A. In Preparation for a Study Session, the City Clerk, under the direction of the City Manager, shall arrange a Council Study Session worksheet for the Study Session. The Council Study Session worksheet shall contain the Discussion Item.

B. After the proposed Council Study Session worksheet has been approved by the Presiding Officer, a copy of it along with any available supporting materials shall be prepared for Councilmembers, and the meeting will be noticed by close of business Friday prior to the Council Study Session, except in an emergency.

C. During a Study Session, the Moderator may:
   1. Introduce and give background information
   2. Identify the discussion goal
   3. Act as facilitator to keep the discussion focused
   4. Alert the Presiding Officer when/if it is appropriate to call for a motion or other official direction of the Council

8.08 Order of Business – General Procedures

A. Forms of Address:
The Mayor shall be addressed as "Mayor (surname).” The Deputy Mayor shall be addressed as "Deputy Mayor (surname)." Members of the Council shall be addressed as "Councilmember (surname)."

B. Seating Arrangement of the Council:
Councilmembers shall occupy the respective seats in the Council Chamber assigned to them by the Mayor.

C. Signing of City Documents:
The Mayor, unless unavailable, shall sign all ordinances, resolutions and other documents which have been adopted by the City Council and require an official signature; except when the City Manager has been authorized by Council action to sign documents. In the event the Mayor is unavailable, the Deputy Mayor may sign such documents.

D. Quorum:
At all meetings of the Council, four Councilmembers who are present and eligible to vote shall constitute a quorum for the transaction of business. A lesser number may adjourn from time to time, provided that written notice of said adjournment is posted in accordance with RCW 42.30.090. Council meetings adjourned under the previous provision shall be considered a regular meeting for all purposes.

E. Attendance:
RCW 35A.12.060 provides that a Councilmember shall forfeit his/her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Members of the Council may be so excused by complying with this section. The member shall contact the Presiding Officer prior to the meeting and state the reason for his/her inability to attend the meeting. If the member is unable to contact the Presiding Officer, the member shall contact the City Manager or City Clerk, who shall convey the message to the Presiding Officer. Following roll call, the Presiding Officer shall inform the Council of the member's absence, state the reason for such absence, and inquire if there is a motion to excuse the member. This motion shall be non-debatable. Upon passage of such motion by a majority of members present, the absent member shall be considered excused and the Clerk will make an appropriate notation in the minutes.

F. Remote Attendance:
A Councilmember may participate remotely in all or part of a Council meeting because of an unanticipated event that prevents a Councilmember from attending in person through no fault of their own. In order to receive compensation for a meeting, a formal recognition of remote attendance must be granted by the Mayor or Presiding Officer.

If the basis for the remote participation is due to the Councilmember attending to City business in another capacity, the Councilmember shall be considered physically present for the purposes of DMMC 4.08.020.

In the event that the Mayor or Chair seeks to attend a meeting remotely, they shall notify the Deputy Mayor/Vice Chair, and the Deputy Mayor/Vice Chair shall preside over the meeting. ~~seek prior approval from the Deputy Mayor. If approval is granted, the Deputy Mayor shall act as the Presiding Officer for the meeting.~~

When participating remotely:

1. A Councilmember must be able to be heard.
2. The Councilmember shall have reviewed all of the applicable material and participated in the relevant portion of the Council Meeting related to the topic of the vote. Any technical prohibitions or difficulties that prevent all parties present at the Council Meeting from adequately communicating, will negate any authorization previously given by the Mayor.
3. The remote participant shall notify the Presiding Officer if they are about to disconnect participation.
4. A remote appearance shall count toward a quorum of the Council for all purposes and shall entitle the Councilmember to vote.

G. Minutes:
The City Clerk or designee shall take minutes at all meetings of the City Council. The minutes shall be made available for public inspection.

H. Voting:
Unless otherwise provided for by statute, ordinance, or resolution, all votes shall be taken by voice or by raise of hand as requested by the Presiding Officer. A roll call vote shall be taken by the Clerk at the request of a Councilmember. The order of the roll call vote shall be determined by the Presiding Officer:

1. Vote requirements include:
   a. Majority of the fixed membership of the Council (4 votes)
   b. Two-thirds of the fixed membership of the Council (5 votes)
   c. Minimum of a majority of members present and voting (if 4 or 5 members present and voting, this is 3. If 6 or 7 members present and voting, this is 4).
2. In case of a tie in votes on any proposal, the proposal shall be considered lost.
3. Every member who was in the Council chambers when the question was put, shall give their vote unless the Councilmember excuses themselves in accordance with 8.08(e). If any unexcused Councilmember remains silent, they shall be listed in the record as “abstain.”
4. Reconsideration of an item will be taken up by a majority vote of members present and voting. A member of the prevailing side must make a motion for reconsideration after the previous vote was taken, and it can be made no later than the next regular meeting after which the previous vote was taken.
5. The passage of any ordinance, grant or revocation of franchise or license, any resolution for the payment of money, any approval of warrants, and any resolution for the removal of the City Manager shall require the affirmative vote of at least a majority of the fixed membership of the Council (four votes)

6. The passage of any public emergency ordinance (an ordinance that takes effect immediately), expenditures for any calamity or violence of nature or riot or insurrection or war, and provisions for a lesser emergency such as a budget amendment shall require the affirmative vote of at least two -thirds of the fixed membership of the Council (five votes).
7. Only those ordinances, resolutions, or motions that receive an affirmative vote by the majority of members present and voting shall be passed or become effective unless other voting requirements are provided by Washington State law, DMMC, or this Resolution as amended.
8. In order for an ordinance or resolution to become effective immediately, the City Council must declare that an emergency exists and approve the ordinance or resolution by the affirmative vote of two-thirds of the fixed membership of the Council (five votes). (See Chapter 8.G.10E).

8.09 Open Public Meetings Act

A. The Des Moines City Council will comply with all state and federal law in the notice, conduct, recording, storage and dissemination of meetings and associated information.

B. All writings distributed for discussion or consideration at a public meeting are public records. To that end, except for emergencies and technical issues, Councilmembers shall not communicate digitally, in forms such as, but not limited to; call, text, chat, or social media posting during a council meeting.

C. Actions:
No legal action can be taken by the Council except in a public meeting. At a *Special Meeting,* action can be taken only on those items appearing on the posted agenda, except for emergency items. At a Regular Meeting of the City Council, the Council is free to take action on non-agenda items, subject to applicable notice requirements in state statutes or local ordinances for the subject matter being considered.

CHAPTER 9
PROTOCOL ADMINISTRATION

9.01 Biennial Review

The City Council will review and revise the City Council Protocol Manual every two years, or as needed.

If needed, an Ad Hoc committee may be appointed by the Mayor for the purpose of review and advice to the Council.

9.02 Adherence to Protocol

A. Each Councilmember shall have the duty and obligation to review this Protocol Manual and understand to be bound by its provisions.

B. The Mayor will be primarily responsible to ensure that the City Council, staff, and members of the public adhere to the Council's adopted Protocol Manual.

C. Knowing and/or willful failure to adhere to the provisions of this Protocol Manual may subject a Councilmember to enforcement and sanctions as follows:
1. Upon determining that there is credible evidence that a Councilmember has, or may have, engaged in knowing and/or willful action or omission that constitutes failure to adhere to the provisions of this Protocol Manual, the Mayor or the Deputy Mayor, in the event that the Mayor is the Councilmember alleged to have engaged in such action or omission, may call upon the Council to determine whether such knowing and/or willful action or omission has occurred, and the sanctions, if any, to be imposed.
2. Prior to conducting any hearing on an alleged failure to adhere to the provisions of this Protocol Manual, the Mayor or Deputy Mayor shall provide written notice to the Councilmember alleged to

have engaged in such failure to adhere at least ten (10) calendar days prior to calling for such hearing. The written notice shall identify the specific provisions of this Protocol Manual with which the Councilmember is alleged to have failed to adhere and the facts supporting such allegation.

3. Upon call by the Mayor or Deputy Mayor, a majority of the Council shall vote on whether to hold a hearing to determine the existence of an act or omission constituting a failure to adhere and the sanctions, if any, to be imposed. If such hearing is approved by the Council, the hearing shall be held at a time and place specified in the motion approving such hearing.
4. At such hearing, the Council shall determine whether there is a preponderance of credible and substantial evidence indicating that a Councilmember has knowingly and/or willfully acted or failed to act in a manner constituting a failure to adhere to the provisions of this Protocol Manual. The Councilmember alleged to have failed to adhere to the provisions of this Protocol Manual shall have the right to present evidence and testimony. The finding of the existence of such knowing and/or willful failure to adhere shall be determined by motion approved by a majority of the Council.
5. Upon finding that a knowing and/or willful failure to adhere to the provisions of this Protocol Manual has occurred, the Council shall proceed to determine whether the sanctions, if any, should be imposed. Such breaches include, but are not limited to:
   a. Failure to observe respectful rules of discussion
   b. Creating disruption at the dais
   c. Breaching confidentiality of executive session
   d. Failing to observe ethics guidelines
   e. Taking action outside the board meeting which undermines the body.
   f. Appropriate sanctions include, but are not limited to the following:
      1. Verbal warning
      2. Written warning
      3. Public censure
      4. Removal of appointment to extra-territorial boards, committees,or commissions; and
      5. Removal of appointment to Council boards or committees

9.03 City Attorney as Protocol Advisor

The City Attorney shall assist the Mayor and serve as an advisor for interpreting the City Council's adopted Protocol Manual.

CHAPTER 10
LEAVING OFFICE/FILLING VACANCIES

10.01 Return of Materials and Equipment

During their service on the City Council, members may have acquired or been provided equipment such as computers, cell phone or other items of significant value. These items are to be returned to the City at the conclusion of a member's term. If an item is lost or unable to be returned, the Councilmember will reimburse the City for the current value of the item.

10.02 Filling Council Vacancies

The purpose of this section is to provide guidance to the City Council when a Des Moines Councilmember position becomes vacant before the expiration of the official's elected term of office. Pursuant to state law, a vacancy shall be filled only until the next regular municipal election, to serve the remainder of the unexpired term.

A. References

RCW 42.30.110 (H) – Executive Session Allowed to Consider Qualifications of a Candidate for Appointment to Elective office.
RCW 42.30.060 – Prohibition on Secret Ballots.

RCW 42.12 – Vacant Position.

RCW 35A.13.020 – Vacancies – Filling of Vacancies in Council/Manager Form of Government:

1. A Council position shall be officially declared vacant upon the occurrence of any of the causes of vacancy set forth in RCW 42.12.010, and RCW 35A.13.020, including resignation, recall, forfeiture, written or public statement of intent to resign, or death of a Councilmember. The Councilmember who is vacating their position is not allowed to participate in the appointment process.
2. In order to fill the vacancy with the most qualified person available until an election is held, the City Council shall direct staff to begin the Councilmember appointment process and establish an interview and appointment schedule, so that the position is filled at the earliest opportunity:
    a. The City Clerk's Office shall prepare and distribute a public notice as required. This notice shall contain information, including but not limited to, time to be served in the vacant position, election information, salary information, Councilmember powers and duties, the deadline date and time for submitting applications, interview and appointment schedules, and such other information that the City Council deems appropriate.
    b. The City Clerk's Office shall prepare an application form, which requests appropriate information for City Council consideration of the applicants. Applications will be available at City of Des Moines offices and on the City's official website.
    c. Applications and any attachments received by the deadline date and time will be distributed by the City Clerk's Office, to the Mayor and City Council.
    d. The City Clerk's Office shall publish the required public notice(s) for the meeting scheduled for interviewing applicants for consideration to the vacant position. This meeting may be a regularly scheduled City Council meeting, or a special City Council meeting.
    e. The City Clerk's Office shall notify applicants of the location, date and time of City Council interviews, and include instructions about how the interview process will be conducted.
3. Interview Process:
   The Interview process will be determined by a vote of the majority of the Council.
4. Voting:
   Upon completion of the interviews, Councilmembers may convene into Executive Session to discuss the qualifications of the applicants. However, all interviews, deliberations, nominations and votes taken by the Council shall be in open public session:
    a. The Mayor shall ask for nominations from the Councilmembers for the purpose of creating a group of candidates to consider. No second is needed.
    b. Nominations are closed by a motion, second and majority vote of the Council.
    c. Councilmembers may deliberate on such matters as criteria for selection and the nominated group of candidates.
    d. The Mayor shall poll Councilmembers to ascertain that Councilmembers are prepared to vote.
    e. The City Clerk shall proceed with a roll-call vote.
    f. Elections will continue until a nominee receives a majority vote of the remaining Councilmembers.
    g. At any time during the election process, the City Council may postpone elections until a date certain or regular meeting if a majority vote has not been received.
    h. Nothing in this policy shall prevent the City Council from reconvening into Executive Session to further discuss the applicant/candidate qualifications.
    i. The Mayor shall declare the nominee receiving the majority vote as the new Councilmember and shall be sworn into office by the City Clerk at the earliest opportunity or no later than the next regularly scheduled City Council meeting.
    j. If the City Council does not appoint a qualified person to fill the vacancy within 90 days of the declared vacancy, the Revised Code of Washington delegates appointment powers to King County.

CHAPTER 11
PARLIAMENTARY PROCEDURES

Rules of Order not specified by statute, Ordinance or Resolution shall be governed by the most recent edition of *Robert's Rules of Order Newly Revised.*

All items of business placed before the Council that require the expenditure of Council and/or administration resources, shall be in the form of an affirmative motion.

11.01 Meeting Decorum and Order

A. The presiding officer shall preserve decorum and decide all questions of order, subject to appeal by the Council. During Council meetings, Councilmembers shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the orders of the chair or the rules of protocol.

B. Courtesy: Members of the Council, in the discussion, comments or debate of any matter or issue, shall be courteous in the language and demeanor, and shall not engage in derogatory remarks or insinuations in respect to any other member of the Council, or any member of the staff or the public, but shall, at all times, confine their remarks to those facts which are germane and relevant as determined by the Presiding Officer, to the question or matter under discussion.

Interruption: No member of the Council shall interrupt or argue with any other member while such a member has the floor

C. The City of Des Moines is committed to maintaining a drug and alcohol free workplace. Accordingly, members of the Council shall abide by Sections 6(1) and (6)(J)(I) of the City of Des Moines Personnel Manual while serving at the dais.

D. The City of Des Moines is an equal opportunity employer. Accordingly, members of the Council shall abide by Sections 2(A-D) of the City of Des Moines Personnel Manual while serving at the dais.

~~C.~~E. The City of Des Moines is committed to providing a safe workplace for its employees, guests, contractors, vendors and the public. Accordingly, members of the Council shall abide by Section 2(F) of the Personnel Manual while serving at the dais.

Any Councilmember may request the presiding officer to enforce the rules of protocol by using the motion "Point of Order." The Presiding Officer rules on whether the Point of Order is well-taken or not. Any Councilmember may appeal the Presiding Officer's ruling. The Council will decide whether to sustain or overrule the Presiding Officer's ruling by majority vote. The Presiding Officer may vote on the appeal. A tie vote sustains the Presiding Officer's decision.

~~D.~~F. Dress Code: For Council Business meetings and representation assignments, Councilmembers shall adhere to a business casual attire, allowing for appropriate cultural expectations.

11.02 Obtaining the Floor

A Councilmember shall address or signal the presiding officer and gain recognition prior to making a motion or engaging in debate. Cross-exchange between Councilmembers and the public should be avoided. This is to prevent general conversation and to keep the order necessary to maintain decorum and accomplish the business of the Council.

After a member has concluded comments and yielded the floor, if two or more members are trying to obtain the floor at the same time, the general rule is that the person who addresses or signals the chair first is entitled to be recognized. When a motion is open to debate, however, there are two instances in which the

presiding officer should assign the floor to a person who may not have been the first to address the chair. These are:

A. The Councilmember who made the motion currently under debate is entitled to be recognized in preference to other members if that individual is claiming the floor and has not already spoken on the question.

B. No member is entitled to the floor a second time in the meeting on the same motion as long as another member who has not spoken on the motion desires the floor.

11.03 Interruptions

Once recognized, a Councilmember should not be interrupted while speaking, except when another member makes a point of order. If a Councilmember is called to order while speaking, the individual shall cease speaking until the question order is determined.

Upon being recognized by the presiding officer, members of the staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the presiding officer.

11.04 Discussion Limit

A. Councilmembers should not speak more than once on a particular subject until every other Councilmember has had the opportunity to speak. No member of the Council shall speak more than twice on the same motion except by consent of the majority of the Council present.

B. Questions and answers by the members of the Council are not considered as speaking to the motion.

C. Each member of the Council shall speak for not more than five minutes per turn unless granted exception by a majority of the Council present.

D. No member of the Council may give their allotted time to another member unless there is approval of the majority of the Council present.

11.05 Suspending the Rules

A majority vote of members present and voting may suspend any provision of these meeting rules not governed by state law or ordinance without debate. The Councilmember moving the motion will state, "I move that we suspend the rules to [giving the purpose]." The Council may not suspend rules on fundamental principles of parliamentary procedure or those affecting the rights of individual members.

CHAPTER 12
ADDITIONAL TRAINING AND RESOURCE MATERIALS

12.01 Association of Washington Cities [(800) 562-8981]

https://wacities.org/ The Association is a voluntary, nonpartisan, nonprofit association comprised of all incorporated cities and towns in Washington.

12.02 National League of Cities [(202) 626-3000]

www.nlc.org A non-partisan organization serving municipal governments, the NLC works to establish unified policy positions, advocates those policies forcefully, and shares information that strengthens municipal government throughout the nation.

12.03 International City/County Management Association [(202) 289-4262]

https://icma.org/ ICMA is a professional and educational association of local government administrators that serves to enhance the quality of local government through professional management and to support and assist professional local government administration. The Association's *Elected Officials Handbook* series can be of great value to Councilmembers. Publications are also available through ICMA concerning

every basic city service.

12.04 Government Finance Officers Association [(312) 977-9700]
www.gfoa.org GFOA is a professional association of state and local finance officers. The Association administers a broad range of services and programs related to government financial management.

12.05 Municipal Research & Services Center of Washington [(206) 625-1300]
www.mrsc.org MRSC is a nonprofit, independent organization created in 1969 to continue programs established in 1934 under the Bureau of Governmental Research at the University of Washington. One of the principal services of MRSC is to respond to inquiries on virtually every facet of local government.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Anti-Cruising Ordinance

ATTACHMENTS:
1. Draft Ordinance 25-065

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: June 30, 2025

CLEARANCES:
[ ] City Clerk ____
[ ] Community Development ____
[X] Courts M Patrick
[ ] Director of Marina Redevelopment ____
[ ] Emergency Management ____
[ ] Finance ____
[ ] Human Resources ____
[X] Legal /s/TG
[ ] Marina ____
[X] Police ____
[ ] Parks, Recreation & Senior Services ____
[X] Public Works MPS

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

The purpose of this agenda item is for Council to consider Draft Ordinance 25-065 which would define and set the penalty for automobile cruising on public streets and other City-owned vehicle facilities.

Suggested Motion

Motion 1: "I move to approve Draft Ordinance 25-065 prohibiting cruising."

Background

Cruising is a decades-old pastime in the United States. Groups of people gather to drive slowly and repeatedly over a stretch of road as a social activity with no set destination. The purpose is not to get somewhere – the purpose is to be seen and the act of cruising itself. By its nature, cruising can create problems for the police, nonparticipating motorists, some businesses, and the community at large. Among them are

- Conflicts between cruisers
- Littering
- Noise (from vehicle engines, screeching tires, car stereos, and exuberant fans)
- Traffic congestion (including obstruction of emergency vehicles)
- Traffic crashes
- Vandalism and unintentional property damage.

At least sixteen Washington cites and two counties have enacted anti-cruising ordinances in an attempt to curb cruising and its negative effects: Auburn, Centralia, Covington, Everett, Federal Way, Kirkland, Lakewood, Longview, Marysville, Olympia, Puyallup, Renton, Seattle, Tacoma, Wenatchee, Yakima, Clark County, and Pierce County. Cruising can also be also a significant contributor to congestion problems and the resulting conflicts in Des Moines, particularly at Redondo.

The ordinances these cities and counties enacted generally follow the same form – set a process for designating areas where cruising is prohibited; define the offense as driving a motor vehicle past a set point a specified number of times in the same direction within a specific period of time; create exemptions for emergency vehicles, residents of the no cruising area, etc.; and set the penalty for violation.

There are basically three methods used by these jurisdictions for designating no cruising areas. In three of the ordinances, the council specifically named the area in the ordinance itself. In five of the ordinances, the council granted to itself the power to name no cruising areas by separate resolution. In eleven of the ordinances, the council delegated authority to the police chief, sheriff, or city manager the power to designate no cruising areas when certain specified conditions exist.

In ten of the cities and both counties, a driver will not be cited until they pass the enforcement point for a third time in the specified time period going the same direction. In the other six cities, the driver can be cited on the second pass. In fifteen of the eighteen jurisdictions, the relevant time period is two hours, with Covington set at one hour, Wenatchee at three hours, and Seattle at four. The offense is an infraction in ten of the jurisdictions and a misdemeanor in eight. In two of the misdemeanor jurisdictions, the offense appears to impose only a fine with no jail time.

Discussion

Draft Ordinance 25-065 has been drafted using a similar formula to the ordinances adopted by other jurisdictions in the state, tailored to the needs of Des Moines. Should the Council determine that this anti-cruising ordinance is necessary to address the public safety, traffic, and environmental issues posed by cruising, the key elements of the draft ordinance are as follows:

The draft ordinance proposes to provide for designating no cruising areas using all three methods listed above. Areas that are known to be problem areas are specifically named in the ordinance, which will allow for enforcement upon the effective date of the ordinance and posting of signs – Redondo, Marine

View Drive through downtown, and the Marina parking lots. If a new area becomes a problem and it appears that the issue will be chronic and ongoing, the Council may designate the new area for permanent designation through adoption of an ordinance or resolution as needed. If a new cruising area suddenly appears and needs to be immediately addressed for public safety, the Police Chief would be empowered to designate the area and post with temporary signs to address the issue.

In the proposed draft ordinance, a violation occurs when a driver passes a specified point chosen by DMPD two or more times in the same direction in a posted no cruising area within one hour. The short one-hour time period is an outlier among the surveyed jurisdictions, but Des Moines does not have the sometimes miles-long cruising strips as other cities like Yakima, Auburn, or Seattle. The areas used for cruising in Des Moines are short enough that cruising activity will become apparent pretty quickly. The short window will also help to prevent innocent drivers who have legitimate reasons for multiple passes through an area from being contacted by police. A resident of the area doing errands will likely not pass through multiple times in one hour, where they might in two or three. While the majority of jurisdictions surveyed in the state require a minimum of three passes to trigger a violation, they overwhelmingly opted to have a time period twice as long or more in which a violation to occur. By reducing the number of passes required, combined with the shorter time period in which the violation may occur, should not result in substantially more innocent conduct getting caught up in enforcement, but it will allow for DMPD to spend less time and labor to cite violators for bona fide cruising.

The penalty for cruising in the draft ordinance is a civil infraction rather than a criminal misdemeanor charge. Over half of the surveyed jurisdictions have found infractions sufficient for their purposes. The proposed penalty, including statutory assessments, can be up to $553 dollars. Charging these offenses as an infraction allows any challenges to be adjudicated quickly, more efficiently, and with no cost to the City for public defense services. If this penalty proves not to have sufficient deterrent effect, the Council can reconsider imposing criminal penalties at a later date.

The draft ordinance also provides specific exceptions for categories of users likely to have legitimate alternative reasons for making multiple trips through an area that are not cruising: government vehicles, taxis and transit vehicles, emergency vehicles, vehicles driven by residents of the no cruising area, and vehicles driven for legitimate medical or commercial reasons.

An anti-cruising ordinance will be one more tool in DMPD's tool box to control traffic and disruptive behavior in the City, but it is not self-executing and not likely to be a complete solution. As with any other tool provided by Council, DMPD's ability to conduct enforcement of an anti-cruising ordinance will be constrained by available staffing and other public safety needs throughout the City at any given time. Enforcement of the ordinance will likely require that at least one (and likely more) officers remain at a set location for multiple hours, so there should not be an expectation that DMPD will be able to conduct enforcement on anything more than an occasional basis when circumstance allow.

Alternatives

Council may:

1. Enact the draft ordinance as presented
2. Enact the draft ordinance with changes
3. Decline to enact the draft ordinance

Financial Impact

The City would be required to fabricate and install signs to warn drivers they entering a no-cruising area. Staff estimates that the cost of each sign would be approximately $1,000.00. Prosecution of

offenses under the draft ordinance would result in legal and court costs that cannot be reliably estimated, in addition to police costs, but may result in fine revenue in excess of those costs.

Recommendation
Staff recommends the Council enact the draft ordinance as presented

Council Committee Review
N/A

Attachment #1

CITY ATTORNEY'S FIRST DRAFT 06/30/2025

DRAFT ORDINANCE NO. 25-065

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to public safety and traffic, defining and prescribing a penalty for vehicle cruising within the City, designating no cruising areas, creating exemptions, and enacting a new chapter in Title 10 DMMC entitled "Cruising".

WHEREAS, the City of Des Moines is a popular recreation destination for residents of Des Moines and nearby cities due to recreation opportunities and facilities near to and on the shores of Puget Sound, and

WHEREAS, this popularity can strain the limited access into and out of these areas during peak use that results from the City's unique geography, and

WHEREAS, certain areas of Des Moines, particularly Redondo, are prone to instances of "cruising", commonly understood to mean groups of people driving their automobiles over a particular stretch of roadway repeatedly and without any destination as social activity, and

WHEREAS, cruising has been found to be associated with public drug and alcohol abuse, assaults, and property damage, and

WHEREAS, the increased traffic causes congestion in areas where access is limited, delaying emergency response, residents from leaving or returning home, and customers from local businesses, and

WHEREAS, many of the areas where cruising commonly occurs are also directly adjacent to residential neighborhoods where peace and enjoyment of their private property is negatively impacted by excessive traffic, and

WHEREAS, part of the cruising culture is to attract attention to your vehicle, often through making excessive noise, and,

WHEREAS, police often have limited tools available to restrict the symptoms of cruising from impacting surrounding areas, and

WHEREAS, the City Council finds that enacting the provisions contained in this ordinance are necessary and proper

to protect public safety, welfare, and the environment; now therefore,

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

Sec. 1. Definitions.

(1) "Cruising" means the repeated passage of a motor vehicle on or across a public street or other City-owned property intended for motor vehicle traffic within the City.

(2) "No Cruising Area" means all or a portion of a street or other City-owned property intended for motor vehicle traffic designated as provided in section 2 of this ordinance and posted with "No Cruising" signs.

(3) "Traffic Control Point" means a point in a designated No Cruising Area, selected by the police department for the purpose of monitoring cruising.

Sec. 2. Designation of no cruising area.

(1) The City Council may by Ordinance or Resolution designate all or a portion of a street or other City-owned property intended for motor vehicle traffic a "No Cruising Area" when it finds the area to be susceptible to, or having a history of, traffic congestion; obstruction of streets; interference with the use of property or conduct of business in the area adjacent thereto; or that emergency vehicles cannot respond in that area within a reasonable period of time.

(2) The Chief of Police may designate all or a portion of a street or other City-owned property intended for motor vehicle traffic a "No Cruising Area" when they determine that traffic congestion has slowed average vehicle speed to less than one-half the posted speed limit; the congestion significantly interferes with passage of vehicles being driven to and from locations within the area; the congestion is likely to prevent or substantially delay emergency vehicles from responding to locations within the area, or from passing through the area; and the congestion is caused in whole or in substantial part by cruising.

(3) The City Council designates the following locations as "No Cruising Areas":

(a) Redondo Beach Drive South between South 280th Street and 1st Avenue South

(b) Marine View Drive South between South 216th Street and Kent-Des Moines Road

(c) Des Moines Marina parking lots

Sec. 3. Cruising prohibited.

No person shall drive or permit a motor vehicle under their care, custody, or control to be driven past a Traffic Control Point two or more times in the same direction of travel within a one-hour period in a posted No Cruising Area.

A violation of this section shall be a class 1 civil infraction.

Sec. 4. Exemptions.

This chapter shall not apply to:

(1) Any publicly owned vehicle of any city, county, public district, state, or federal agency.

(2) Any vehicle licensed for public transportation when in the course of business, including but not limited to buses and taxi cabs.

(3) Any in-service emergency vehicle.

(4) Any vehicle being driven by a resident of the No Cruising Area, or

(5) Any vehicle being driven within the No Cruising Area for necessary commercial or medical reasons.

Sec. 5. Presumption. It shall be presumed that the driver of a motor vehicle which passes a Traffic Control Point a second or subsequent time within one hour was the person who drove, or who had under his care, custody or control, the motor vehicle which passed the Traffic Control Point on the prior occasion(s) within the one-hour period.

Sec. 6. Codification. Sections 1 through 5 of this Ordinance shall be codified as a new chapter in Title 10 DMMC entitled "Cruising".

Sec. 7. 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. 8. Effective date. This Ordinance shall take effect and be in full force 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 _____, 2025 and signed in authentication thereof this ___ day of _____, 2025.

_____
M A Y O R

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Published:

Effective Date:

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: City Strategic Plan & Facilitation Services- Professional Services Agreement with Raftelis

ATTACHMENTS:
1. Professional Services Agreement between City of Des Moines & Raftelis
2. Scope of Work
3. Community Engagement and Outreach Plan

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: City Manager

DATE SUBMITTED: June 12, 2025

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation
The purpose of this agenda item is to seek approval for the City Strategic Plan and Facilitation Services Professional Services Consultant Agreement and Scope of Work (Attach. 1 & 2) with Raftelis. The following motion will be appear on New Business.

Suggestion Motion:

Motion 1: "I move to approve the Professional Services Consultant Agreement with Raftelis for the City Strategic Plan and Facilitation Services in the amount of $74,900, and further authorize the City Manager to sign said Contract substantially in the form as submitted."

1

Background

During the City Manager's Report at the June 12, 2025 meeting, the City Manager provided the City Council with an update on the Strategic Plan and Facilitation process. Staff recommended that the consulting firm Raftelis lead public engagement, facilitate the Council goal-setting, and develop the City's Strategic Plan.

At the March 6, 2025, Study Session, the City Council was presented with a proposal from the City Manager to engage in a Strategic Plan. The Council expressed unanimous support for initiating this process. During the Council discussion, they articulated the following goals for the Strategic Plan:

- Define and document shared goals and priorities for the City over the next five years.
- Establish measurable milestones to track progress toward those goals.
- Align with the City's vision, mission, and values while outlining specific policy objectives.
- Identify key issues and set realistic, actionable steps to address them.
- Support informed decision-making and prioritize resource allocation.
- Ensure meaningful public engagement throughout the process.
- Strengthen community trust via the strategic planning process.

On March 21, 2025, the City issued a Request for Qualifications (RFQ) for Strategic Planning and Facilitation services. On April 21, 2025, the City received six responses from qualified firms. A committee of senior staff reviewed these responses and evaluated them based on the criteria established in the RFQ. The criteria included capacity to perform, demonstrated experience with City Councils and municipal government, experience with communities facing financial challenges, and approach to community engagement.

Additionally, the City Manager sought input from the City Council on what the Council felt was most important for staff to consider when evaluating the responses. Council feedback included:

- Preference for firms that have experience developing plans that are executed (rather than "sitting on the shelf").
- Mixed feedback regarding the importance of Washington state experience: Some Councilmembers felt experience in western Washington was critical, while others believed a fresh perspective would be valuable.
- A strong track record in utilizing various community engagement and communication methods, including digital and bilingual approaches, to maximize public engagement in the process.
- Preference for a firm that can guide the Council and staff through the strategic thinking process, with a desire for strategic thinking to be embedded in how the City and Council operate and make decisions.

Based on this input, along with Staff evaluation using the criteria mentioned above, three firms were interviewed. Following the interviews and contacting client references, Staff recommends that the firm Raftelis provide the strategic planning and facilitation services.

Discussion

Raftelis is a multi-disciplinary firm that focuses on municipalities and utilities, having worked with over 1,200 local governments and utilities. The firm has conducted strategic planning and management consulting work with nineteen cities in Washington. For example, Raftelis developed the Strategic Plan for Mercer Island, a local government facing similar budgetary and financial sustainability challenges due to limited growth and primarily residential land use.

The specific team assigned to the City of Des Moines for this project consists of the individuals who prepared the RFQ response and participated in the interviews. Reference checks were conducted, and the staff received universally positive reviews for their work. The project lead from Raftelis has nearly thirty years of experience as a local government management consultant and practitioner, focusing on West Coast communities.

The Council's initial discussion regarding the strategic planning process also emphasized the City's financial health and sustainability. In April, the City Council approved a contract with FCS Group for a Long-Range Financial Plan and Development Impact Analysis. That work has commenced, and we anticipate the findings from that effort will be completed by the end of 2025. We will ensure that this information is finalized and presented in time for the Council to consider when developing the strategic priorities and initiatives for this effort.

Discussion:

The scope of work for the project includes five major activities. These include:

- **Understand the Context**: Comprehensive review of relevant background materials, confidential individual interviews with the Mayor and City Council, interviews with City Manager and key senior staff.
- **Engage the Community and Staff**: Over several months, conduct various outreach activities including focus groups, town hall/open house community-wide meeting, and an online survey. City staff will also increase their efforts to promote awareness of the Strategic Plan and inform residents and businesses about the plan and encourage them to provide their input. Additionally, a survey will be administered of City staff to gauge input on the strategic needs and priorities within the organization.
- **Facilitate Strategic Planning Workshops**: After collecting robust input from the community, staff and Council, the Consultant will conduct two strategic planning workshops: the first with the City staff executive team to develop draft goals for the Strategic Plan. Then, there will be a City Council strategic planning workshop in which priorities can be refined and strategic initiatives determined. The timing of the City Council workshop will take into account the transition of a new Council to ensure both current Council voices are heard as well as provide the opportunity for the new Council to collectively develop the City's plan.
- **Develop Strategic Framework:** Draft strategic plan framework and review draft with City Council.
- **Provide Deliverables and Implementation Plan:** In order to ensure the implementation of the Strategic Plan, Consultant will develop an implementation template for each goal area identified by the City Council. These templates will help staff track progress and ensure accountability; additionally, pertinent updates can be shared with the public to keep them abreast of the City's progress. Consultant will conduct a workshop with key City staff to kickstart the process for implementation and tracking performance. Finally, Consultant will develop a high-quality, public-facing planning document for the City Council to adopt. Document may be similar in depth and material covered to this: Gresham Strategic Plan

Timeline and Cost:

The entire Strategic Plan process is expected to take six to seven months and will involve both the current City Council and the new City Council after the November 2025 election. The aim is to complete the Strategic Plan in time to influence the development of the 2027-2028 biennial budget.

The total cost for the process is $74,900, which includes all travel expenses. Staff will coordinate with the consultant to maximize travel to Des Moines, ensuring multiple activities are conducted during each trip, and

will use virtual meetings when feasible. The main cost factors are the extent of community engagement and the effort required for implementation planning; however, Council feedback indicates that both are valued and high priorities.

Based on the process and final product desired, this cost is in range and typical for similar Plans at other cities.

During the 2025/2026 budget development, $100,000 was set aside for contract services and economic development. These funds will be used for this effort. Regarding economic development, upon further consideration, Staff recommends the City Council set its broad Strategic Plan and key priorities, which will then inform an economic development strategy. Additionally, staff are pursuing a grant that would cover contract costs for certain economic development activities.

Alternatives:
The City Council direct staff to reject this proposed scope of work and fee and issue a new Request for Qualifications to solicit firms interested in this work.

Recommendation:
Staff recommends the City Council approve this contract and proposed scope of work.

Attachment #1

CONSULTANT SERVICES CONTRACT
between the City of Des Moines and

RAFTELIS FINANCIAL CONSULTANTS, INC

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Raftelis Financial Consultants, Inc. organized under the laws of the State of North Carolina, located and doing business at 611 Wilshire Boulevard, Suite 900, PMB1009, Los Angeles, CA 90018 (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

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

As described in Exhibit "A" attached to this agreement and herein incorporated by reference

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

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I by December 31, 2026.

III. COMPENSATION.

A. The City shall pay the Consultant, based on time and materials, an amount not to exceed $74,900.00 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit Exhibit "A" for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year
from the effective date of this Contract.

B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. LIMITATION OF ACTIONS. CONSULTANT MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONSULTANT'S ABILITY

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

VIII. TERMINATION. Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

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

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

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

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

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

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

XI. INSURANCE. The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

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

provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Consultant shall obtain insurance of the types and coverage described below**:**

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.

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

4. Professional Liability insurance appropriate to the Consultant's profession.

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

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $2,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $2,000,000 per claim and $2,000,000 policy aggregate limit.

C. Other Insurance Provisions.

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

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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

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

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

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

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

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

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

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

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

XV. WORK PERFORMED AT CONSULTANT'S RISK. Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant

shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XVI. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

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

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

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

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

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

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

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

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

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

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

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

CONSULTANT:	**CITY OF DES MOINES:**
By:_____ *(signature)* Print Name:_____ Its_____ *(Title)* DATE:_____	By:_____ *(signature)* Print Name: Katherine Caffrey Its City Manager *(Title)* DATE:_____ Approved as to form: _____ City Attorney DATE:_____

NOTICES TO BE SENT TO: **CONSULTANT:**	**NOTICES TO BE SENT TO:** **CITY OF DES MOINES:**
Nancy Hetrick Raftelis Financial Consultants, Inc 611 Wilshire Boulevard Suite 900, PMB 1009 Los Angeles, CA 90017 408.674.3369 (telephone) nhetrick@raftelis.com (fax/email)	Bonnie Wilkins City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206.870.6519 (telephone) bwilkins@desmoineswa.gov (fax/email)

Attachment #2

RAFTELIS

June 27, 2025

Katherine Caffrey, City Manager
City of Des Moines
21630 11th Avenue S, Suite A
Des Moines WA 98198

Subject: Scope of Work and Cost Proposal for a Citywide Strategic Plan

Dear Ms. Caffrey:

Thank you for considering Raftelis for this engagement. Per your request, I have provided a scope of work and price proposal based upon our discussions.

Please contact me with any questions. We look forward to assisting the City with this important work.

Sincerely,

Nancy Hetrick, *Vice President*
P: 408.674.3369 / E: nhetrick@raftelis.com

Scope of Work

THE FOLLOWING OUTLINES OUR PROPOSED SCOPE OF WORK FOR DEVELOPING A STRATEGIC PLAN WITH THE CITY.

Activity 1: Understand the Context

A successful process will benefit from a collaborative relationship between the consultant and City project teams from the very beginning of the process. This task is intended to begin building that relationship.

At the start of the engagement, our team will conduct a virtual kick-off meeting with the City Manager and other key staff on the City's project team to discuss the project, schedule, and communication and engagement strategies.

We will provide the City with a document/data request for background information such as prior survey results, existing planning documents, demographic information, and more. We will carefully review the information to learn about the City's operating context and key projects and initiatives over the next several years.

Next, Raftelis will confidentially and individually interview the Mayor and City Councilmembers remotely to learn about their expectations for the strategic plan, as well as insights into the City's strengths, weaknesses, opportunities, challenges, and planned initiatives for the future. In addition, Raftelis will interview new council members – those who are elected to the body in November – to ensure all voices are included in the engagement themes.

Our team will incorporate the information from our document review and interviews into the development of an Environmental Scan. The Environmental Scan will provide helpful background information about the City's current state and potential future impacts. To finalize the Environmental Scan, we will gather existing data about the community, such as financial trends, demographic data, statistics about housing, business, and jobs, and other relevant information. This information will provide important context and a foundation upon which the strategic plan can be developed. We will review the Scan with the City's project team, perform any necessary follow-up work, and finalize it.

Throughout the project, our team will provide regular status updates to the City and both formal and informal opportunities to discuss the process and make any necessary adjustments.

Activity 1 Meetings	Activity 1 Deliverables
• Project kick-off meeting • Interviews with Mayor and City Council members	• Kick-off meeting agenda • Draft and final project schedule • Document/data request • Draft and final Environmental Scan

Activity 2: Engage the Community and Staff

A strategic plan is best when touched by as many people as possible. In this activity, we will solicit input from community and staff stakeholders. We will first review and finalize the engagement plan with the City's project team and discuss and affirm key activities and methods early in the process.

We will plan for and lead a series of engagement activities to obtain input from community stakeholders. This includes focus groups, a Town Hall/Open House, and an online survey. We will also provide support and guidance to city staff to conduct addition outreach through community events and at city facilities.

In consultation with the City's project team, we will plan for and facilitate up to six focus groups. We will work with the City to identify key stakeholders, such as community associations, business groups, and representatives on boards and commissions to participate in these sessions. One of the outcomes of the process that we are recommending is the spirit of community that is developed among participants. With a sound process and facilitation, participants will develop ownership of, and a commitment to, the strategic planning process and its implementation. In addition to the focus groups, we will work with the City to plan for an engaging Town Hall/Open House that invites community members to share their perspectives, priorities and vision for the future of Des Moines.

In collaboration with the City, our team will also develop an online survey for community stakeholders. We will draft the survey for staff review, administer the survey online, and analyze and summarize all input received. The survey can be posted on the City's website or distributed directly using a QR code. We use the online survey platform Zoho™ which maintains confidentiality; all survey responses come directly to Raftelis from the respondent.

To engage City staff in the process, we will develop and administer an online employee survey for all City staff. Through a series of targeted questions, we will learn about staff perceptions of mission and values for the City and ask about City strengths, weaknesses, opportunities, and challenges (SWOC). We will identify themes and summarize responses for the City.

Following these activities, Raftelis will prepare a "Sense of Stakeholders" document that summarizes all input and identifies key themes. We will review the draft with the City's project team and finalize it based upon their input. This summary of engagement activities will be especially helpful to aid new council members who join the elected body following the election in November.

Activity 2 Meetings	Activity 2 Deliverables
• Six community focus group meetings • Town Hall/Open House	• Draft and final online staff survey • Draft and final online community stakeholder survey • Sense of Stakeholders document

Activity 3: Facilitate Strategic Planning Workshops

Following the engagement activities, our team will prepare for and facilitate a workshop with the City's executive team. During this session, we will review the Sense of Stakeholders document, reflect on the City's existing mission, vision and values, and begin to draft goals and strategies for the City.

Next, we will plan and facilitate a strategic planning workshop with the City Council to finalize the City's strategic planning framework and answer the fundamental questions, "What is our vision of the future" and "How do we get there?" This workshop will again review the Sense of Stakeholders to consider the input from the broader community, reflect on the City's Vision, review draft goals and strategies, and provide the opportunity to identify strategic initiatives that will guide implementation so the Vision can be realized. The timing of the City Council workshop will take into account the transition of a new council to ensure new voices are active in the development of the city's plan.

This workshop will include activities that will allow everyone to actively participate and engage in the process. Our visual facilitator will transform your conversations into live graphic form, before participants leave the room, promoting a sense of shared understanding.

During the session, the primary role of the facilitator is to ensure that the environment is respectful and conducive to open and constructive dialogue so that the established objectives are ultimately met. While the agenda provides the structure to accomplish the tasks, we also know how important it is to pay attention to the group and make sure that conversations that need to happen actually happen, so we are flexible and in tune with the group during the process.

Activity 3 Meetings	Activity 3 Deliverables
• Executive team workshop • Strategic planning workshop with City Council	• Workshop materials and PowerPoint slide decks

Activity 4: Develop Strategic Framework

Based upon workshop outcomes, Raftelis will prepare a draft strategic plan framework, including vision, mission, values, and strategic goals. We will meet with the City's project team to review the draft framework and incorporate their feedback.

Our team will conduct a study session with the City Council to review the strategic framework and finalize it.

Activity 4 Meetings	Activity 4 Deliverables
• Meeting with City's team to review draft framework • Study session with City Council to review framework	• Draft and final strategic plan framework

Activity 5: Provide Deliverables and Implementation Plan

In order to ensure the implementation of the strategic plan, our team will prepare a custom implementation template for each Goal area identified during the City Council workshop. These templates will help to create consistency across the organization and to enhance accountability to ensure that progress is made on the City's strategic objectives.

Our team will plan for and facilitate a workshop with key staff from each City department to review the goals, identify key strategies to achieve them, and align existing City programs and initiatives with strategic outcomes. We will work with staff to fill out the implementation templates for each Goal in order to identify who is accountable, the estimated timeline, the resources required, and to identify several "key performance indicators" (KPIs) to be used to measure achievement toward each goal. This workshop will result in an initial implementation plan to be used as a living document for tracking progress toward the achievement of strategic plan goals.

In our final activity, Raftelis will prepare a high-quality, public-facing strategic planning document for review by the City. Based upon feedback received, our team will finalize the strategic plan document and present it to the City Council for adoption.

Activity 5 Meetings	Activity 5 Deliverables
• Staff workshop to prepare implementation plan • City Council presentation	• Draft implementation plan • Draft and final strategic plan

Cost/Fees

The total fixed fee to complete the scope of work outlined in this proposal is $74,900, which includes all professional fees and expenses, including travel.

A breakdown of costs by project activity is provided in the table below.

Activity	Description	Cost
1	Understand the Context	$9,500
2	Engage the Community and Staff	$21,400
3	Facilitate Strategic Planning Workshops	$21,250
4	Develop Strategic Framework	$5,500
5	Provide Deliverables and Implementation Plan	$17,250
	TOTAL	**$74,900**

It is our practice to invoice clients for monthly progress payments based upon work completed.

Community Engagement and Outreach Plan Associated with City Strategic Plan and Facilitation Services

- Raftelis will take the lead on the overall strategy for community engagement and the primary activities including developing and leading the six focus groups, leading the Town Hall/Open House community-wide meeting, and developing the online community survey and employee survey.
- City staff's role will include:
    - Collaborating with City Council to establish the focus group participation structure and select participants.
    - Develop dedicated webpage on City's website with information on Strategic Plan
    - Advertise the Town Hall and Community Survey through a variety of methods including but not limited to:
        - Signage in multiple languages throughout the City
        - Targeted outreach via existing events such as downtown Trick or Treating, What's Up Des Moines, youth sports at Fieldhouse, etc.
        - Targeted outreach to existing groups including City boards and commissions including the CAB, neighborhood groups, Wesley, Judson Park, etc.
        - Paid social media and regular social media posts
        - Utilize existing City communication channels including City mailing list and City Manager Report
        - Flyers and posters at City facilities
        - Email signature with link to survey and advertising town hall during campaign
        - Share information and news with Waterland Blog
    - Specifically how we will reach out to underserved areas and populations:
        - Strategic Plan "Pop Up" for the survey and process at apartment complex meeting rooms
        - Survey in multiple languages (English, Spanish, Dari)
        - Leverage community relationships with Community Services Officer
        - Consider direct mail postcards to underserved areas
        - Reach out to community non-profits for in-roads to certain groups (i.e. Food Bank, Lighthouse, etc)
        - Partner with KCLS to include survey and visual input opportunities at both Library branches
        - Reach out to schools in nearby areas—both public, private and charter

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Consultant Services Contract with Nelson\Nygaard

ATTACHMENTS:
1. Consultant Services Contract with Nelson\Nygaard

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: July 3, 2025

CLEARANCES:
[ ] City Clerk ____
[ ] Community Development ____
[ ] Courts ____
[ ] Finance ____
[ ] Human Resources ____
[X] Legal /s/MH
[ ] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

The purpose of this item is for the Council to consider approving a contract and scope of work with Nelson\ Nygaard, amount not to exceed $100,000, to complete the economic analysis required by the Washington Department of Commerce Grant for Economic Analysis of the Electric Water Taxi Pilot Program

Suggested Motion

Motion: "I move to approve the Consultant Services Contract with Nelson\Nygaard in the amount not to exceed $100,000 for the implementation of a Washington Department of Commerce Grant for Economic Analysis of the Electric Water Taxi Pilot Program."

Background
On October 24, 2024, Council accepted a $160,000 grant awarded from the Washington State Department of Commerce to fund a Community Engagement Study, an Economic & Environmental Analysis Study, and a study of secondary transportation options related to Electric Water Taxi service from Des Moines to downtown Seattle and possible other routes.

Discussion

The majority of the work to implement the grant is proposed to be provided by Nelson\Nygaard (N\N), a nation-wide transportation planning consulting firm with a strong local Seattle office. In interviews, N\N staff demonstrated broad and unbiased understanding of the available transportation modes, costs, and demands for the Puget Sound region, and they provided many case studies that seemed relevant for Des Moines. Finally, N\N had solid experience with community outreach on transportation projects.

A separate economic development consultant will work in tandem with N\N to define and assess opportunities of the proposed ferry service and of other attractive alternatives that are proposed during the study period. The balance of the grant funding will be spent on meetings, materials, and grant management.

Alternatives

1. The City Council may decline to approve the Consultant Services Contract with Nelson\Nygaard; this would result in most of the work required for the Washington State Department of Commerce Grant not being fulfilled and the $160,000 grant funds not be used. Additionally, the City does not have adequate resources to perform this work in house.
2. The City Council may continue this Agenda Item and request that staff provides additional information on the Consultant Services Contract.

Financial Impact
The $160,000 provided by the Washington State Department of Commerce Grant requires no local match and will cover all costs associated with the work.

Recommendation
Staff recommends the adoption of this motion.

Council Committee Review
The implementation of this grant was discussed at the Committee of the Whole on July 10, 2025.

Attachment #1

CONSULTANT SERVICES CONTRACT
between the City of Des Moines and

Nelson\Nygaard Consulting Associates, Inc.

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Nelson\Nygaard Consulting Associates, Inc. organized under the laws of the State of California, located and doing business at 1525 International Parkway, Suite 3021, Lake Mary, FL 32746 (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

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

As described in Exhibit "A" attached to this agreement and herein incorporated by reference

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

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I by December 31, 2025.

III. COMPENSATION.

A. The City shall pay the Consultant, based on time and materials, an amount not to exceed $100,000.00 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit "B": BUDGET AND RATES for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year
from the effective date of this Contract.

B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. LIMITATION OF ACTIONS. CONSULTANT MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONSULTANT'S ABILITY

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

VIII. TERMINATION. Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

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

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

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

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

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

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

XI. INSURANCE. The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

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

provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Consultant shall obtain insurance of the types and coverage described below**:**

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.

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

4. Professional Liability insurance appropriate to the Consultant's profession.

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

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $2,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $2,000,000 per claim and $2,000,000 policy aggregate limit.

C. Other Insurance Provisions.

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

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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

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

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

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

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

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

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

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

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

XV. WORK PERFORMED AT CONSULTANT'S RISK. Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant

shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XVI. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

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

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

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

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

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

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

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

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

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

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

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

CONSULTANT:	**CITY OF DES MOINES:**
By:_____ *(signature)* Print Name:_____ Its_____ *(Title)* DATE:_____	By:_____ *(signature)* Print Name: Katherine Caffrey Its City Manager *(Title)* DATE:_____ Approved as to form: _____ City Attorney DATE:_____

NOTICES TO BE SENT TO: **CONSULTANT:**	**NOTICES TO BE SENT TO:** **CITY OF DES MOINES:**
Nelson\Nygard Consulting Associates, Inc. 1525 International Parkway Suite 3021 Lake Mary, FL 32746 [Insert Telephone Number] (telephone) [Insert Fax/email] (fax/email)	[Insert Name of City Rep. to Receive Notice] City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 [Insert Telephone Number] (telephone) [Insert Fax/email] (fax/email)

EXHIBIT A: DESCRIPTION OF WORK

The scope of work and deliverables for this project are outlined below.

Task 1 – Project Management

To start this effort, Nelson\Nygaard will host a virtual kick-off meeting with the City of Des Moines project team. Nelson\Nygaard will also host bi-weekly one-hour project status meetings that will be used to coordinate project delivery, review project deliverables, and address any challenges that may arise. Nelson\Nygaard will also develop a monthly progress report that will detail work accomplished over the previous month and provide a budget summary for the same duration.

Task 2 – Document Review

Nelson\Nygaard will complete a review of all major planning documents for the City of Des Moines, Sound Transit, and King County Metro to better understand the long-term vision for the City and the two current public transportation providers. This document review will identify major planning decisions that have been made previously, which will become the baseline for the remaining work in this report. The document review will provide key insights into planned growth of Des Moines, to ensure future transportation investments are consistent with this vision. The review will also note areas where there are differences in direction between the three parties, as well as gaps where the vision is missing elements. Also of specific interest will be to identify vision elements related to transportation disadvantaged individuals and how their needs dovetail with the stated visions.

Deliverable

- Memo summarizing key findings from all reviewed plans

Task 3 – Market Analysis

Utilizing Census data, established travel demand models, and Replica travel data, Nelson\Nygaard will develop a market analysis for travel in Des Moines with special attention focused on public transportation. This analysis will help understand the demand for regional mobility and connectivity to/from Des Moines. The analysis will spatially identify where populations of people with a propensity for using public transportation live and work to better understand how people move into and out of Des Moines today. To the extent this data can also identify more casual travel patterns, such as leisure and tourism-based travel, we will also uncover and discuss those, as well. While the focus of this effort is on

development of ferry service, presumably to downtown Seattle, the consultant team will also identify other possible travel markets based on their relative strengths and adaptability to be serviced by a new ferry route. These discussions will not be comprehensive in nature, but will identify other market opportunities for which additional investigations under other efforts may be helpful.

During Task 3, Nelson\Nygaard will work with the identified economic development consultant to ensure projected growth and transportation demand are consistent.

Nelson\Nygaard will prepare a technical memo that summarizes ferry market opportunities related to downtown Seattle. It will also document our high-level evaluation of other opportunities for potential ferry markets which Des Moines may want to consider for further study.

Deliverable

- Market analysis report
- Ferry market technical memo

Task 4 – Engagement

Engagement will be divided into two distinct phases: stakeholder interviews, and community survey.

Stakeholder interviews will occur during the development of the market analysis and will be conducted with key individuals, roles, and organizations directly involved in the delivery of the 2022 pilot project. In addition, Nelson\Nygaard will interview key elected officials to understand community priorities and context. Nelson\Nygaard will complete up to 16 virtual stakeholder interviews.

A community survey will be used to engage community members directly to understand insights into how proposed transportation alternatives will impact decisions for people's daily mobility needs. The survey will be designed and administered in coordination with the City of Des Moines, with a goal to maximize participation across Des Moines residents, with targeted response rates for identified for key demographic factors, including age, income, race, and gender. Nelson\Nygaard will translate and administer the survey in up to 3 languages, aside from English. Nelson\Nygaard will administer the survey through SurveyMonkey or a similar platform. Advertisement of the survey will be through virtual and in-person methods (tabling at Waterfront Farmers Market or similar events). In addition, Nelson\Nygaard will work with the City to identify local newsletters, blogs, and other communication channels where survey information can be shared.

Community engagement will be used to inform the alternatives analysis and to understand community support for investments in future ferry service.

Deliverable

- Key Stakeholder Interview Memo
- Community Engagement Report

Task 5 – Ferry Pilot Evaluation

Utilizing data provided by the City of Des Moines, Nelson\Nygaard will evaluate the ferry pilot operated in 2022 across a variety of metrics, possibly including:

- Cost effectiveness
  - Operational cost
  - Cost per passenger
  - Cost per revenue hour
- Ridership
  - By day
  - By time of day
  - User (round trip analysis?)
- Operations
  - On-time performance/schedule adherence
  - Operational challenges
    - Delays
    - Weather impacts
- Community impacts
  - Key markets served
- Environmental impacts

Key assumption

- Economic Impacts Assessment completed by others, with transportation inputs provided by Nelson\Nygaard

Deliverable

- Ferry Pilot Evaluation Technical Report

Task 6 – Alternatives Analysis

Task 6 will compare the proposed ferry service investments to other alternative transportation options, including the King County Metro – Rapid Line A, and the planned Sound Transit – Link 1 Line Expansion with community connections to those services. Based upon input from the Market Analysis, Nelson\Nygaard will evaluate how effectively differing transportation infrastructure investments meet needs identified in Task 3. Alternatives will be evaluated across several factors, including:

- Operating cost
- Capital cost
- Connectivity impacts on underserved communities

In addition, for alternatives that include existing or planned infrastructure, Nelson\Nygaard will identify additional service and capital investments planning-level cost estimates that improve local connectivity to those services.

The alternatives analysis will assume a diesel-operated ferry as baseline for the analysis. Nelson\Nygaard will prepare a supplemental electrification memo that outlines key cost, infrastructure, and programming differences between diesel and electric ferries

Deliverable:

- Alternatives Analysis Report
- Ferry electrification memo

Task 7 – Recommendations

Nelson\Nygaard will develop clear recommendations for the City of Des Moines to make definitive decisions about the implementation of regular ferry service. These recommendations will clearly articulate, based on findings from previous tasks, if investing in ferry service or another alternative best meet the city's planned outcomes. We will also leave points for further investigation with respect to economic development opportunities that may be presented by a ferry operating in and out of the Des Moines waterfront. While these will need further evaluation/consideration by others, they will present a starting point.

If Nelson\Nygaard recommends an alternative other than ferry service, Nelson\Nygaard will develop planning-level capital and operating cost estimates.

Deliverable:

- Final Full Report
- Recommendations/Executive Summary

EXHIBIT B: BUDGET AND RATES

The budget established for this project is outlined below.

		Nelson\Nygaard Labor Costs													
		Payne, Timothy	Nordin, Gregory	Johnson, Christopher	Kolesinskas, Ian	Carraher,	Associate 3	Project Accountant							
		Senior Principal 2	Principal 1	Senior Principal 2	Senior Associate 1	Assistant Manager	Associate 3	Project Accountant	NN Labor		Total Labor Hours	Total Labor Costs	Expenses	Expenses	Total Direct Expenses	Total Costs
	Total Billing Rate	296.17	227.42	297.68	143.55	199.46	162.22	162.22	Hours	Cost						
Task	Description															
-	PROJECT MANAGEMENT and QA/QC															
1.00	**Project Management**															
1.10	Kick-off	2	5		1				8	1,872.97	8.00	1,872.97				1,872.97
1.20	Coordination Meetings	4	10		10				24	4,894.36	24.00	4,894.36				4,894.36
1.30	Progress Reports		5					5	10	1,948.19	10.00	1,948.19				1,948.19
	Task Total 1	6	20	-	11	-	-	5	42	8,715.52	42.00	8,715.52	-	-	-	8,715.52
2.00	**Document Review**															
2.10	Document Review		4		20				24	3,780.70	24.00	3,780.70				3,780.70
	Task Total 2	-	4	-	20	-	-	-	24	3,780.70	24.00	3,780.70	-	-	-	3,780.70
3.00	**Market Analysis**															
3.10	Transit Market Analysis	4	16	8	32	36			96	18,979.07	96.00	18,979.07				18,979.07
3.20	Ferry Market Memo	6	2						8	2,231.85	8.00	2,231.85				2,231.85
	Task Total 3	10	18	8	32	36	-	-	104	21,210.92	104.00	21,210.92	-	-	-	21,210.92
4.00	**Engagement**															
4.10	Stakeholder Interviews		12		20				32	5,600.03	32.00	5,600.03				5,600.03
4.20	Survey Development and Administration		4		8				12	2,058.08	12.00	2,058.08				2,058.08
4.30	In-Person Survey Promotion						20		20	3,244.42	20.00	3,244.42				3,244.42
4.40	Community Engagement Report	4	4		8				16	3,242.76	16.00	3,242.76				3,242.76
	Task Total 4	4	20	-	36	-	20	-	80	14,145.29	80.00	14,145.29	225.00	5,000.00	5,225.00	19,370.29
5.00	**Ferry Pilot Evaluation**															
5.10	Ferry Pilot Evaluation	12	12		44	20			88	16,588.55	88.00	16,588.55				16,588.55
	Task Total 5	12	12	-	44	20	-	-	88	16,588.55	88.00	16,588.55	-	-	-	16,588.55
6.00	**Alternatives Analysis**															
6.10	Concept Development	4	6		16				26	4,846.01	26.00	4,846.01				4,846.01
6.20	Concept Evaluation	8	8		36				52	9,356.56	52.00	9,356.56				9,356.56
6.30	Opportunities for Improved Connectivity	4	6		20				30	5,420.22	30.00	5,420.22				5,420.22
6.40	Ferry Electrification Memo	7	2						9	2,528.02	9.00	2,528.02				2,528.02
	Task Total 6	23	22	-	72	-	-	-	117	22,150.81	117.00	22,150.81	-	-	-	22,150.81
7.00	**Recommendations**															
7.10	Recommendations Report	4	8		36				48	8,171.88	48.00	8,171.88				8,171.88
	Task Total 7	4	8	-	36	-	-	-	48	8,171.88	48.00	8,171.88	-	-	-	8,171.88
	TOTAL HOURS	**59**	**104**	**8**	**251**	**56**	**20**	**5**	**503**	**94,763.67**	**503.00**					**503.00**
	TOTAL COSTS															**99,988.67**

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Telecommunications Franchise Agreement with HyperFiber

ATTACHMENTS:
1. Draft Ordinance No. 25-038
2. Exhibit 1-A showing preliminary alignment for Fiber Optic installation

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: June 30, 2025

CLEARANCES:
[ ] City Clerk ____
[ ] Community Development ____
[ ] Courts ____
[X] Finance ____
[ ] Human Resources ____
[X] Legal /s/TG
[ ] Marina ____
[ ] Police ____
[ ] Parks, Recreation & Senior Services ____
[X] Public Works MPS

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

The purpose of this agenda item is for the City Council to conduct a first reading of a telecommunications Franchise Agreement with HyperFiber for the installation of fiber optic facilities in City right-of-way.

Suggested Motion

Motion 1: "I move to pass Draft Ordinance No. 25-038 regarding a telecommunications Franchise Agreement with HyperFiber to a second reading on July 24, 2025."

Background

A franchise agreement authorizes an entity to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public. The grant of a franchise is a special privilege that allows particular individuals to profit from the use of the city streets in a manner not generally available to the public as a common right. The legislature has

granted authority to cities to grant a nonexclusive franchise. RCW 35A.47.040. Once granted, a franchise is a contract which is binding on both the grantor and the grantee.

HyperFiber submitted a telecommunications franchise application in April of 2025 seeking to deploy fiber optic cables and equipment in City right-of-way to provide voice and data service to businesses and residential customers. The routes and service areas shown in Attachment 2 are preliminary only and will be finalized once permits are applied for and they are reviewed and approved by City staff.

The City has a standard telecommunications franchise template that was used as the basis for this agreement.

Discussion

The key terms of the franchise agreements are detailed below. The terms of the agreements are consistent with the approved telecommunications franchises previously issued by the City.

1. **Franchise Term:** The term of the Franchise is for 10 years. After 5 years, if either party identifies a specific issue that needs to be addressed, the parties are required to meet to negotiate. This language requires the parties to discuss such issues in good faith at the half-way mark of the 10 year term. The term will extend another 10 years unless either party notifies the other in writing 180 days before the end of the Agreement.

2. **Relocation:** HyperFiber is solely responsible for relocation costs unless state law requires otherwise. RCW 35.99.060 applies specifically to telecommunications franchises and requires cities to share in some relocation costs for specific instances where a city requires relocation for a private party's benefit or if a city requires relocation twice within a 5 year period.

3. **Right of Way Management, Planning, and Operations:** The Franchise reflects current City practice. HyperFiber is required to follow City permitting processes prior to installation of facilities or any work in the right-of-way.

4. **Indemnification and Insurance:** The Agreement provides that HyperFiber will indemnify the City for actions of the company or their agents. HyperFiber is required to maintain $5,000,000 in automobile and general liability insurance coverage. This coverage exceeds any reasonably expected liability that could occur from this Agreement.

5. **Franchise Fee:** HyperFiber will pay the City a one-time franchise fee of $5,000. This flat fee is consistent with RCW 35.21.860 which requires that a franchise fee be limited to the actual administrative expenses incurred by the City in the negotiation of the franchise. This amount will reimburse the City for the staff costs of the negotiations over the last several months.

6. **Taxes:** Under DMMC 3.68.060(3) the City imposes a 6% tax on telephone businesses. To the extent that revenue is received from the installation of these facilities, the City will receive 6%.

7. **Abandonment**: The Franchise requires that HyperFiber remove any facilities that have been abandoned in the right of way at their own expense. The City has the option to allow them to be abandoned in place or removed.

8. **Vacation –** The proposed language is an accurate reflection of current practice and does not restrict the City's authority to vacate a right of way. The Agreement requires the City to notify HyperFiber of a vacation so that they can obtain an easement if one is needed.

9. **Collaboration on City projects –** This Agreement expressly calls out RCW 35.99.070 which requires a service provider that is operating in public right-of-way to provide the City with additional duct or conduit for the City's purposes. The City would receive this benefit at cost under the Franchise Agreement.

10. **Additional Terms** – The majority of the remainder of the Agreement is boilerplate legal language. All language and terms have been thoroughly reviewed and negotiated and the City's interests are protected throughout these Agreements.

Alternatives

1. Pass the Draft Ordinance to a second reading.
2. Do not pass the Draft Ordinance and provide rationale for not passing.

Financial Impact

The City will receive an initial $5,000 to cover the City's costs of the negotiation of this Franchise Agreement. Additionally, the City will receive all permitting costs for work to be conducted and any additional staffing time that is spent administering this Agreement can be billed to HyperFiber.

Finally, the City will receive 6% utility tax on the telephone business conducted by HyperFiber.

Recommendation

The Legal Department, Planning, Building, and Public Works, and Finance Department recommend passing the Draft Ordinance to a second reading.

Attachment #1

DRAFT ORDINANCE NO. 24-087

AN ORDINANCE OF THE CITY OF DES MOINES granting a non-exclusive Franchise to construct, install, operate, maintain, repair, or remove telecommunications facilities within the public ways of the City of Des Moines ("City") to HyperFiber, LLC d/b/a HyperFiber of Washington, LLC ("Grantee"). Grantee's telecommunications facilities shall not include antennas and support structures specifically for attaching antennas that are used for personal wireless communications services. The City and Grantee are sometimes hereinafter collectively referred to individually as a "party" and collectively as the "parties."

WHEREAS, HyperFiber, LLC d/b/a _HyperFiber of Washington, LLC, a corporation organized and existing under the laws of the State of Missouri is a competitive telecommunications company providing telecommunication services, including voice, internet and data services, which desires to occupy the City of Des Moines rights-of-ways to install, construct, operate, and maintain its telecommunications facilities and network for the purpose of providing services to its customers at locations within the City, and

WHEREAS, the Grantee, HyperFiber, LLC, has represented to the City that it provides a telecommunications service business as defined herein, and

WHEREAS, Grantee has applied to the City for a non-exclusive telecommunications service franchise to enter, occupy, and use public ways to construct, install, operate, maintain, and repair telecommunications facilities to offer and provide telecommunications service for hire, sale, or resale in the City, and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises within the boundaries of the City, and

WHEREAS, the 1934 Communications Act, as amended relating to telecommunications providers recognizes and provides local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis, and

WHEREAS, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the City, including without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the City after review of specific plans, and

WHEREAS, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways, and

WHEREAS, the City and Grantee desire to effectuate good coordination of the use of the rights-of-way, and

WHEREAS, the City Council finds that the franchise terms and conditions contained in this Ordinance are in the public interest; now therefore,

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

Sec. 1. Definitions.

(1) **Use of words and phrases.** For the purposes of this Franchise, the following terms, phrases, words, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in the Des Moines City Code (DMMC), or in the Federal Communications Act of 1934 as amended, unless inconsistent herewith. The headings contained in this Franchise are to facilitate reference only, do not form a part of this Franchise, and shall not in any way affect the construction or interpretation hereof. The words "shall," "will," and "must" are mandatory, and the word "may" is permissive or directory.

(2) "Abandonment" means the disconnection by the Grantee of specific Facilities from the telecommunications system.

(3) "Affiliate" means any Person who owns or controls, is owned by or controlled by, or is under common ownership or control with Grantee.

(4) "City Council" means the governing body of the City.

(5) "Communications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(6) "Communications applications fees and charges" includes fees and charges connected to right-of-way management, construction permit, permit design fee, building permit, encroachment permit, inspections and pavement restoration.

(7) "Communications service" means the offering of communications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(8) "Communications system" or "system" means only those facilities necessary for Grantee to provide Communications services.

(9) "Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines.

(10) "Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

(11) "Dark fiber" means properly functioning optical cable which is not used or available for use by Grantee or the general public, but may be made available for use under lease to third parties.

(12) "Effective date" means five days following the publication of this Franchise or a summary thereof occurs in an official newspaper of the City as provided by law.

(13) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

(14) "Facilities" means, collectively, any and all telecommunications transmission systems and appurtenances owned by Grantee, now and in the future, in the Franchise Area, including, but not limited to, wire, radio, optical cable, electromagnetic or other similar types of equipment and related appurtenances in any way comprising part of the System.

(15) "FCC or Federal Communications Commission" means the agency as presently constituted by the United States Congress or any successor agency with jurisdiction over telecommunications service matters.

(16) "Fiber optic" means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying telecommunication service by means of electric light-wave impulses.

(17) "Franchise area" means the area within the jurisdictional boundaries of the City, including any annexed areas, to be served by Grantee as specified in this Franchise.

(18) "Incremental costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred.

(19) "Optical cable" means wires, lines, cables and communication and signal lines used to convey communications by fiber optics.

(20) "Person" means any individual, firm, partnership, association, joint stock company, trust, corporation, company, governmental entity.

(21) "Public ways or rights-of-way" includes the surface, the air space above the surface, and the area below the surface of any public street, highway, parkway, circle, lane, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation, repair, and maintenance of a Telecommunication System. No reference in this Franchise to a public right-of-way shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation, repair, and maintenance of a Telecommunication System, and the Grantee shall be deemed to gain only those rights which the City has the undisputed right and power to give. For this Franchise, public ways and rights-of-way are limited to the areas above the ordinary high water mark of Puget Sound.

(22) "Route map" means a geographic representation of the Grantee's Telecommunication System as it exists within the public right-of-way and within private easements in the Franchise area.

(23) "Subscriber" means any Person who or which purchases, leases, rents, obtains or subscribes to Telecommunications Service provided by Grantee by means of or in connection with the Grantee's Telecommunications System.

(24) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(25) "Telecommunications applications fees and charges" includes fees and charges connected to right-of-way management, construction permit, permit design fee, building permit, encroachment permit, inspections and pavement restoration.

(26) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Telecommunications service shall also include offering Internet access, private line

service, front- and back-haul transport and/or leasing dark fiber directly to the public or third parties.

(27) "Telecommunications system" or "system" means only those facilities necessary for Grantee to provide Telecommunications service.

(28) "Underground facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

(29) "Utility poles" means poles, and crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication.

(30) "Wireless Communications Facilities" means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

Sec. 2. Franchise - Grant of authority.

(1) **Use of public rights-of-way.** There is hereby granted to Grantee the right and privilege, to have, acquire, construct, reconstruct, upgrade, repair, maintain, use, and operate in the City a Telecommunications System, and to have, acquire, construct, reconstruct, repair, maintain, use, and operate in, over, under, and along the present and future Public rights-of-way of the City all necessary or Facilities, including without limitation, desirable wires, cables, electronic conductors, underground conduits, vaults, and other structures and appurtenances necessary for the construction, maintenance, and operation of Grantee's Telecommunications system in the Franchise Area. Grantee or Affiliates shall not install or construct facilities within the City's Public Rights-of-Way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

(2) **Additional services/compensation.** By granting this Franchise, the City does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered over the Telecommunication system which are not Telecommunication services. Upon request, Grantee shall inform City of any non-Telecommunication and/or Telecommunication services offered over the Telecommunication system of which Grantee or its Affiliates are aware. By accepting this Franchise, Grantee does not waive any right it has under law to challenge the City's requirement for authorization to provide non-Telecommunication Services.

(3) **Responsibility for costs.** Except as expressly provided otherwise, any act that Grantee is required to perform under this Franchise shall be performed at Grantee's cost. If Grantee fails to perform work that it is required to perform within the time provided for performance or a cure period, the City may perform the work and bill the Grantee for documented costs. The Grantee shall pay the amounts billed within thirty (30) days. The parties agree that any amounts paid pursuant to this Section are not Franchise fees and fall within one or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this section is intended to affect in any way (by expansion or contraction) Grantee's rights under applicable law governing the ability to impose any costs, including but not limited to the rates charged.

(4) **Publication costs.** Any and all costs of publication related to this Franchise which may be required by law or action of City Council shall be borne by Grantee. Any payments made by the City under this provision are to be reimbursed to the City within thirty (30) days of Grantee's receipt of the invoice.

(5) **Franchise non-exclusive.** The rights, privileges of any franchise granted pursuant to chapter 20.04 of the Des Moines Municipal Code (DMMC) shall be nonexclusive. This Franchise shall not be construed as any limitation upon the right of the City, through its proper officers, to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges

or authority herein set forth, in the same or other streets and public ways by Franchise, permit or otherwise. The City shall not authorize or permit any Person providing Communication services to enter into the Public rights-of-way in any part of the City on terms or conditions that, when viewed collectively, are generally more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise.

(6) Nothing in this Franchise excuses Grantee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.

(7) Nothing in this Franchise excuses Grantee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.

(8) Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Grantee of any obligation to pay lawfully imposed charges or fees. Notwithstanding any other provision of this Franchise, nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on Franchisee’s business activities under this Franchise under applicable law.

(9) Nothing in this Franchise grants authority to Grantee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.

(10) Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities or to modify public ways to accommodate Grantee's facilities.

(11) Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Grantee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.

(12) Nothing in this Franchise shall be construed to permit Grantee to unlawfully enter or construct improvements upon the property or premises of another.

(13) Nothing in this Franchise grants authority to Grantee to enter, occupy or use City property, nor to install or construct facilities within the City's Public rights-of-way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

(14) Nothing in this Franchise grants authority to Grantee to provide or offer cable service as defined in 47 U.S.C. § 522(6) or Open Video System services as defined in 47 U.S.C. § 573. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City separate authorization to provide Cable or Open Video System services, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

(15) Grantee may use its facilities authorized by this Franchise to provide telecommunications service only as expressly provided in this Franchise.

Sec. 3. Term evaluation, and renewal.

(1) This Franchise shall run for a period of ten (10) years unless extended or terminated sooner as hereinafter provided. This Franchise shall commence after the effective date of this Franchise and in accordance with the written acceptance requirements herein.

(2) Unless either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise, this Franchise shall automatically renew on the tenth anniversary of the effective date for an additional ten (10) years, with the same terms and conditions as set forth in this Franchise.

(3) On the fifth (5th) anniversary of this Franchise, if either party identifies one or more specific issues that the party believes may require a reevaluation of one or more of the material terms of this Franchise, the Parties agree to discuss such issues diligently and in good faith. Notwithstanding the foregoing, either party may at any time during the term of this Franchise, request a clarification of a term, or seek an amendment to, this Franchise.

Sec. 4. Compliance with City, state, and federal laws.

(1) **Compliance with applicable laws**. Grantee shall at all times comply with all laws, rules, and regulations of the City, state and federal governments and any administrative agencies thereof which are applicable to all businesses in the City and/or all users of the Public rights-of-way. The express provisions of this Franchise constitute a valid and enforceable contract between the parties.

(2) **Other ordinances**. This Franchise and all rights and privileges granted hereunder are subject to, and the Grantee must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City's exercise of its police powers and applicable law, and in case of any conflict between the express terms of this Franchise and any ordinance enacted by the City, this Franchise shall govern, except where such ordinance would

result in a competitor to Grantee having more favorable franchise terms than Grantee in which case City will notify Grantee and offer Grantee the opportunity to amend this Franchise consistent with such terms. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. The Grantee reserves the right to challenge provisions of any ordinance that conflicts with its contractual rights, and does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

(3) **Police power of the City.** Construction, maintenance, and operation of Grantee's Telecommunication system and all property of Grantee subject to the provisions of this Franchise shall be subject to all lawful police powers, rules, and regulations of the City. The Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise area. The City reserves the right to use, occupy and enjoy any Public rights-of-way or other public places for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, installation of traffic signal systems, intelligent transportation systems, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The City shall have the power at any time to order and require Grantee to remove or abate any pole, line, tower, wire, cable, guy, conduit, electric conductor, or any other structure or facility that is dangerous to life or property. In the event Grantee, after written notice, and the unencumbered ability to comply, fails or refuses to act within fifteen (15) days of such written notice, City shall have the power to remove or abate the same at the expense of Grantee, all without compensation or liability for damages to Grantee except in instances when the damage is caused by negligence or willful misconduct of the City or its agents. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.

(4) **Notification in the event of preemptive law.** Grantee shall use its best efforts to notify the City of any change in law that materially affects Grantee's rights or obligations under this Franchise.

(5) **Amending franchise to conform to subsequent law.** The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

Sec. 5. Conditions of public rights-of-way occupancy.

(1) **Use permits and/or development authorization.** Grantee shall obtain use, right-of-way construction, and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in the franchise area. Grantee shall provide the following information for all facilities that it proposes to construct or install:

(a) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:

(i) The location and route of the proposed facilities;

(ii) When requested by the City, the location of all overhead and underground public utility, communication, cable, water, sewer, drainage and other facilities in the public way along the proposed route;

(iii) When requested by the City, the location(s), if any, for interconnection with the communication facilities of others;

(iv) The specific trees, structures, improvements, facilities and obstructions, if any, that Grantee proposes to temporarily or permanently alter, remove or relocate.

(b) If Grantee is proposing to install overhead facilities, the Grantee shall provide evidence that the proposed overhead installation is in compliance with all applicable provisions of the Des Moines Municipal Code. The Grantee shall also provide evidence of Grantee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole, and written acknowledgement by the Grantee that if the overhead facilities are subsequently relocated underground, the Grantee shall relocate underground at no cost to the City, except as otherwise provided in RCW Section 35.99.060.

(c) If Grantee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:

(i) Evidence of ownership or authorization to use such ducts or conduits;

(ii) Conditions of use imposed by the owner(s) of the ducts or conduits;

(iii) If known to Grantee or reasonably ascertainable to Grantee, the total capacity of such ducts or conduits; and

(iv) If known to Grantee or reasonably ascertainable to Grantee, the amount of the total capacity within

such ducts or conduits which will be occupied by Grantee's facilities.

(d) If Grantee is proposing to install underground facilities in new ducts or conduits within the public ways:

(i) The location proposed for new ducts or conduits;

(ii) The total capacity of such ducts or conduits; and

(iii) The initial listing of co-located facilities located within Grantee constructed or installed ducts or conduits.

(e) A preliminary construction schedule and completion date together with a traffic control plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) for any construction.

(f) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.

(g) Such other documentation and information regarding the facilities requested by the City.

(h) The requirements of this section do not apply to installation of optical cable necessary to connect a customer of Grantee to a previously approved facility; provided that neither excavation nor trenching in the public right-of-way is required; that the optical cable does not cross a distance of more than eighty (80) feet from its point of connection to the approved facility and the point where it exits the public right-of-way; that the optical cable connection meets or exceeds all applicable technical standards required by law; that the optical cable connection is durable and installed in accordance with good engineering, construction, and installation practices and does not interfere with the public use of the public ways, or adversely affect public health, safety or welfare; that the optical cable connection is constructed and installed to conform to all

applicable federal, state, local, and industry codes, rules, regulations, and standards; and that the optical cable connection does not damage or impair the City's public way or property.

(i) The requirements of this section do not apply to repair or maintenance of a previously approved overhead facility; provided that the location and size of the previously approved facility is not materially changed; that no additional new facilities are constructed or installed; that the repair or maintenance activities are conducted in accordance with good engineering, repair, and maintenance practices and do not interfere with the public use of the public ways, or adversely affect public health, safety, or welfare; that maintenance or repair activities conform to all federal, state, local, and industry codes, rules, regulations, and standards; and that the repair or maintenance activities comply with the City Code.

(2) **Construction and installation requirements.**

(a) Grantee's System shall be constructed and maintained in such manner as not to interfere with in-place sewers, water pipes or any other property of City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been placed in rights-of-way by, or under, City's authority.

(b) All facilities shall be constructed and installed in such manner and at such points so as not to inconvenience City or public use of the public ways or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.

(c) Interference with use of streets. When installing, locating, constructing or maintaining Facilities, the Grantee shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface and subsurface of any such street in as good condition as it was prior to performance by the Grantee of such work, to the satisfaction of the City.

(d) The Grantee shall apply for, obtain, and comply with the terms of all permits required under Des Moines Municipal Code sections regulating construction and maintenance within the right-of-way for any work done upon Grantee Facilities. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner. Grantee shall have the sole responsibility for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair or expand the System, and to construct, maintain and repair any part thereof.

(e) The Telecommunications system constructed, maintained and operated by virtue of this Franchise, shall be so constructed, maintained and operated in accordance with all applicable engineering codes adopted or approved by the City, State of Washington, federal government and/or engineering profession and in accordance with any applicable Statutes of the State of Washington, rules and regulations of the applicable Washington regulatory authority, Ordinances of the City or of any other governmental regulatory commission, board or agency having jurisdiction over Grantee.

(f) The construction plans and Grantee's operations shall conform to all federal, state, local, and industry codes, rules, regulations, standards and laws. Grantee must cease work immediately if the City determines that Grantee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the City determines that Grantee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

(g) Neither approval of plans by the City nor any action or inaction by the City shall relieve Grantee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Grantee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.

(h) Except as to emergency repairs, Grantee shall, prior to excavating within any street, alley or other public place, and installing any conduit, overhead cable or equipment therein, file with the City Manager or designee plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, and a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. The Grantee shall conform to all applicable requirements of the City Code, as it currently exists or as it may be amended.

(i) All construction and/or maintenance work as provided herein shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.

(j) Excavation work requiring a permit from the City shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the Facilities, City property or other persons or property, Grantee may proceed without first obtaining the normally required permits. In such event Grantee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities, or any part thereof; City property; or other persons or property, and to protect the public welfare, health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

(k) In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City Manager or designee in writing as promptly as possible, before such repair or emergency work commences, or as soon thereafter as possible, if advance notice is not practical. The City may act, at any time, without prior written notice in the case of emergency, but shall notify the Grantee in writing as promptly as possible under the circumstances.

(l) Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property including, by way of example and not limitation, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and rights-of-way improvements, private facilities and public safety.

(m) New facilities shall be constructed in accordance with the following terms and conditions:

(i) Facilities shall be installed within the Grantee's existing underground duct or conduit whenever excess capacity exists.

(ii) Overhead facilities shall be installed on pole attachments to existing utility poles only, and then only if space is available.

(iii) Whenever all existing telephone and electric utilities are located underground within public ways, the Grantee must also locate its facilities underground.

(iv) Whenever all new or existing telephone and electric utilities are located or relocated underground within public ways, the Grantee that currently occupies the same public ways shall concurrently relocate its Facilities underground at its own expense, except as otherwise provided in RCW Section 35.99.060.

(n) Display of right-of-way permit. The Grantee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or designee at all times when construction work is occurring.

(o) Construction schedule. The Grantee shall submit a written construction schedule to the City Manager or designee prior to commencing any work in or about the public ways in accordance with City regulations.

(p) Locator service compliance. The Grantee, before commencing any construction in the public ways, shall call for location in accordance with RCW 19.122.

(q) Placement. All facilities, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners. All facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way. Exact placement within the right-of-way shall be coordinated with the City and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The City reserves the reasonable right as to final placement.

(r) Completion of construction. The Grantee shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within public ways, including restoration, must be completed within 90 calendar days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

(s) Non-complying work. Upon order of the City Manager or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

(t) The City reserves the right to install, and permit to be installed, sewer, electric, phone, gas, water and other pipelines, cables, conduits and related appurtenances and to do, or permit to be done, any underground or overhead work in, across, along, over or under a public way or other public place occupied by Grantee. The City also reserves the right to construct new streets and public utilities and to alter the design of existing streets and public utilities. In performing such work,

the City shall not be liable to Grantee for any damage, except in the event of the contributory negligence or willful misconduct of the City or its contractors, but nothing herein shall relieve any other person or entity from the responsibility for damages to Grantee's Facilities. The City will use its best efforts to provide Grantee with reasonable advance notice of plans by other persons to open the public ways.

(3) **Coordination of construction and installation activities.**

(a) Grantee shall coordinate its construction and installation activities and other work with the City and all other users of the public ways, including utilities located within the franchise area.

(b) All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.

(c) At least forty-eight (48) hours prior to entering a public way to perform construction and installation activities or other work, Grantee shall give notice, at its cost, to owners and occupiers of property adjacent to such public ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger. Grantee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.

(d) The City shall give reasonable advance notice to Grantee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice, except in the event of the contributory negligence or willful misconduct of the City or its contractors. When such notice has been given, Grantee shall provide information requested by the City regarding Grantee's future plans for use of the public way to be opened. When notice has been given, Grantee may only construct or install facilities during such period that the City has opened the public way for construction or installation.

(4) **Relocation.** Grantee shall relocate its facilities as ordered by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060, when there is construction, alteration, repair or improvement of a public way. Grantee shall complete the relocation by the date specified by the City. Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change or relocation. Grantee shall relocate its facilities at its own expense except where the Grantee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Grantee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation or as otherwise provided in RCW Section 35.99.060.

(5) **Temporary removal, adjustment or alteration of facilities.**

(a) Grantee shall temporarily remove, adjust or alter the position of its facilities at its cost, except as otherwise provided in RCW Section 35.99.060, at the request of the City for public projects, events, or other public operations or purposes.

(b) Grantee shall locate the precise horizontal and vertical location of its underground facilities by excavating upon request of the City. If the City's request is in support of a City project, the Grantee shall complete this service within 14 days at no cost to the City, except as otherwise provided in RCW Section 35.99.060,. If the City's request is in support of a third party's project, the Grantee shall be entitled to recover its cost from the project sponsor as set forth in RCW Section 35.99.060.

(c) If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Grantee for the temporary removal, adjustment or alteration of Grantee's facilities to accommodate the moving or removal of said building or other object. In such event, Grantee shall, at the cost of the person desiring to move or remove such building or

other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:

(i) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Grantee's business, consistent with the maintenance of proper service to Grantee's customers;

(ii) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the operations of Grantee, in the sole discretion of the City;

(iii) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and save Grantee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence or willful misconduct of the person moving or removing such building or other object or the negligence or willful misconduct of the agents or employees of the person moving or removing such building or other object; and

(iv) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.

(d) The City may require Grantee to temporarily remove, adjust or alter the position of Grantee's facilities as the City may reasonably determine to be necessary at no cost to the City, except as otherwise provided in RCW Section 35.99.060, for work deemed needed by the City in the Rights-of-Way. The City shall not be liable to Grantee or any other party for any direct (except as a result of the negligence or willful misconduct of the City or its contractors), indirect, consequential, punitive,

special or other damages suffered as a direct or indirect result of the City's actions.

(e) The temporary removal, adjustment or alteration of the position of Grantee's facilities shall not be considered relocation for any purpose whatsoever, except as otherwise provided in RCW Section 35.99.060.

(6) **Tree trimming.** The Grantee shall have the authority to trim trees or other natural growth on public property or which overhang streets, alleys, sidewalks and public ways of the City so as to prevent the branches of such trees from coming in contact with the Grantee's wires, cables or other equipment that may be damaged due to continued contact. Grantee takes full responsibility for removing debris when the work is complete. All trimming is to be done at the sole expense and responsibility of Grantee.

Trimming of trees and shrubbery within or overhanging the public ways to prevent contact with Grantee's Facilities shall be done in such a manner to cause the minimum amount of damage to trees and shrubs. If in the City's determination, trees are excessively damaged as a result of the work undertaken by or on behalf of Grantee, Grantee shall pay the City, within 30 days of submission of a statement by the City, the reasonable cost of any treatment required to preserve a tree or shrub or the cost for removal and replacement of the tree or shrub with landscaping of equal value or the value of the tree or shrub prior to the damage or removal, as determined by the City Manager or designee.

Any trimming or removal of trees or shrubs shall be done in full compliance with the City's Ordinances and all other laws or regulations of the City.

(7) **Underground installation.**

(a) The parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities, provided such requirement is applied on a non-discriminatory basis as required under applicable state or federal law.

(b) Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Grantee shall underground the Grantee Facilities in the manner specified by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060,. Where other utilities are present and involved in the undergrounding project, Grantee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trench excavation, backfill, and restoration, and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

(c) Grantee will maintain membership in good standing with the Utility Coordinating Council One Call Center, or other similar or successor organization designated to coordinate underground equipment locations and installations. Grantee shall abide by chapter 19.122 RCW (Washington State's "Underground Utilities" statutes) and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

(8) **Ducts and conduits.**

(a) If the Grantee is constructing underground conduit for its own use, the City may require the Grantee to construct excess conduit capacity in the public ways, provided that the City enters into a contract with the Grantee consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Grantee, (calculated as the difference between what the Grantee would have paid for the construction of its conduit and the additional cost only of construction of the excess conduit). If the City makes the additional conduit available to any other entity for the purposes of providing telecommunications service or cable service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the Grantee shall recover at least the fully allocated costs of the Grantee. The Grantee shall state both contract rates in the contract. The City shall inform the Grantee of the use, and any change in use, of the requested conduit

and related access structures, if any, to determine the applicable rate to be paid by the City.

(b) The City shall not require that the additional conduit space be connected to the access structure and vaults of the Grantee.

(c) Except as expressly provided in this section, Grantee shall not charge the City for any costs, of any kind whatsoever, for facilities provided by Grantee in accordance with this section.

(d) The provisions of this section shall conform to the requirements of RCW 35.99.070.

(9) **Location of Grantee facilities.**

(a) From time to time, the City, or its representatives, may request identification of the specific location of Grantee System facilities. The Grantee agrees to respond to such request within forty-eight (48) hours of the receipt of the request, excluding delays due to weather or other conditions. In the event that Grantee cannot locate such information within forty-eight (48) hours, Grantee shall notify the City. If Grantee fails to notify the City of its facilities locations within forty eight (48) hours, and damage is caused to Grantee's facilities as a direct result, the Grantee shall hold the City harmless from all liability, damage, cost or expense resulting from the City's actions in this regard unless such damage was caused by the negligence or willful misconduct of the City or its agents.

(b) Report of underground facilities. From time to time the City may require to design or construct right-of-way improvements in a specific area, the City or its designee may require the Grantee to submit a report of existing underground system facilities for a specific area of the City that will be impacted as a result of a planned right-of-way improvement. Within thirty (30) days after receipt by the Grantee of a request from the City or its designee, the Grantee shall submit a report of underground system facilities that shall comply with the following provisions:

(i) Certification by an engineer licensed in the State of Washington employed by the Grantee that the report accurately depicts the location of all system facilities, including drop service lines to individual subscribers, if any. The accuracy of this report shall be noted based upon the capability of the locating equipment used.

(ii) The accurate depth of the underground facility, as may be available based upon the capability of the locating device used. The accuracy of this information shall be noted.

(iii) Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

(iv) The City and Grantee recognize the importance of making best efforts to communicate during the planning and construction phases of right-of-way improvement projects. To that end, the City and Grantee agree to work cooperatively and to be reasonable and timely in requesting and providing necessary information. In the event the City reasonably determines that more precise information is needed for a specific aspect of a right-of-way project, the Grantee agrees to take the necessary steps to provide such precise information within thirty (30) days of receipt of request. If it is necessary for the Grantee to pot-hole or excavate and restore portions of the right-of-way to respond to the City's information request, the Grantee agrees to take such steps at its expense, , except as otherwise provided in RCW Section 35.99.060,and the City agrees to waive all permitting and inspection fees therefore.

(c) Within sixty (60) days of the effective date of this Franchise, Grantee shall provide the City with a current route map of the Telecommunication System located within the City. Upon City request, but no more often than once each year during the term of this Franchise, the Grantee shall provide the City with an updated route map showing the changes that have occurred in the Telecommunication System.

(d) Grantee agrees to obtain facilities location information from other users of the Public rights-of-way prior to Grantee's construction, reconstruction, maintenance, operations and repair of the Grantee's System facilities.

(10) **Removal and abandonment of facilities.** In the event that the use of any part of the Grantee's system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system equipment or facilities have been installed in any public ways or rights-of-way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired, upon receiving ten (10) business days prior written demand from the City, the Grantee shall promptly remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the public ways of rights-of-way. Said removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Grantee shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition satisfactory to the City. Any affected equipment or facilities of the Grantee remaining in place one-hundred eighty-one (181) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days with prior written request from the Grantee, and such request shall not be unreasonably withheld. Any equipment or facilities of the Grantee that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the equipment or facilities of the Grantee in place, the equipment or Facilities shall become that of the City, and the Grantee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such equipment or facilities. None of the foregoing affects or limits the Grantee's rights to compensation for an involuntary abandonment of its equipment or facilities under state or federal law.

(11) **Safety and maintenance requirements.**

(a) All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner.

(b) Grantee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Grantee, establish a reasonable time for Grantee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself at the cost of the Grantee or have them made at the cost of Grantee.

(c) If Grantee fails to commence, pursue or complete any work required by law, this Franchise or any applicable permit to be done in any public way within the time prescribed and to the satisfaction of the City, the City may at its discretion cause the work to be done. Grantee shall pay to the City the reasonable costs of the work in an itemized report provided by the City to Grantee within 30 days after receipt of such report.

(d) Grantee, and any person acting on its behalf, shall provide a traffic control plan that conforms to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property. Grantee shall implement and comply with its approved traffic control plan during execution of its work. The traffic control plan shall be developed and kept on site in Grantee’s possession for all work impacting vehicular and pedestrian traffic. Traffic control plans may be modified as necessary by the Grantee to achieve effective and safe traffic control. All road closures requested by Grantee require a detour plan submitted at least 48 hours in advance and prior City approval unless there is an emergency.

(e) Grantee shall maintain its facilities in proper working order. Grantee shall restore its facilities to proper working order upon receipt of notice from the City that facilities are not in proper working order. The City may, after discussions with Grantee, establish a reasonable time for Grantee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established time frame, the City may restore the facilities to proper working order or have them restored at the cost of Grantee.

(f) The City shall have the right to inspect all construction and installation work performed by Grantee pursuant to this Franchise to the extent necessary to ensure compliance by Grantee. On an ongoing basis, Grantee shall certify to the City that Grantee's work is being performed and completed in a satisfactory manner.

(g) On notice from the City that any work is being performed contrary to the provisions herein, or in an unsafe or dangerous manner or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the City may issue a stop work order and Grantee shall stop the work immediately. The City shall issue a stop work order in writing, unless given verbally in the case of an emergency, and provide the order to the individual doing work or post it on the work site. A copy of the order shall be sent to Grantee, and the order must indicate the nature of the alleged violation or unsafe condition and the conditions under which Grantee may resume work.

(12) **Removal of unauthorized facilities.** Within thirty (30) days following written notice from the City, Grantee shall, at its expense, remove unauthorized facilities and restore public rights-of-way and other property to as good a condition as existed prior to construction or installation of its facilities. Any plan for removal of said facilities must be approved by the City prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

(a) Upon expiration, termination, or cancellation of this Franchise;

(b) Upon abandonment of the facilities. Facilities shall be deemed abandoned if they are unused by Grantee as described in Section 5(10);

(c) If the facilities were constructed or installed prior to the effective date of this Franchise; unless such facilities were constructed or installed upon the condition of subsequent approval of this Franchise with the consent of the City;

(d) If the facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits;

(e) If the facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Franchise; or

(f) If the facilities are unauthorized for any reason whatsoever.

(13) **Restoration of public ways and other property.**

(a) Whenever necessary, after construction or maintaining any of Grantee's Facilities within the Rights-of-Way, the Grantee shall, without delay, and at Grantee's sole expense, except as otherwise provided in RCW Section 35.99.060, remove all debris and restore the surface and subsurface disturbed by Grantee as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during Grantee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable. Grantee agrees to pay all costs and expenditures required on the rights-of-ray as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Grantee for necessary trench patch maintenance, for a period of ten years from the date such maintenance was performed, normal wear and tear excepted. Favorable weather conditions permitting, Grantee agrees to repair rights-of-way as a result of settling, subsidence, or other needed

repairs or maintenance resulting from excavations made by the Grantee upon forty-eight (48) hours' notice excluding weekends and holidays. If Grantee fails to undertake such repairs as herein provided, the City may perform the repairs at Grantee's expense.

(b) Landscape restoration. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of the Grantee's facilities, shall be replaced or restored, at the Grantee's expense to the condition existing prior to performance of the work, except as otherwise provided in RCW Section 35.99.06.

(14) **Poles, structures, and property owned by others.** If and when the Grantee is authorized to install communication facilities aerially in accordance with chapter 12.48 of the Des Moines Municipal Code (DMMC), Grantee must obtain written approval from the owners of utility poles, structures and property not owned by Grantee prior to attaching to or otherwise using such poles, structures or property, and provide proof of such approval to the City. The City makes no representation and assumes no responsibility for the availability of utility poles, structures, and property owned by third parties for the installation of Grantee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by the City or third parties for any reason whatsoever. The installation of facilities by Grantee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, the authority of Grantee to construct, install, operate, maintain, and repair Grantee's facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

Sec. 6. Indemnification and liability and assumption of risk.

(1) Indemnification / Hold Harmless. The Grantee 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 activities or operations performed by the Grantee or on the Grantee's behalf under this Franchise agreement, except for injuries and damages caused by the contributory negligence or willful misconduct of the City.

(2) The City shall give the Grantee written notice of any claim or of the commencement of any action, suit or other proceeding covered by this section. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. However, the failure of the City to provide such notice in writing to Grantee shall not relieve Grantee of its duties and obligations under this Section, provided that Grantee is given sufficient advance notice to perform its duties under this Section. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee'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.

(3) Should a court of competent jurisdiction determine that this Agreement 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. The provisions of this section shall survive the expiration or termination of this Agreement.

(4) **Damages and penalties.** By acceptance of this Franchise, Grantee specifically agrees that it will pay, all damages or penalties which the City, its officers, agents, employees, or contractors may legally be required to pay as a result of damages arising out of copyright infringements and all other damages arising out of Grantee's or Grantee's agents' installation, maintenance, or operation of the

telecommunications System, except as specifically referenced elsewhere in this Franchise.

(5) **Expenses.** If any action or proceeding is brought against the City or any of its officers, agents, or employees for claims for damages or penalties described in this Section, the Grantee, upon written notice from the City, shall assume the investigation of defense and fully control any resolution or compromise thereof, including the employment of counsel and the payment of all expenses including the reasonable value of any services rendered by any officers, agents, employees or contractors of the City which are not unreasonably duplicative of services provided by Grantee and its representatives. The City shall fully cooperate with the Grantee.

(6) **Separate counsel.** The City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and the Grantee shall pay the reasonable fees and expenses of such separate counsel if representation of both the Grantee and the City by the same attorney would be inconsistent with accepted canons of professional ethics and if separate counsel is employed with the approval and consent of the Grantee, which shall not be unreasonably withheld.

(7) **Assumption of risk.** Grantee assumes the risk of damage to its facilities located in the City's public ways from activities conducted by third parties or the City, its elected officials, officers, employees, agents, or representatives, except in the event of the negligence or willful misconduct of any one or more of the above persons. Grantee releases and waives any and all claims against the City, its elected officials, officers, employees, agents, and representatives for damage to or destruction of the Grantee's facilities except to the extent any such damage or destruction is caused by or arises from the negligence or willful misconduct of the City. Grantee bears sole responsibility to insure its property. Grantee shall ensure that its insurance contracts waive subrogation claims against the City, its elected officials, officers, employees, agents, and representatives, and Grantee shall indemnify, defend and hold harmless the City, its elected officials, officers, employees,

agents, and representatives against any and all subrogation claims if it fails to do so.

Sec. 7. Insurance.

(1) Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to Persons or damage to property which may arise from or in connection with this Franchise by the Grantee, their agents, representatives, employees or subcontractors.

(a) Amounts of Insurance. In accordance with applicable law, the Grantee shall maintain throughout the term of this Franchise the following insurance limits:

(i) Automobile Liability. Commercial automobile liability insurance policy in the amount of than Five Million Dollars ($5,000,000) combined single limit each accident for bodily injury and property damage covering all owned, hired, and non-owned vehicles).

(ii) Commercial General Liability. A commercial general liability insurance policy issued by a company duly authorized to do business in the State of Washington insuring the Grantee with respect to the installation, maintenance, and operation of Grantee's Telecommunication System in the amount of Five Million Dollars ($5,000,000) per occurrence for bodily injury and property damage and Five Million Dollars ($5,000,000) general aggregate. The City shall be included as an additional insured as their interest may appear under this Agreement under Grantee's Commercial General Liability insurance policy.

(iii) Excess General Liability. Excess or Umbrella Liability coverage at limits of One Million Dollars ($1,000,000) per occurrence and annual aggregate providing coverage above the primary Commercial General, Commercial automobile liability and employer's liability insurance.

(iv) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. This requirement may be satisfied instead through the

Grantee's primary Commercial General and Automobile Liability coverage, or any combination thereof.

(b) Other Insurance Provisions. The insurance policies are to contain the following provisions for Automobile Liability and Commercial General Liability insurance:

(i) The Grantee's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Grantee's insurance and shall not contribute with it.

(ii) Upon receipt of notice from it insurer(s) Grantee shall endeavor to provide Grantor with thirty (30) days prior written notice of cancellation

(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. Upon acceptance of the Franchise, Grantee shall furnish the City with original certificates and blanket additional insured endorsement, evidencing the insurance requirements of the Grantee.

(e) Subcontractors. Grantee shall require any contractor or subcontractor to obtain and maintain substantially the same insurance with substantially the same limits as required of Grantee.

(2) Endorsements. Grantee agrees that with respect to the insurance requirements contained above, all insurance certificates will contain the following required provisions:

(a) Include the City and its officers, employees, and elected representatives as an additional insured as their interest may appear under this Agreement.

(c) Shall be on an occurrence basis and shall be primary coverage of all losses resulting from Grantee's operations covered by the policies.

(3) **Insurance term.** The insurance required above shall be kept in full force and effect by Grantee during this Franchise and thereafter until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of Grantee's Telecommunication System, should such removal be required by City Council or undertaken by Grantee.

(4) **Issuing companies.** Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

(5) **No limit on liability.** Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Sec. 8. Performance bond and security fund.

(1) **Amount.** The Grantee shall provide the City with a financial guarantee in the amount of Twenty-Five Thousand Dollars ($25,000) running for, or renewable for, the duration of the construction of Grantee's facilities in the City, in a form and substance acceptable to the City. This Franchise performance bond shall be separate and distinct from any other bond or deposit required.

(2) **Damages.** In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise, then there shall be recovered jointly and severally from the principal and any surety of such financial guarantee any damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the

cost of removal or abandonment of facilities hereinabove described.

(a) Before any draws are made on the Franchise performance bond, the City Manager or designee shall give written notice to the Grantee:

(i) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the Grantee's act or default;

(ii) Providing a reasonable opportunity for the Grantee to first remedy the existing or ongoing default or failure, if applicable;

(iii) Providing a reasonable opportunity for the Grantee to pay any moneys due the City before the City draws on the Franchise performance bond, if applicable;

(iv) That the Grantee will be given an opportunity to review the act, default or failure described in the notice with the City Manager or designee.

(b) The Grantee shall replace the Franchise performance bond within fourteen (14) days after written notice from the City Manager or designee that there is a deficiency in the amount of the Franchise performance bond.

(3) **Security fund.** In addition to the performance bond, Grantee shall establish and maintain a security fund in the amount of twenty-five thousand dollars ($25,000), at its cost, with the City by depositing such monies, letters of credit, or other instruments in such form and amount acceptable to the City within 30 calendar days of the effective date of this Franchise. No sums may be withdrawn from the fund by Grantee without consent of the City. The security fund shall be maintained at the sole expense of Grantee so long as any of the Grantee's facilities occupy a public way.

(a) The fund shall serve as security for the performance of this Franchise, including any claims, costs, damages, judgments, awards, attorneys' fees or liability, of any

kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.

(b) Before any sums are withdrawn from the security fund, the City shall give written notice to Grantee:

(i) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, attorneys' fees or liability which the City has incurred or may pay by reason of Grantee's act or default;

(ii) Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure, if applicable;

(iii) Providing a reasonable opportunity for Grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and

(iv) Grantee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

(c) Grantee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.

(d) Insufficiency of the security fund shall not release or relieve Grantee of any obligation or financial responsibility.

Sec. 9. Taxes, charges, and fees.

(1) **Franchise fee.** RCW 35.21.860 currently prohibits a municipal franchise fee for permission to use the right of way for telephone business purposes. Based on the representations of Grantee, it is the City's understanding that Grantee will use the right of way for telephone business purposes as defined by RCW 82.16.010 or as a service provider as such term is defined in RCW Section 35.99.010 for the provision of telecommunications

services. If this prohibition is removed or does not apply to future services, Grantee understands the City may assess a reasonable franchise fee in accordance with the City Code, so long as local, State or federal law does not otherwise prohibit such fee.

(2) **Utility tax.** The parties further understand that RCW 35.21.870 currently limits the rate of City tax upon telephone business activities to six percent (6%) of Gross Receipts, unless a higher rate is approved by vote of the people. The parties agree, however, that nothing in this Franchise shall limit or expand the City's power of taxation, as now or may hereafter exist. Grantee understands that some of its business activities in the City of Des Moines as identified herein may be taxable activities subject to the six percent (6%) gross receipts tax rate, as imposed under the City's telephone business tax, adopted in Des Moines Municipal Code Chapter 3.68, subject to such activities being deemed taxable under applicable state and federal laws. This provision does not limit the City's power to amend Des Moines Municipal Code Chapter 3.68 as may be permitted by law, including increases to the tax rate. Notwithstanding any other provision of this Franchise, nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on Franchisee’s business activities under this Franchise under applicable law.

(3) **Permit and administrative fees.** Grantee shall also pay and be responsible for all charges and fees (authorized under applicable law) imposed to recover actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise, any use and/or development authorizations which may be required, or any permit which may be required, to inspecting plans and construction, or to the preparation of a detailed statement. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City but shall not excuse Grantee from paying and being responsible for other actual administrative expenses incurred by the City.

(a) Grantee shall pay a franchise processing fee of $5,000 within 30 calendar days of the effective date of this Franchise.

(b) Grantee shall pay fees according to applicable sections of the City Code.

(4) Grantee shall pay and be responsible for taxes permitted by law.

(5) In addition to penalties and other remedies for which Grantee may be subjected, the City reserves the right to impose site-specific charges (authorized under applicable law) for placement of structures used to provide telecommunications services. Unless otherwise agreed by the parties, such charges shall be an amount equal to at least fifty percent (50%) of the costs of construction or installation of such structures.

Sec. 10. Access to facilities and universal service.

(1) Grantee shall provide access to its facilities by hire, sale, or resale on a nondiscriminatory basis. Grantee shall make its telecommunications services available to any customer within its franchise area who shall request such service whenever feasible, without discrimination as to the terms, conditions, rates or charges for the Grantee's services; provided, however, that nothing in this section shall prohibit Grantee from making any reasonable classifications among differently situated customers.

(2) Grantee shall provide Internet access to users of City property, at locations requested by the City, if it is practicable, upon Grantee’s then-current market rates for such service and pursuant to a separate services agreement. Grantee and the City may enter into a separate agreement or agreements regarding the allocation of costs to construct, install, operate, maintain, repair, and remove facilities needed to provide such access; provided, however, that nothing herein shall require the City to accept construction or installation of facilities on City property.

Sec. 11. Acquisition of facilities. Upon Grantee’s acquisition of any facilities in the public way, or upon any addition or annexation to the City of any area in which Grantee has facilities, such facilities shall immediately be subject to

the terms of this Franchise without further action of the City or Grantee.

Sec. 12. Vacation of public ways. The City reserves the right to vacate any public way which is subject to rights, privileges, and authority granted by this Franchise. If Grantee has facilities in such public way, the City shall reserve an easement for Grantee, if requested by Grantee.

Sec. 13. Duty to provide information. Grantee's obligations under this section are in addition to those provided elsewhere in this Franchise. Within fifteen (15) days of a written request from the City, Grantee shall furnish the City with all requested information sufficient to demonstrate:

(1) That Grantee has complied with all requirements of this Franchise;

(2) That taxes, fees, charges, or other costs owed or payable by Grantee have been properly collected and paid; and

(3) The names of the users of Grantee's facilities and the services and products those users are providing to the public.

Sec. 14. Records.

(1) Grantee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Grantee and its affiliates that are reasonably necessary for the enforcement of this Franchise or to verify Grantee's compliance with terms or conditions of this Franchise. Grantee will not deny the City access to any of Grantee's records on the basis that Grantee's documents or records are under the control of any affiliate or a third party.

(2) All documents and records maintained by Grantee shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Grantee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Grantee to disclose proprietary or

confidential information without adequate safeguards for its confidential or proprietary nature.

(3) One copy of documents and records requested by the City will be furnished to the City at the cost of Grantee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days of the City's request, that the City inspect them at Grantee's local office. If any documents or records of Grantee are not kept in a local office and/or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Franchise, or to verify Grantee's compliance with terms or conditions of this Franchise, then all reasonable travel and related costs incurred in making such examination shall be paid by Grantee.

(4) At the request of the city, Grantee shall provide the City with an annual report on the number of feet of right-of-way Grantee occupies in the City and the services Grantee is providing in the City. Grantee may request all or a portion of such information be protected from disclosure under the Washington Public Records Act (RCW 42.56).

Sec. 15. Assignment or transfer. Grantee's rights, privileges, and authority under this Franchise, and ownership or working control of facilities constructed or installed pursuant to this Franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Grantee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any transfer, assignment or disposal of Grantee's rights, privileges, and authority under this Franchise, or ownership or working control of facilities constructed or installed pursuant to this Franchise, may be subject to reasonable conditions as may be prescribed by the City.

(1) No rights, privileges, or authority under this Franchise shall be assigned, transferred, or disposed of in any manner within twelve (12) months after the effective date of this Franchise.

(2) Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.

(3) Grantee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of assignment, transfer, or disposal:

(a) Complete information setting forth the nature, terms and conditions of the proposed assignment, transfer, or disposal;

(b) Any other information reasonably required by the City; and

(c) A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal.

(3) No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.

(4) Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise or ownership or working control of facilities constructed or installed pursuant to this Franchise, without prior written approval of the City pursuant to this section, shall be void and is cause for termination of this Franchise.

(5) Transactions between affiliated entities and transactions involving a purchaser of all or substantially all of Grantee’s assets are exempt from City approval; provided that, Grantee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control

of Grantee. City approval shall not be required for mortgaging purposes or if said transfer is from Grantee to another person controlled by Grantee.

(6) All terms and conditions of this Franchise shall be binding upon all permitted successors and assigns of Grantee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

Sec. 16. Violations, noncompliance, and other grounds for termination or cancellation.

(1) This Franchise, and any right, privilege or authority of Grantee to enter, occupy or use public ways may be terminated or cancelled by the City for the following reasons:

(a) Violation of or noncompliance with any term or condition of this Franchise by Grantee;

(b) Violation of or noncompliance with the material terms of any use and/or development authorization or required permit by Grantee;

(c) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Grantee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;

(d) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;

(e) Misrepresentation or lack of candor by or on behalf of Grantee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Grantee;

(f) Abandonment of facilities;

(g) Failure of Grantee to pay taxes, fees, charges or costs when and as due, unless subject to a proper and timely legal protest; or

(h) Insolvency or bankruptcy of Grantee.

(2) In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Grantee to enter, occupy or use public ways, Grantee shall be given written notice and a reasonable period of time not exceeding thirty (30) days to furnish evidence:

(a) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;

(b) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or

(c) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.

(3) In the event that Grantee fails to provide evidence reasonably satisfactory to the City as provided in subsection (2) of this section, the City shall refer the apparent violation, noncompliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

(4) If the City Council determines that the violation, noncompliance, or other grounds above for termination or cancellation exist, then, Grantee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the foregoing and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Grantee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Grantee's actions or omissions. The City

Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Grantee:

(a) Whether the misconduct was egregious;

(b) Whether substantial harm resulted;

(c) Whether the violation was intentional;

(d) Whether there is a history of prior violations of the same or other requirements;

(e) Whether there is a history of overall compliance; and

(f) Whether the violation was voluntarily disclosed, admitted or cured.

(5) The City Council's choice of remedy shall not excuse Grantee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit. Grantee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for termination or cancellation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, or the Grantee may have at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Grantee.

Sec. 17. Notices.

(1) Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY:

City Manager
City of Des Moines
21630 11th Ave. S., Ave A
Des Moines, WA 98198

GRANTEE:

with a copy (except for invoices) to:

(2) Grantee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Grantee shall cooperate with the City and make its best efforts to immediately respond to minimize damage, protect the welfare, health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Grantee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

Sec. 18. Non-waiver. The failure of either party to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the party and shall not prevent the party from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Sec. 19. Eminent domain. This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Sec. 20. Limitation of liability. Except as otherwise set forth in this Franchise, administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, agents, and representatives for any injury or damage; or by reason of any schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the City; or for the accuracy of plans submitted to the City.

Sec. 21. Damage to facilities. Except as otherwise set forth herein, unless directly and proximately caused by the active sole negligence of the City, the City shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.

Sec. 22. 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 Franchise 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 Franchise 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 Franchise 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 Franchise, each party shall pay its own legal costs and attorneys' 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.

Sec. 23. Severability. If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise or its application to any other person or entity.

Sec. 24. Miscellaneous.

(1) **Equal employment and nondiscrimination.** Throughout the term of this Franchise, Grantee will fully comply with all applicable equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.

(2) **Local employment efforts.** Grantee will use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever the Grantee employs contractors to perform work under this Franchise.

(3) **Descriptive headings.** The headings and titles of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.

(4) **Force majeure.** Grantee shall not be required to perform any covenant or obligation in this Franchise, or be liable in damages to the City, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God or force majeure. An "act of God" or "force majeure" is defined for purposes of this Franchise as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of

the public enemy, wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Grantee.

(5) **No joint venture.** Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

(6) **Actions of the City or Grantee.** In performing their respective obligations under this Franchise, the City and Grantee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

(7) **Counterparts.** This Franchise may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Franchise shall be deemed to possess the full force and effect of the original.

(8) **Entire agreement.** This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.

(9) **Modification.** The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

(10) **Rights granted.** This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and terms stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title.

(10) **Contractors and subcontractors.** Grantee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to

the same restrictions, limitations and conditions as if the work were performed by Grantee.

Sec. 26. Publication. The City Clerk is authorized and directed to publish a summary hereof.

Sec. 27. Effective date. This Ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law, but if, and only if, the Grantee has endorsed this Ordinance and accepted the terms and conditions thereof.

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

_____
M A Y O R

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Published:

ACCEPTANCE:

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening, to the extent that the City is legally entitled to do so, in any legal or regulatory proceeding affecting the Telecommunication System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

By: _____

Printed Name:_____

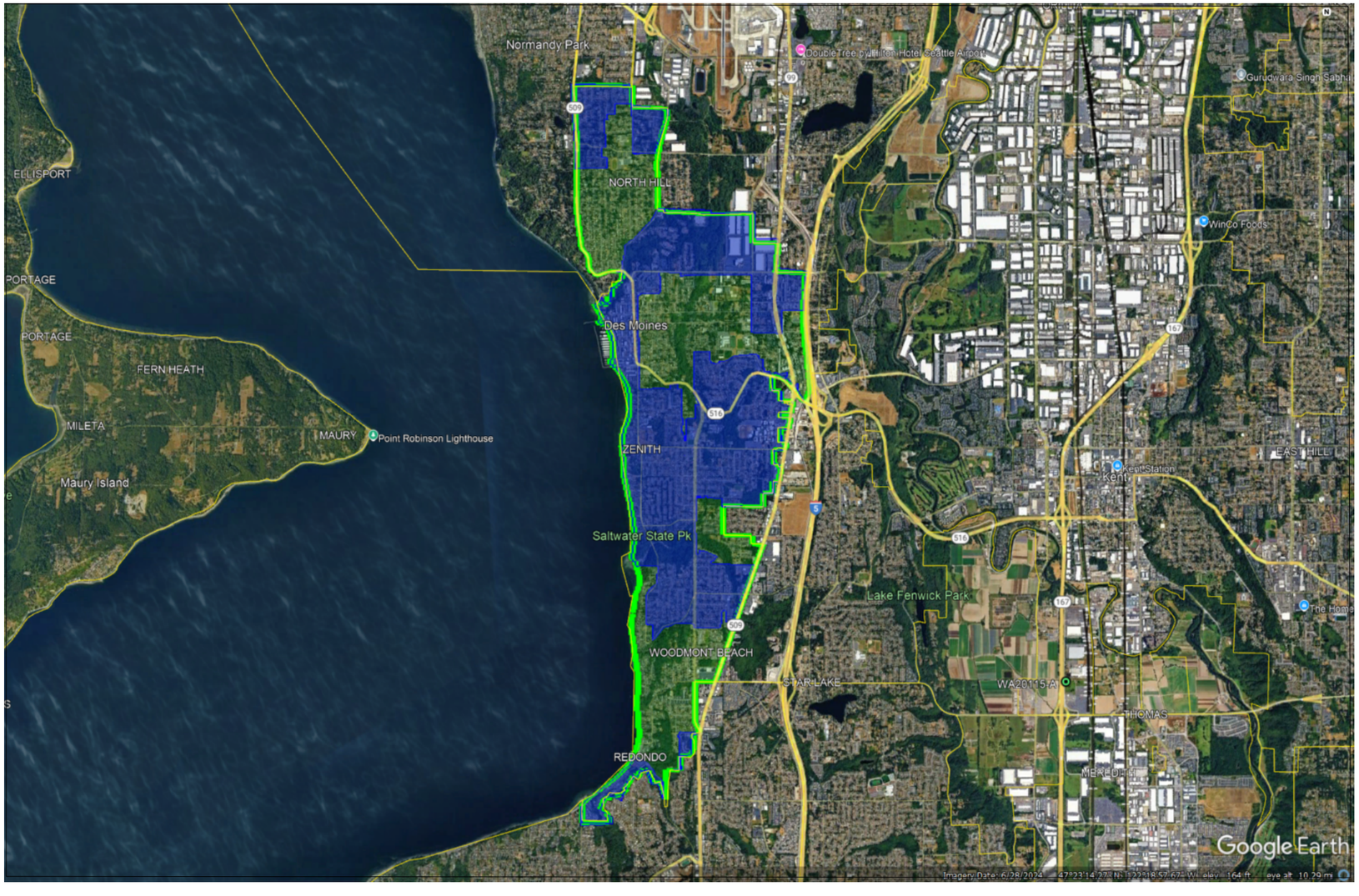
Date:_____

Title: _____

Attachment #2

City Limit

Project Area



811 Know what's below. Call before you dig.

N

APPROXIMATE TRUE NORTH

ENGINEERING FIRM:

OWNER / CLIENT:

HyperFiber

400 Chesterfield Center
Chesterfield, MO 63017

REVISIONS:

REV.	DATE	DESCRIPTION

PROJECT INFO:

DES MOINES AREA MAP

KING COUNTY
WASHINGTON

SCALE IS FOR REFERENCE PURPOSES ONLY. THE CABLE CONTRACTOR IS RESPONSIBLE FOR CONTACTING THE APPROPRIATE PERMITTING MUNICIPALITY PRIOR TO BEGINNING CONSTRUCTION. IN ORDER TO VERIFY THAT THE CABLE IS BEING PLACED WITHIN THEIR RIGHT-OF-WAY.

DRAWN BY:

APPROVED BY:

SHEET TITLE:

PROPOSED PROJECTAREA MAP

DWG NAME: Des_Moines_Proposed_Area_Map_v1_20250317.dwg

SCALE: NOT TO SCALE

SHEET #: C0

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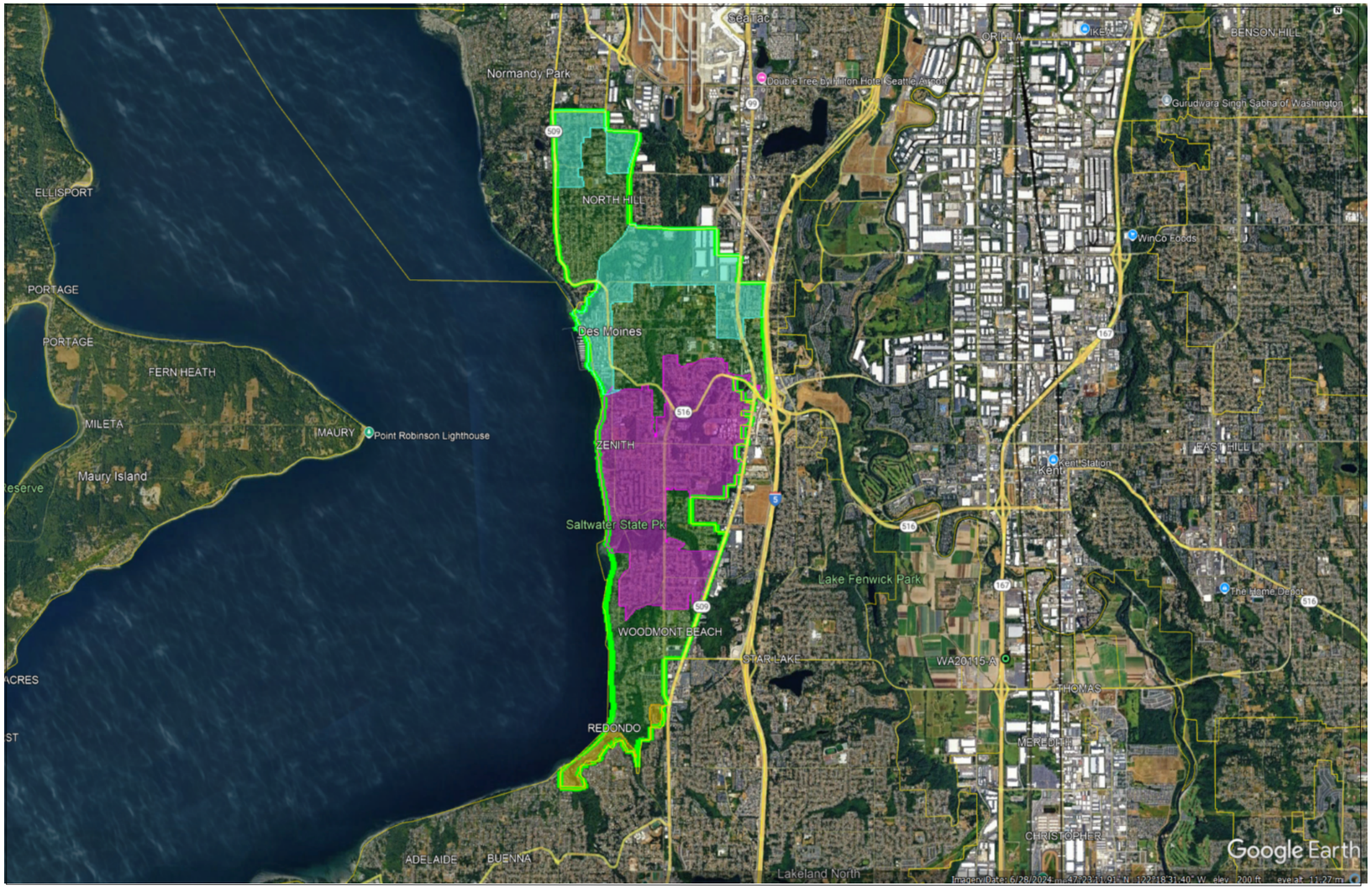
City Limit

Project Area 1

Project Area 2

Project Area 3



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APPROXIMATE TRUE NORTH

ENGINEERING FIRM:

OWNER / CLIENT:

HyperFiber

400 Chesterfield Center
Chesterfield, MO 63017

REVISIONS:

REV.	DATE	DESCRIPTION

PROJECT INFO:

DES MOINES AREA MAP

KING COUNTRY
WASHINGTON

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DRAWN BY:

APPROVED BY:

SHEET TITLE:

PROPOSED BUILD ORDER MAP

DWG NAME:
Des_Moines_Proposed_Area_Map_v1_20250317.dwg

SCALE: NOT TO SCALE

SHEET #: C1

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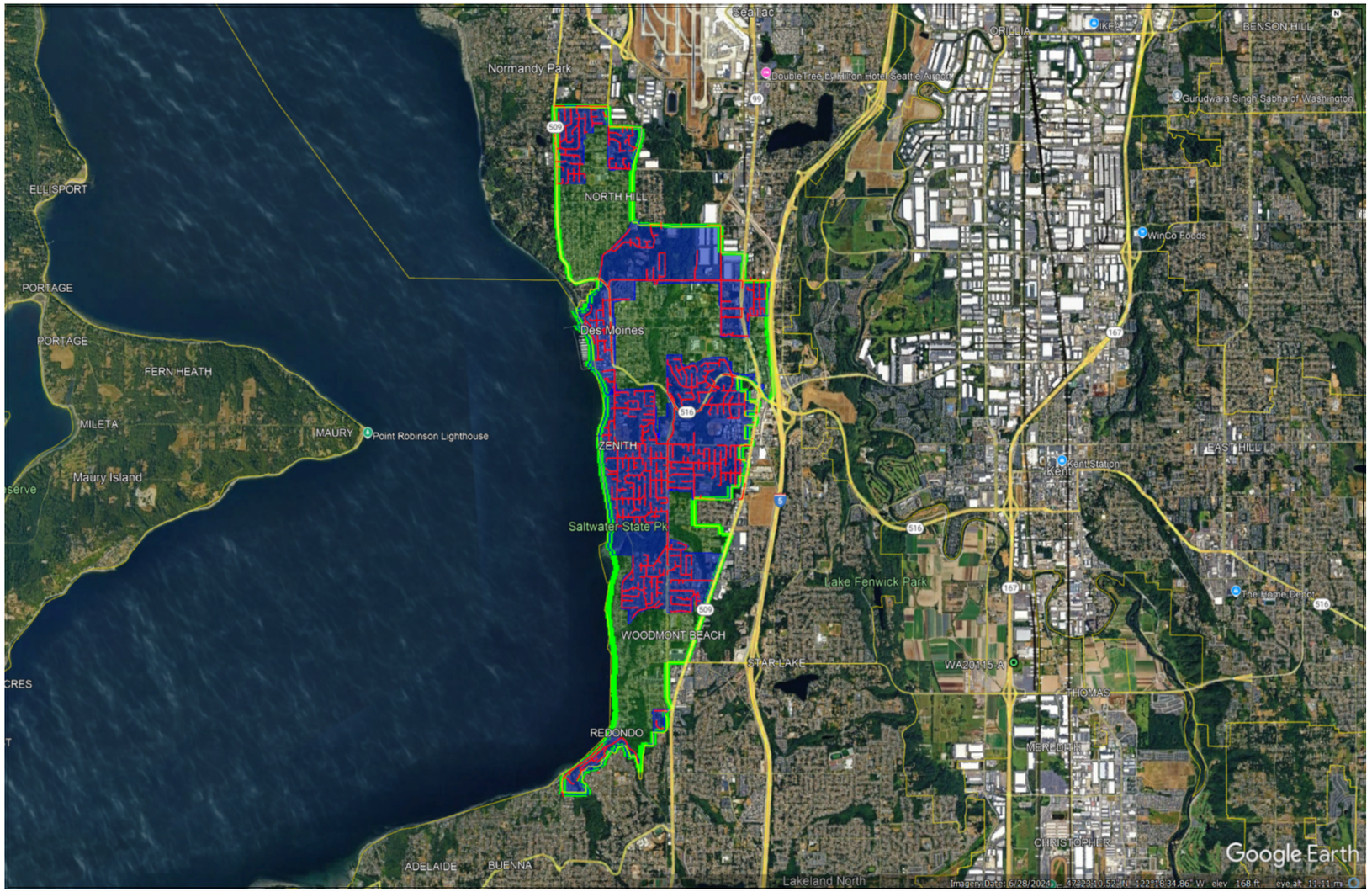
City Limit

Project Area

Proposed Routes



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APPROXIMATE TRUE NORTH

ENGINEERING FIRM:

OWNER / CLIENT:

HyperFiber

400 Chesterfield Center
Chesterfield, MO 63017

REVISIONS:

REV.	DATE	DESCRIPTION

PROJECT INFO:

DES MOINES AREA MAP

KING COUNTRY
WASHINGTON

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DRAWN BY:

APPROVED BY:

SHEET TITLE:

PROPOSED ROUTES

DWG NAME: Des_Moines_Proposed_Area_Map_v1_20250317.dwg

SCALE: NOT TO SCALE

SHEET #: C2

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