

AMANDED AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, December 14, 2023 - 6:00 PM**

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

SWEARING IN OF COUNCILMEMBER YOSHIKO GRACE MATSUI

ROLL CALL

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

COMMENTS FROM THE PUBLIC

COMMITTEE CHAIR REPORT

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

Item 1. ~~THIRD QUARTER FINANCE REPORT~~

CONSENT AGENDA

Item 1. APPROVAL OF VOUCHERS
Motion is to approve the payment vouchers through November 30, 2023 and payroll transfers through December 06, 2023 in the attached list and further described as follows:

EFT Vendor Payments	#9179-9346	\$1,364,695.72
Wires	#2375-2410	\$4,045,587.17
Accounts Payable Checks	#165416-165487	\$286,920.05
Voided Checks	#164929	(\$1,325.00)
Voided EFT's	#9258, 9298, 9305	(\$18,568.82)
Payroll Checks	#19760-19764	\$3,194.72
Direct Deposit	#7363-7534	\$462,103.25
Payroll Checks	#19765-19766	\$2,775.54
Direct Deposit	#7535-7700	\$483,468.09

Payroll Checks	#7701-7870	\$555,907.42
Direct Deposit	#7871-7871	\$2,341.47

Total Checks and Wires for A/P & Payroll: \$7,191,156.93

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES
Motion is to approve the November 09, 2023 City Council Regular Meeting Minutes.

[Approval of Minutes](#)

Item 3. KING COUNTY COOPERATIVE WATERSHED MANAGEMENT GRANT AWARD – DES MOINES CREEK ESTUARY PROJECT
Motion is to accept the King County Cooperative Watershed Management Grant Award for the Des Moines Creek Estuary Project and authorize the City Manager to sign the Grant Agreement substantially in the form as submitted.

[King County Cooperative Watershed Management Grant Award - Des Moines Creek Estuary Project](#)

Item 4. AHBL CONSULTANT SERVICES CONTRACT
Motion is to authorize the City Manager to sign the Consultant Services Contract between the City of Des Moines and AHBL, substantially in the form as attached.

[AHBL Consultant Services Contract](#)

Item 5. 24TH AVE S IMPROVEMENTS PROJECT - PUGET SOUND ENERGY EASEMENT AMENDMENT
Motion is to approve the Puget Sound Energy Easement Amendment on Tax Parcel No. 0922049018, and further authorize the City Manager to sign said easement substantially in the form as submitted.

[24th Ave S Improvements Project – Puget Sound Energy Easement Amendment](#)

Item 6. RIGHT OF WAY DEDICATION - DES MOINES THEATER
Motion is to authorize the City Manager to accept a Right-of-Way dedication from the Des Moines Theater, King County Tax Parcel No. 20066001100, which is located along the Marine View Drive property frontage.

[Right of Way Dedication – Des Moines Theater](#)

Item 7. REGIONAL COORDINATION FRAMEWORK FOR DISASTERS AND PLANNED EVENTS
Motion is to approve the agreement for the Regional Coordination Framework for Disaster and Planned Events for Public and Private Organizations and to authorize the City Manager to sign the agreement in substantially in the form submitted.

[Regional Coordination Framework for Disasters and Planned Events](#)

- Item 8. 2024-2025 RECYCLING PROGRAM PROFESSIONAL SERVICES CONTRACT
Motion is to approve the Professional Services Contract for the 2024-2025 Recycling Program between the City of Des Moines and Olympic Environmental Resources and to authorize the City Manager to sign substantially in the form at submitted.
[2024-2025 Recycling Contract Agenda Item](#)
- Item 9. DEPARTMENT OF ECOLOGY 2023-2025 WATER QUALITY STORMWATER CAPACITY GRANT AWARD
Motion is to accept the State of Washington Department of Ecology 2023-2025 Water Quality Stormwater Capacity Grant Agreement between the State of Washington Department of Ecology and the City of Des Moines, and authorize the City Manager to sign the Grant Agreement substantially in the form as submitted.
[Department of Ecology 2023-2025 Water Quality Stormwater Capacity Grant Award](#)
- Item 10. COMMERCE MIDDLE HOUSING GRANT AGREEMENT
Motion 1 is to authorize the City Manager to sign the Middle Housing Grant Agreement (Contact No. 24-63326-113) between the City of Des Moines and the Washington State Department of Commerce, substantially in the form as attached.

Motion 2 is to authorize the City Manager to sign the Consultant Services Contract between the City of Des Moines and AHBL, substantially in the form as attached.
[Commerce Middle Housing Grant Agreement for the City of Des Moines](#)

UNFINISHED BUSINESS

- Item 1. RECONSIDERATION OF ORDINANCE NO. 1782 AND 1783
[Reconsideration of Ordinances No. 1782 and 1783](#)

NEW BUSINESS

- Item 1. CECIL POWELL NEIGHBORHOOD PARK IMPROVEMENTS – PUBLIC WORKS CONSTRUCTION CONTRACT AWARD
Staff Presentation by Director of Community Events and Services Nicole Nordholm

[Cecil Powell Neighborhood Park Improvements – Public Works Construction Contract Award](#)
[Cecil Powell 12-14-23](#)
- Item 2. 2023 BUDGET AMENDMENTS
Staff Presentation by Finance Director Jeff Friend

[2023 Annual Budget Amendments](#)
[Budget Amendment Corrections](#)

Item 3. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

NEXT MEETING DATE

January 04, 2024 City Council Regular Meeting

ADJOURNMENT

[Public Comment 12.14.2023](#)

CITY OF DES MOINES
Voucher Certification Approval
December 14, 2023
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 **December 14, 2023** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through November 30, 2023 and payroll transfers through December 6, 2023 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		9179	9346	1,364,695.72
Wires		2375	2410	4,045,587.17
Accounts Payable Checks		165416	165487	286,920.05
Voided Checks		164929		(1,325.00)
Voided EFT's		9258, 9298, 9305		(18,568.82)
Total Vouchers paid				5,677,309.12
Payroll Vouchers				
Payroll Checks	11/3/2023	19760	19764	3,194.72
Direct Deposit		7363	7534	462,103.25
Payroll Checks	11/20/2023	19765	19766	2,775.54
Direct Deposit		7535	7700	483,468.09
Payroll Checks	12/5/2023	19767	19770	4,057.32
Direct Deposit		7701	7870	555,907.42
Direct Deposit	12/6/2023	7871	7871	2,341.47
Total Paychecks & Direct Deposits				1,513,847.81
Total checks and wires for A/P & Payroll				7,191,156.93

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, November 9, 2023 - 6:00 PM**

CALL TO ORDER

Mayor Matt Mahoney called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Vic Pennington.

ROLL CALL

Council Present:

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

Staff Present:

City Manager Michael Matthias; City Attorney Tim George; Assistant City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Chief Administrative Officer Bonnie Wilkins; Finance Director Jeff Friend; Judge Lisa Leone; Director of Court Administration Melissa Patrick; Harbormaster Scott Wilkins; Community Development Director Denise Lathrop; Planning & Development Services Manager Laura Techico; Senior Planner Jason Woycke; Public Works Director Andrew Merges; Building Official Dan Hopp; Assistant Police Chief Patti Richards; Director of Parks, Recreation and Senior Services Nicole Nordholm; and Events and Facilities Manager Cortney Wilt

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

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

COMMENTS FROM THE PUBLIC

- Cassie Moralez; Traffic Safety - S. 223rd
- Lloyd Lytle Jr.; Masonic Home, City's Future
- George Pettibone; Masonic Home
- Annie & Josh Pantzke; Licensing for Short Term Rentals

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- Bill Linscott; Marina Steps, the Citizens Advisory Committee Meeting, and One Time Money.

COMMITTEE CHAIR REPORT

- Environment Committee Meeting: Chair Jeremy Nutting

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- No Report

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS
Motion is to approve the payment vouchers through October 27, 2023 and payroll transfers through October 20, 2023 in the attached list and further described as follows:

EFT Vendor Payments	#9080-9178	\$ 744,094.10
Wires	#2361-2374	\$2,086,873.58
Accounts Payable Checks	#165324-165415	\$ 316,238.68
Voided Checks sent to DOR		(\$1,340.63)
Payroll Checks	#19756-19756	\$ 1,013.65
Direct Deposit	#7198-7362	\$ 453,690.78
Total Checks and Wires for A/P & Payroll:		\$3,600,570.16

Item 2: APPROVAL OF MINUTES
Motion is to approve the October 19, and October 26, 2023 City Council Regular Meeting Minutes.

Item 3: SMALL BUSINESS SATURDAY PROCLAMATION
Motion is to approve the Proclamation recognizing the Saturday after Thanksgiving as Small Business Saturday.

Item 4: 2024 HUMAN SERVICES ADVISORY COMMITTEE - FUNDING RECOMMENDATIONS AMENDMENT
Motion is to approve the 2024 Human Services funding recommendations amendment and authorize the City Manager to sign a contract reflecting the amendment.

Item 5: DES MOINES CREEK BUSINESS PARK WEST MASTER PARK - HEARING EXAMINER REVIEW

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Motion is to remand the Master Plan decision for the Des Moines Creek Business Park West Master Plan application filed under LUS2022-0044 to the Hearing Examiner pursuant to DMMC 18.240.160(3).

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda; seconded by Deputy Mayor Traci Buxton.

Councilmember JC Harris pulled Consent Agenda Item #4.

The remainder of the Consent Agenda passed 7-0.

Mayor Matt Mahoney read the Small Business Saturday Proclamation into the record.

Council discusses Consent Agenda Item #4.

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda Item #4 as presented; seconded by Councilmember Harry Steinmetz.
Motion passed 6-1.

For: Mayor Matt Mahoney; Deputy Mayor Traci Buxton; Councilmember Gene Achziger, Councilmember Jeremy Nutting, Councilmember Vic Pennington, Councilmember Harry Steinmetz.

Against: Councilmember JC Harris

PUBLIC HEARING/CONTINUED PUBLIC HEARING

2024 PROPERTY TAX LEVIES
Staff Presentation by Finance Director Jeff Friend

At 6:29 p.m. Mayor Matt Mahoney opened the Public Hearing.

- Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2024 Property Tax Levy.

Mayor Matt Mahoney asked 3 times if anyone wished to speak.

Seeing none, Mayor Matt Mahoney asked Council if they had any questions.

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At 6:34 p.m. Mayor Matt Mahoney closed the Public Hearing.

Direction/Action

Motion 1 made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 23-053, determining the amount of funds to be raised by ad valorem taxes for the year 2024 for general City expenditures; seconded by Deputy Mayor Traci Buxton.
Motion passed 7-0.

Motion 2 made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 23-052, authorizing the increase in ad valorem taxes for the year 2024 for general City expenditures; seconded by Deputy Mayor Traci Buxton.
Motion passed 7-0.

2024 PRELIMINARY ANNUAL BUDGET, SECOND READING
Staff Presentation by Finance Director Jeff Friend

At 6:40 p.m. Mayor Matt Mahoney opened the Public Hearing.

- Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2024 Preliminary Annual Budget.

Mayor Matt Mahoney asked 3 times if anyone wished to speak.

- Marnie Sevores; Des Moines
- Bill Linscott; Des Moines

Mayor Matt Mahoney asked Council if they had any questions.

At 7:18 p.m. Mayor Matt Mahoney closed the Public Hearing.

Direction/Action

Motion made by Councilmember Jeremy Nutting to pass Draft Ordinance No. 23-051, establishing the 2024 Annual Budget for the fiscal year ending December 31, 2024; seconded by Councilmember Vic Pennington.

Motion made by Deputy Mayor Traci Buxton to create an Ad Hoc Finance Committee in the First Quarter of 2024; seconded by Councilmember Harry Steinmetz.
Amended motion passed 5-2.

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

Against: Councilmember Gene Achziger, and Councilmember JC
Harris.

Amended motion made by JC Harris to set aside \$100,000 to increase
the IT Budget for the Website; seconded by Councilmember Gene
Achziger.

Amended motion failed 2-5.

For: Councilmember Gene Achziger and Councilmember JC Harris.

Against: Mayor Matt Mahoney; Deputy Mayor Traci Buxton;
Councilmember Jeremy Nutting, Councilmember Vic Pennington, and
Councilmember Harry Steinmetz.

The main motion passed 7-0.

2023 ANNUAL BUDGET AMENDMENTS
Staff Presentation by Finance Director Jeff Friend

At 7:47 p.m. Mayor Matt Mahoney opened the Public Hearing.

- Finance Director Jeff Friend gave Council a PowerPoint
Presentation on the 2023 Annual Budget Amendments.

Mayor Matt Mahoney asked 3 times if anyone wished to speak.

Seeing none, Mayor Matt Mahoney asked Council if they had any
questions.

At 8:00 p.m. Mayor Matt Mahoney closed the Public Hearing.

Direction/Action

Motion made by Councilmember Jeremy Nutting to enact Draft
Ordinance No. 23-054 relating to municipal finance, amending the 2023
Annual Budget adopted in Ordinance No. 1764; seconded by Deputy
Mayor Traci Buxton.
Motion passed 6-1.

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For: Mayor Matt Mahoney; Deputy Mayor Traci Buxton; Councilmember JC Harris, Councilmember Jeremy Nutting, Councilmember Vic Pennington, and Councilmember Harry Steinmetz.

Against: Councilmember Gene Achziger.

NEW BUSINESS

Item 1: DRAFT ORDINANCE 23-068 - SUSPENDING RESTRICTION ON USE OF ONE-TIME REVENUE FOR 2024
Staff Presentation by Finance Director Jeff Friend

- Finance Director Jeff Friend gave Council an update on Suspending Restrictions on use of one-time revenue for 2024.

Direction/Action

Motion made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 23-068, amending DMMC 3.100.020, and lifting the restriction on the use of one-time revenue in the general fund budget for the year 2024; seconded by Deputy Mayor Traci Buxton.
Motion passed 5-2.

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

Against: Councilmember Gene Achziger, and Councilmember JC Harris.

Item 2: DRAFT ORDINANCE 23-055 ESTABLISHING AN ENTERPRISE FUND ENTITLED "EVENTS AND FACILITY RENTALS FUND"
Staff Presentation by Finance Director Jeff Friend

- Finance Director Jeff Friend gave Council a brief update on establishing an Enterprise Fund entitled "Events and Facility Rentals Fund."

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve Draft Ordinance 23-055, adding a new section to the chapter 3.52 DMMC establishing an Enterprise Fund entitled "Event and Facility Rentals Fund"; seconded by Councilmember Vic Pennington.

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Amended motion made by Councilmember Gene Achziger to postpone establishing an Enterprise fund entitled "Events and Facility Rentals Fund" to 2024; seconded by Councilmember JC Harris.
Amended motion failed 1-6.

For: Councilmember Gene Achziger

Against: Mayor Matt Mahoney; Deputy Mayor Traci Buxton;
Councilmember JC Harris, Councilmember Jeremy Nutting,
Councilmember Vic Pennington, and Councilmember Harry Steinmetz.

The main motion passed 4-3.

For: Mayor Matt Mahoney; Councilmember Jeremy Nutting,
Councilmember Vic Pennington, and Councilmember Harry Steinmetz.

Against: Deputy Mayor Traci Buxton; Councilmember Gene Achziger,
and Councilmember JC Harris.

Item 3: REALLOCATION OF AMERICAN RESCUE PLAN ACT FUNDS (ARPA)
Staff Presentation by Finance Director Jeff Friend

- Finance Director Jeff Friend gave Council a brief update on the Reallocation of American Rescue Plan Act Funds

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the recommended reallocation and expenditure of the unspent American Rescue Plan Act Funds; seconded by Deputy Mayor Traci Buxton.
Motion passed 7-0.

Item 4: INTERFUND LOAN TO SUPPORT ESTABLISHMENT OF EVENTS
AND FACILITY RENTALS FUND
Staff Presentation by Finance Director Jeff Friend

- Finance Director Jeff Friend gave a brief update on the Interfund loan to support establishment of Events and Facility Rentals Fund.

Direction/Action

Motion made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 23-056 authorizing an interfund loan of \$750,000 from the Surface Water Management Fund to the Events and Facility Rental

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Fund to support the establishment of the new enterprise fund; seconded by Councilmember Vic Pennington.
Motion passed 4-3.

For: Mayor Matt Mahoney; Councilmember Jeremy Nutting, Councilmember Vic Pennington, and Councilmember Harry Steinmetz.

Against: Deputy Mayor Traci Buxton; Councilmember Gene Achziger, and Councilmember JC Harris.

Item 5: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

- Councilmember JC Harris called for an Executive Session under RCW 42.30.110(f) to receive and evaluate a complaint against a Public Employee.
Died for lack of Council support.

EXECUTIVE SESSION

At 8:23 p.m. Mayor Matt Mahoney called the Executive Session to order.

ROLL CALL

Council Present:

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

Others Present:

Chief Administrative Officer Bonnie Wilkins, Human Resource Director Adrienne Johnson-Newton, and outside legal Counsel Evan Chinn.

PURPOSE

The purpose of the Executive Session is to discuss the Performance of a Public Employee under RCW 42.30.110(1)(g). The Executive Session was expected to last 30 Minutes.

At 8:31 p.m. Councilmember Jeremy Nutting motioned to extend the Council Meeting to 9:30 p.m. and to extend the Executive Session to 9:14 p.m.

Motion passed 4-0.

No formal action was taken.

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The Executive Session lasted 51 minutes.

Direction/Action

Motion made by Mayor Matt Mahoney to terminate the employment agreement with City Manager Michael Matthias contingent upon Execution of an Interim Chief Economic Development Director Employment Agreement Substantially in the form as prepared by the City; seconded by Deputy Mayor Traci Buxton.
Motion passed 5-2.

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

Against: Councilmember JC Harris, and Councilmember Gene Achziger.

Motion made by Councilmember Jeremy Nutting to extend the Council Meeting to 10:00 p.m.; seconded by Councilmember Harry Steinmetz.
Motion passed 6-1.

For: Mayor Matt Mahoney; Deputy Mayor Traci Buxton; Councilmember JC Harris, Councilmember Jeremy Nutting, Councilmember Vic Pennington, and Councilmember Harry Steinmetz.

Against: Councilmember Gene Achziger.

Motion made by Mayor Matt Mahoney to appoint City Attorney Tim George to Interim City Manager and authorize the Mayor to sign the Employment Agreement substantially in the form as prepared by the City; seconded by Councilmember Harry Steinmetz.
Motion passed 5-2.

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

Against: Councilmember JC Harris, and Councilmember Gene Achziger.

Chief Administration Officer Bonnie Wilkins swore City Attorney Tim George in as the Interim City Manager.

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NEXT MEETING DATE

November 16, 2023 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Harry Steinmetz to adjourn; seconded by Councilmember Vic Pennington.

Motion passed 7-0.

The meeting adjourned at 9:41 p.m.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: King County Cooperative Watershed Management Grant Award – Des Moines Creek Estuary Project

AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 14, 2023

ATTACHMENTS:

1. Agreement for Award of Cooperative Watershed Management Grant Funds
2. Des Moines Creek Estuary CIP Project Worksheet

CLEARANCES:

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

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

Purpose and Recommendation

The purpose of this Agenda Item is to seek City Council acceptance of the King County Cooperative Watershed Management (CWM) Grant Award (Attachment 1) for the Des Moines Creek Estuary Project. The following motion will appear on the Consent Agenda:

Suggested Motion

Motion: “I move to accept the King County Cooperative Watershed Management Grant Award for the Des Moines Creek Estuary Project and authorize the City Manager to sign the Grant Agreement substantially in the form as submitted.”

Background

The Des Moines Creek drainage basin is home to coho salmon, chum salmon, steelhead, and cutthroat trout which have been historically identified in the lower reaches of Des Moines Creek. The lower reaches of the creek around Des Moines Beach Park provide some of the most heavily utilized fish habitat within the watershed, due primarily to its vicinity and accessibility to Puget Sound.

The Des Moines Creek Estuary Project is highlighted as a salmon-recovery capital project in the Green/Duwamish and Central Puget Sound Watershed’s (WRIA 9) Salmon Habitat Plan. Project goals at the mouth of Des Moines Creek include restoring and securing access to the stream, creating safe fish passage, removing rock armoring from the stream bank, and creating a pocket estuary.

The City applied for a King County Flood Reduction Grant in the summer of 2022 and the Des Moines Creek Estuary Project was awarded grant funding in the amount of \$250,000. The Agreement for Award of Flood Reduction Grant Funds was approved by the City Council at its April 13th, 2023 meeting. This grant funding was awarded to support the project through the first phase of site assessment and 10% preliminary engineering design.

At the May 11th, 2023 Council meeting an On-Call General Engineering Services Task Assignment with Parametrix was approved to begin the preliminary engineering design.

Discussion

With the support of WRIA 9, the City applied for the CWM Grant opportunity in the Spring of 2023. The King County Flood Control District voted unanimously to award the project for the requested amount of \$250,000. The City is required to certify funding by signing and returning the Agreement for Award of CWM Grant Funds (Attachment 1).

Grant award funds will be used to support the continued advancement of the preliminary engineering as outreach, data collection, and site evaluation continue.

Alternatives

The City Council could elect not to accept the CWM Grant award. As a result, the City would have to seek funding for the project from alternative sources.

Financial Impact

The CWM Grant funding will be applied to the Des Moines Creek Estuary Project CIP (Attachment 2). No additional funding is expected to be required at this time to complete the grant obligations.

Recommendation

Staff recommends adoption of the motion.

Council Committee Review

Council Environment Committee has been routinely updated on the status and progress of this project.

Project Name: Des Moines Creek Estuary Restoration

Award Number: 4.9.23.004

**AGREEMENT FOR AWARD OF
COOPERATIVE WATERSHED MANAGEMENT GRANT FUNDS
BETWEEN THE CITY OF DES MOINES AND KING COUNTY**

This Agreement is made between King County, a municipal corporation, and the **City of Des Moines** (“Recipient”) (collectively referred to as the “parties” and in the singular “party”), for the purposes set forth herein. This Agreement shall be in effect from the date of execution to **December 31, 2026**.

Primary Contact for King County: Kim Harper, Grant Administrator, 206-477-6079, Kim.harper@kingcounty.gov.

Primary Contact for Recipient: Tyler Beekley, Surface Water and Environmental Engineering Manager, 206-870-6869, Tbeekley@desmoineswa.gov.

SECTION 1. RECITALS

- 1.1 Whereas, the King County Flood Control District (“District”) is a quasi-municipal corporation of the State of Washington, authorized to provide funding for cooperative watershed management arrangements and actions for purposes of water quality, water resource, and habitat protection and management;
- 1.2 Whereas, King County is the service provider to the District under the terms of an interlocal agreement (“ILA”) by and between King County and the District, dated February 17, 2009, as amended, and as service provider implements the District’s annual work program and budget;
- 1.3 Whereas, in accordance with Resolution FCD2012-07.2 and in its capacity as service provider to the District, King County has established a grant award program, called the Cooperative Watershed Management Award Program, to fund water quality, water resources and habitat restoration and management projects and activities;
- 1.4 Whereas, the Board of Supervisors of the District (the “Board”), the District’s governing body, passed Resolution FCD 2022-13 on November 8, 2022, authorizing the King County executive or his designee to develop and administer a grant award program of up to \$10,737,696 in 2023 for water quality, water resources and habitat restoration and management projects and activities in King County, provided that the project list is approved by the Board;
- 1.5 Whereas, on September 12, 2023, the Board passed Resolution FCD 2023-07, which approved the projects described in Attachment A to that Resolution;
- 1.6 Whereas, the Recipient submitted an application to its respective WRIA forum or

committee for the project, as described in Exhibit A attached hereto and incorporated herein by this reference, and that body has recommended the project for funding under the Cooperative Watershed Management Grant Program in accordance with King County’s Cooperative Watershed Management Grant Program Policies and Procedures, a copy of which has been furnished by King County to the Recipient and which are incorporated herein by this reference (“Grant Policies and Procedures”);

- 1.7 Whereas, the Board approved funding of Recipient’s application for the project (“Project”), as described in Attachment A to Resolution FCD 2023-07 in the amount of **\$250,000** (“Award”);
- 1.8 Whereas, King County has received a Scope of Work and a Budget for the Project from the Recipient and has determined that the Scope of Work, attached hereto and incorporated herein as Exhibit B (“Scope of Work”), and the Budget, attached hereto and incorporated herein as Exhibit C (“Budget”), are consistent with the Grant Policies and Procedures; and
- 1.9 Whereas, King County and the Recipient desire to enter into this Agreement for the purpose of establishing the terms and conditions under which King County will provide funding from the District in accordance with Resolution FCD 2023-07 and the Grant Policies and Procedures, and under which the Recipient will implement the Project.

SECTION 2. AGREEMENT

- 2.1. The Recitals are an integral part of this Agreement and are incorporated herein by this reference.
- 2.2. King County agrees to pay the Award amount to the Recipient in the total amount of **\$250,000** from District funds. The Award shall be used by the Recipient solely for the performance of the Project, as described in Exhibit A to this Agreement. King County shall pay the Recipient in accordance with the terms of the Grant Policies and Procedures.
- 2.3. The Recipient represents and warrants that it will only use the Award for the Scope of Work of this Agreement and in accordance with the Project Budget. The Recipient shall be required to refund to King County that portion of the Award which is used for work or tasks not included in the Scope of Work. Further, the Recipient agrees that King County may retain any portion of the Award that is not expended or remains after completion of the Scope of Work and issuance of the Final Report, as further described below.
- 2.4. Activities carried out for this Project and expenses incurred by the Recipient may predate the execution date of this Agreement provided that 1) they have been identified by Recipient as being within the scopes of numbers 2) and 3) below, and have been approved by King County as being within such scopes; 2) the activities are specified in the Scope of Work of this Agreement; 3) the expenses are incurred in carrying out the Scope of Work and are authorized by the Award as identified in the Budget of this

Agreement; 4) such activities and expenses otherwise comply with all other terms of this Agreement; 5) such activities and expenses do not occur prior to the date the grants were approved by the District; and 6) reimbursements shall be paid to the Recipient only after this Agreement has been fully executed.

- 2.5. The Recipient shall invoice King County for incurred expenses using the Request for Payment form and Progress Report form, or online equivalents to these forms upon the County's implementation of an online reporting database, for those documented and allowable expenses identified in the Budget and according to the rules set forth in the Grant Policies and Procedures. A request for payment shall be made no less frequently than every six months after the effective date of this Agreement nor more frequently than every three months after the aforementioned date. A Progress Report form and backup documentation of claimed expenses shall be submitted with all payment requests. A one-time advance may be allowed, in the discretion of King County, for expenses anticipated to be incurred in the three months following the date of submission of the advance Request for Payment only for work that is included in the Scope of Work of this Agreement, and identified as such in the Request for Payment. The amount of the advance may not exceed 25% of the total award amount. Documentation of payments made from advances shall be submitted to King County prior to any further requests for payment.
- 2.6. The Recipient shall be required to submit to King County a final report which documents the Recipient's completion of the work in conformance with the terms of this Agreement within thirty (30) days after the completion of the work. The final report may be submitted on the Close-out Report form, or online equivalent to this form upon the County's implementation of an online reporting database. The final report shall include a summary of the Project's successes and shall address the watershed benefits accomplished by the work.
- 2.7. The Recipient's expenditures of Award funds shall be separately identified in the Recipient's accounting records. If requested, the Recipient shall comply with other reasonable requests made by King County with respect to the manner in which Project expenditures are tracked and accounted for in the Recipient's accounting books and records. The Recipient shall maintain such records of expenditures as may be necessary to conform to generally accepted accounting principles as further described in Section 2.8 below, and to meet the requirements of all applicable state and federal laws.
- 2.8. The Recipient shall be required to track project expenses using the Budget Accounting and Reporting System for the State of Washington ("BARS") or Generally Accepted Accounting Principles set forth by the Financial Accounting Standards Board or by the Governmental Accounting Standards Board.
- 2.9. King County or its representative, and the District or its representative, shall have the right from time to time, at reasonable intervals, to audit the Recipient's books and records in order to verify compliance with the terms of this Agreement. The Recipient shall cooperate with King County and the District in any such audit.

- 2.10. The Recipient shall retain all accounting records and project files relating to this Agreement in accordance with criteria established by the Washington State Archivist Local Government Common Records Retention Schedule (CORE) as revised.
- 2.11. The Recipient shall ensure that all work performed by its employees, agents, contractors, or subcontractors is performed in a manner which protects and safeguards the environment and natural resources, and which is in compliance with local, state and federal laws and regulations. The Recipient shall implement an appropriate monitoring system or program to ensure compliance with this provision.
- 2.12. If Recipient is purchasing real property interests with Award funds, Recipient agrees to include restrictive language provided by the County in the instrument transferring the real property interest specifying that the real property interest shall be used in perpetuity for purposes consistent RCW 86.15.035.
- 2.13. The Recipient agrees to indemnify, defend and hold harmless King County, and the District, their elected or appointed officials, employees and agents, from all suits, claims, alleged liability, actions, losses, costs, expenses (including reasonable attorney's fees), penalties, settlements and damages of whatsoever kind or nature arising out of, in connection with, or incident to any acts or omissions of the Recipient, its employees, agents, contractors, or subcontractors in performing its obligations under the terms of this Agreement, except to the extent of the County's or the District's sole negligence.

The Recipient's obligations under this provision shall include, but not be limited to, the duty to promptly accept tender of defense and provide defense to the County and the District with legal counsel acceptable to the County and the District at Recipient's own expense. Recipient, by mutual negotiation, hereby waives, as respects the County and the District only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event it is necessary for the County or the District to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable from Recipient. The provisions of this section shall survive the expiration, abandonment, or termination of this Agreement.

- 2.14. The Recipient agrees to acknowledge the District as a source of funding, and the WRIA as a funding partner, for the Project on all printed, online, and electronic documents; signage or press releases; audio-visual materials; or any other materials produced in association with the Project. Grant Recipient shall submit documentation of acknowledgement activities with their final reporting documents.

SECTION 3. GENERAL PROVISIONS

- 3.1. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The Recipient shall not assign this Agreement to a third party.
- 3.2. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No prior or contemporaneous representation, inducement, promise or agreement between or among the parties which relate to the subject matter hereof which are not embodied in this Agreement shall be of any force or effect.
- 3.3. No amendment to this Agreement shall be binding on any of the parties unless such amendment is in writing and is executed by the parties. The parties contemplate that this Agreement may from time to time be modified by written amendment which shall be executed by duly authorized representatives of the parties and attached to this Agreement.
- 3.4. Unless otherwise specified in the Agreement, all notices or documentation required or provided pursuant to this Agreement shall be in electronic form and shall be deemed duly given when received at the addresses set forth below via electronic mail and transmittal is demonstrated by an electronic delivery receipt or similar confirmation.

King County	Recipient
Kim Harper	Tyler Beekley
Grant Administrator	Surface Water and Environmental Engineering Manager
King County WLRD	City of Des Moines
kim.harper@kingcounty.gov	Tbeekley@desmoineswa.gov

Either party hereto may, at any time, by giving ten (10) days written notice to the other party to designate any other address in substitution of the foregoing address to which such notice or communication shall be given.

- 3.5. Each party warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.
- 3.6. The Project shall be completed by no later than **December 31, 2026**. In the event that the Project is not completed by this date, King County has the discretion, but not the obligation to terminate this Agreement and retain any unexpended Award funds.
- 3.7. The Agreement will be terminated if the Recipient is unable or unwilling to expend the Award as specified in Section 2.2 and Exhibits B and C. In the event of termination

under this section, the County shall be released from any obligation to fund the Project and Recipient shall forfeit all rights to the unexpended portion of the Award.

- 3.8. If the County determines that a breach of contract has occurred or does not approve of the Recipient's performance, it will give the Recipient written notification of unacceptable performance. Recipient will then take corrective action within a reasonable period of time, as may be defined by King County in its sole discretion in its written notification to Recipient. King County may withhold any payment owed Recipient until the County is satisfied that corrective action has been taken or completed.
- 3.9. Waiver of breach of any provision in this Agreement shall not be deemed to be a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent defaults.
- 3.10. KCC chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Agreement. In its performance under this Agreement the Recipient shall not discriminate against any person on the basis of race, color, age, gender, marital status, sexual orientation, gender identity or expression, religion, ancestry, national origin, disability or use of a service or assistive animal by an individual with a disability, unless based upon a bona fide occupational qualification, and the Recipient shall not violate any of the terms of chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, or any other applicable federal, state, or local law or regulation regarding nondiscrimination in employment.
- 3.11. None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.
- 3.12. This Agreement may be signed in multiple counterparts.
- 3.13. If any provision of this Agreement shall be wholly or partially invalid or unenforceable under applicable law, such provision will be ineffective to that extent only, without in any way affecting the remaining parts or provision of this Agreement, and the remaining provisions of this Agreement shall continue to be in effect.
- 3.14. This Agreement shall be governed by and construed according to the laws of the State of Washington. Actions pertaining to this Agreement will be brought in King County Superior Court, King County, Washington.
- 3.15. The amount of the Award has been fully funded by the District. To the extent that funding of the Award requires future appropriations by the District or the King County Council, King County's obligations are contingent upon the appropriation of sufficient funds by the District or the King County Council to complete the Scope of Work. If no such appropriation is made, this Agreement will terminate at the close of the

Project Name: Des Moines Creek Estuary Restoration

Award Number: 4.9.23.004

appropriation year for which the last appropriation that provides funds under this Agreement was made.

This document has been approved as to form by the King County Prosecuting Attorney's Office as of March 1, 2023.

KING COUNTY:

RECIPIENT:

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Project Name: Des Moines Creek Estuary Restoration

Award Number: 4.9.23.004

EXHIBIT A: PROJECT DESCRIPTION

Project	Recipient	Description	Leverage	Award
Des Moines Creek Estuary Restoration	City of Des Moines	Complete a site assessment to provide 10% preliminary engineering design, conduct initial cultural resource support, conduct public outreach support, and identify permits needed for improvements to the shoreline, estuary habitat and public access near the mouth of and adjacent to Des Moines Creek. The work will identify potential improvements to address flooding impacts to Des Moines Beach Park while bolstering both shoreline and estuary habitat, and evaluate public access and connectivity impacts to the estuary from the Des Moines Marina to the Des Moines Beach Park.	\$250,000	\$250,000

Project Location: Mouth of Des Moines Creek and marine shoreline in Des Moines Beach Park.

EXHIBIT B: SCOPE OF WORK

Activity Title	Activity Description	Deliverables	Estimated Percent of Grant Budget	Month/Year Task will be Completed
Task 1: Project Administration (Required)	Submit reimbursement request forms, backup documentation for billing, and progress reports at least every 6 months. Submit a Fiscal Closeout form and a Closeout Report form with the final reimbursement request.	Fiscal closeout form; Closeout Report; Final Reimbursement Request	0%	September 2025
Task 2: Survey and Mapping	Under a contract with lead Consultant Parametrix, existing parcel and property information will be gathered and assembled. Utility locates will be identified and fielded. Topographic and planimetric field surveys will be completed.	Basemap plans; Property exhibits	0%	December 2024
Task 3: Alternatives Evaluation and Concept Design	Under a contract with lead Consultant Parametrix, alternative layouts will be generated and go under screening/evaluation. A concept design and planning level cost estimate will be produced for the preferred alternative(s).	Alternative layouts; Concept Designs; Planning level Cost Estimate	0%	December 2024
Task 4: Hydraulic Analysis	Under a contract with lead Consultant Parametrix, a hydraulic analysis will be prepared through gathering existing information, coordination with stakeholders, and performing a variety of the following assessments. (water level, sea level rise, flood assessment, hydrodynamic, and bank stabilization)	Water level and sea level rise evaluation; Flood assessment; Hydrodynamic assessment; Bank stabilization assessment	0%	September 2025
Task 5: Coastal Engineering	Under a contract with lead Consultant Parametrix, coastal engineering will be	Beach characterization;	0%	September 2025

Project Name: Des Moines Creek Estuary Restoration

Award Number: 4.9.23.004

Activity Title	Activity Description	Deliverables	Estimated Percent of Grant Budget	Month/Year Task will be Completed
	provided to support preliminary design.	Coastal process assessment; Navigation assessment; Coastal engineering preliminary findings report		
Task 6: Geotechnical Engineering	Under a contract with lead Consultant Parametrix, geotechnical engineering will be provided to support preliminary design.	Geotechnical data report; Geotechnical findings preliminary report	27%	September 2025
Task 7: Park and Urban Design	Under a contract with lead Consultant Parametrix, a review and assessment of the park infrastructure will be conducted. Park modifications will be conceptualized, park improvement concepts will be included within Task 10.	Conceptual design and cost support for park elements, and stakeholder engagement.	0%	September 2025
Task 8: Preliminary Design and Engineering	Under a contract with lead Consultant Parametrix, a preliminary site plan, estimate of probable costs, and design report will be developed at the 10% level.	Comprehensive site plan, Construction access and staging site plan, site demolition plan, TESC plan, Shoreline improvement plan, Site layout and grading plan, Des Moines creek profile and sections, Beach and shoreline sections and profiles, bridge layout plan, restoration and site landscape plans, conceptual details, site drainage plan, Estimate of probable costs, Preliminary basis of design report	25%	September 2025
Task 9: Environmental Analysis & Permit Strategy and Support	Under a contract with lead Consultant Parametrix, a preliminary permit coordination and planning will begin. Including cultural resources review and tribal coordination.	Permit matrix, Wetland/OHWM determination, SEPA Documentation, Critical Areas study, Biological assessment, Cultural resources assessment, applicable permit applications and supporting documents.	48%	September 2025

Project Name: Des Moines Creek Estuary Restoration

Award Number: 4.9.23.004

Activity Title	Activity Description	Deliverables	Estimated Percent of Grant Budget	Month/Year Task will be Completed
Task 10: Public Involvement and Outreach Support	Under a contract with lead Consultant Parametrix, a public outreach and communications plan will be created, materials for project outreach efforts will be created, and opportunities for public engagement will be initiated.	Public involvement and outreach plan, Site renderings for public meetings and outreach materials, project website, two public meetings, survey and feedback responses from stakeholders.	0%	September 2025
Task 11: Project Administration and Coordination	Under a contract with lead Consultant Parametrix, administration and coordination is needed to support the tasks above.	Project schedule, progress reports, invoices	0%	September 2025

EXHIBIT C: BUDGET

Budget Item	Grant Request
Commercial Services & Crew Time	\$250,000
TOTAL	\$250,000

**CITY OF DES MOINES
2024-2029 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)**

Des Moines Creek Estuary Restoration	Project #	SWCIP0024
	Previous Project #	451.852

Summary Project Description:
Phase I of this project would remove 500 feet of rock armoring near the mouth of Des Moines Creek and along shoreline areas adjacent to Des Moines Beach Park in order to restore natural beach slopes and allow natural sediment beach feeding from the shoreline bluffs north of the park. The stream channel would be re-constructed for a length of 25 to 50 feet. The stream mouth area would be planted with riparian and marsh vegetation. Phase II includes the removal of 250 feet of rock armoring and potential removal of the concrete seawall leading from the south side of the creek mouth to the marina.

CIP Category: Surface Water Management

Managing Department: Plan, Build & PW Admin

Justification/Benefits: This project will protect and improve riparian vegetation improve tributary access, protect/increase vegetated shallow nearshore habitat, and protect/enhance the pocket estuary and tributary stream mouth of Des Moines Creek. These benefits translate to more navigable waters for fish to get further upstream which will enhance the ecosystem as well as enhance the recreational experience of the Des Moines Beach Park & trails.

<i>PROJECT SCOPE</i>			
<i>Expenditures</i>	<i>Current Budget</i>	<i>Requested Change</i>	<i>Total Budget</i>
Design	341	160	501
Land & Right of Way	-	-	-
Construction	1,000	-	1,000
Contingency	660	(40)	620
Total Expenditures	2,001	120	2,121

<i>ANNUAL ALLOCATION</i>							
<i>Project to Date</i>	<i>Scheduled Year</i>	<i>Plan Year</i>	<i>Plan Year</i>	<i>Plan Year</i>	<i>Plan Year</i>	<i>Plan Year</i>	<i>Plan Year</i>
<i>12/31/22</i>	<i>2023</i>	<i>2024</i>	<i>2025</i>	<i>2026</i>	<i>2027</i>	<i>2028</i>	<i>2029</i>
1	250	250	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	1,000	-	-	-	-
-	10	10	600	-	-	-	-
1	260	260	1,600	-	-	-	-

<i>Funding Sources</i>	<i>Current Budget</i>	<i>Requested Change</i>	<i>Total Budget</i>
Surface Water Utility	202	(1)	201
King County Flood Reduction Grant (Secured)	499	(249)	250
King County CWM Grant (Unsecured)	-	250	250
State of Washington Grants (Unsecured)	1,300	120	1,420
Total Funding	2,001	120	2,121
Funding Shortfall/Excess	-	-	-

<i>Project to Date</i>	<i>Scheduled Year</i>	<i>Plan Year</i>	<i>Plan Year</i>	<i>Plan Year</i>	<i>Plan Year</i>	<i>Plan Year</i>	<i>Plan Year</i>
<i>12/31/22</i>	<i>2023</i>	<i>2024</i>	<i>2025</i>	<i>2026</i>	<i>2027</i>	<i>2028</i>	<i>2029</i>
1	10	10	180	-	-	-	-
-	250	-	-	-	-	-	-
-	-	250	-	-	-	-	-
-	-	-	1,420	-	-	-	-
1	260	260	1,600	-	-	-	-

<i>OPERATING IMPACT</i>			
<i>Operating Impact</i>	<i>6 Year Total</i>		
Revenue	-	-	-
Expenses	-	-	-
Net Impact	-	-	-

<i>ANNUAL OPERATING IMPACT</i>							
<i>12/31/22</i>	<i>2023</i>	<i>2024</i>	<i>2025</i>	<i>2026</i>	<i>2027</i>	<i>2028</i>	<i>2029</i>
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: AHBL Consultant Services Contract

FOR AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: Community Development

ATTACHMENTS:

DATE SUBMITTED: December 7, 2023

- 1. Consultant Services Contract with AHBL

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: _____

Purpose and Recommendation

The purpose of this agenda item is to provide information, enabling the City Council to take action on the Consultant Services Contract between the City of Des Moines and AHBL (Attachment 1) for support on the periodic update to the Des Moines Comprehensive Plan and development regulations, and to authorize the City Manager to sign, substantially in the form as attached.

Suggested Motion

Motion 1: "I move to authorize the City Manager to sign the Consultant Services Contract between the City of Des Moines and AHBL, substantially in the form as attached."

Background

The Department of Commerce provided the City of Des Moines a \$125,000 non-competitive grant to help fund the periodic review and update to the Des Moines Comprehensive Plan and development regulations. There is no requirement for the City to provide matching funds in order to accept this grant; however, additional funding and consultant services are needed to complete the periodic update work.

The grant was split between two fiscal year (FY) funding cycles. Council previously approved the FY2023 grant funds (Contract No. 23-63210-010) which covered work completed between July 1, 2022 and June 30, 2023. City Council also authorized the City Manager to sign the contract for the subsequent amendments for FY24 (Contract No. 24-63335-209) that extends from July 1, 2023 to June 30, 2024.

Discussion

Staff is requesting that the City Council to approve the Consultant Services Contract with AHBL in the amount of \$136,000 (Attachment 1) to provide the necessary support to complete the periodic update process. A portion of the contract (\$62,500) would be covered by the Commerce grant funding.

As Council is aware, our consultant AHBL has been supporting the periodic review and update to the comprehensive plan and development regulations. Due to staff vacancies in Planning during 2023 (about 1.2 Full Time Equivalent) and planning analysis for the North Central Neighborhood, additional consultant support has been necessary to keep the project moving.

While the Commerce grant funds must be expended by June 30, 2024, there is a body of work that will occur prior to the update deadline of December 31, 2024. This is reflected in the Consultant Services scope of work and budget.

Alternatives

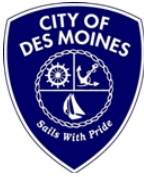
1. The City Council may decline to approve the Consultant Services Contract with AHBL; however, this would result in workload impacts for Community Development that could impact other Departmental operations such as permit reviews, other planning efforts.
2. The City Council may continue this Agenda Item and request that staff provides additional information on the Consultant Services Contract.

Financial Impact

If the City Council authorizes approval of the Consultant Services Contract, \$62,500 of the cost would be paid by the Commerce grant funds and the balance of \$73,500 would be paid by General Fund monies to complete the required GMA periodic review and update to the comprehensive plan and development regulations.

Recommendation

Staff recommends that the City Council approve the Consultant Services Contract with AHBL.



CONSULTANT SERVICES CONTRACT between the City of Des Moines and AHBL, Inc.

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and AHBL, Inc. organized under the laws of the State of Washington, located and doing business at 2215 N 30th Street, Suite 300, Tacoma, WA 98403-3350 (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:

The scope of services to be performed, and the schedule and compensation for performing those services, shall be as described in Exhibit "A", attached, and hereby incorporated into this Contract.

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, 2024, or as amended.

III. COMPENSATION.

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed One Hundred Thirty-six Thousand Dollars (\$136,000.00) 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 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.

CONSULTANT SERVICES CONTRACT
(Various)

- B. The Consultant shall submit quarterly (per Commerce Grant No. 24-63335-209) payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

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

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

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

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

CONSULTANT SERVICES CONTRACT 2
(Various)

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

CONSULTANT SERVICES CONTRACT 3
(Various)

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

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

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

X. INDEMNIFICATION. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the 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

CONSULTANT SERVICES CONTRACT 4
(Various)

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

CONSULTANT SERVICES CONTRACT 5
(Various)

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

CONSULTANT SERVICES CONTRACT 6
(Various)

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

XVI. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

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

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

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

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

CONSULTANT SERVICES CONTRACT 7
(Various)

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

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

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

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

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

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

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

<p>CONSULTANT:</p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: _____</p> <p>Its _____ <i>(Title)</i></p> <p>DATE: _____</p>	<p>CITY OF DES MOINES:</p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: <u>Tim George</u></p> <p>Its <u>City Manager</u> <i>(Title)</i></p> <p>DATE: _____</p> <p>Approved as to form:</p> <p>_____</p> <p>City Attorney</p> <p>DATE: _____</p>
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<p>NOTICES TO BE SENT TO:</p> <p>CONSULTANT:</p> <p>Wayne Carlson, FAICP, Principal AHBL 2215 North 30th Street, Suite 300 Tacoma, WA 98403-3350 253-383-2422 (telephone) 253-383-2572 (facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Denise Lathrop, AICP, Community Development Director City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-870-6563 (telephone) 206-870-6544 (facsimile)</p>
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**EXHIBIT A
SCOPE OF WORK**

AHBL Project Number 2220342.30

**DES MOINES COMPREHENSIVE PLAN UPDATE
WASHINGTON STATE DEPARTMENT OF COMMERCE GRANT NUMBER 24-63335-209**

ADDENDUM #1: This scope of work details the work to be completed from July 1, 2023 to December 31, 2024 to support the City's completion of the update process.

Although the deadline for adoption is December 31, 2024 the grant funding is tied to the end of the state's fiscal year and so only items completed by June 15, 2024 are eligible for reimbursement from Commerce.

TASK 2: PUBLIC ENGAGEMENT

Note: Task 2.1 was completed prior to the end of the state fiscal year 2023 (June 30, 2023) and the deliverable (a public participation plan) was previously provided to the city (and likewise to the Department of Commerce for grant funding).

2.2: Public Outreach / Workshop

AHBL will facilitate a public open house meeting to solicit input on the draft comprehensive plan. AHBL staff will prepare PowerPoint presentations, boards, handouts, and other meeting collateral necessary to facilitate the open house. Other outreach events described in the Public Engagement Plan will be performed under this task.

2.3: Community Conversation (and Public Survey)

AHBL is hosting an online community survey which will close on December 1, 2023. AHBL staff will compile the results of the survey for the City's review and inclusion within the Comprehensive Plan. In addition, a status report documenting outreach events (including the National Night Out Event) will be provided for the second phase of work.

AHBL staff will document the results of the City's public engagement efforts in a public engagement report. The documentation of the public engagement results will include compilation of the following:

- City-approved survey.
- Survey findings report in an electronic format. The raw data in an Excel database, or other format will also be provided to the City.
- Public engagement boards, PowerPoint presentations, and other meeting collateral associated with public open houses.

Deliverables:

- Status Memo of Public Engagement to Date (Due: September 30, 2023);
- Survey Findings Report (Due: December 22, 2023)

TASK 3: DRAFT COMPREHENSIVE PLAN UPDATE AND DEVELOPMENT REGULATIONS UPDATE

Note: Task 3.1 was completed prior to the end of the previous state fiscal year (June 30, 2023) and the deliverable provided to the city (and likewise to the Department of Commerce for grant funding) was a set of initial draft chapters (elements) of the Comprehensive Plan. Further refinements and edits are still needed.

Task 3.2A: Economic Feasibility

ECONorthwest, as a subconsultant to AHBL, is authoring an Economic Feasibility Analysis to assist in understanding market conditions and opportunities to increase housing and employment capacity.

Deliverables:

- Final Economic Feasibility Report (DUE: September 30, 2023)
- Adopted Land Use and Zoning for the Moratorium Area (December 22, 2023)

Task 3.2B: 75% Complete First Draft

An *initial* set of drafts were completed in June 2023. This task will include determining how the City wants to organize, streamline, and trim the document (eliminating unnecessary sections). It also includes updates to any goals, policies, and strategies that need to be strengthened, re-written or re-tooled for GMA compliance in all elements, and updates to narratives, tables, maps, and graphics as necessary.

Extensive updates aren't anticipated outside of changes needed to incorporate recent decisions or changes made by city council (for example, the rezone associated with the Moratorium area, adoption of policies and tools as a part of the Housing Action Plan initiative, the City's most recently approved Capital Facilities Plan and related documents, etc.) and changes that are necessary due to gaps between state requirements and city policies (as documented in an early version of our SEPA checklist).

There are some limited proposed changes to the land use map [with an associated legislative rezone] which are (or will be) docketed for review. These changes will be incorporated into the Periodic Update and included in a single hearing.

EXCEPTIONS:

A - Work on "middle housing" policies are specifically excluded from this scope of work, as the city has grant funding from commerce that would be completed separately (to ensure there is no overlap in work and state funding reimbursements); that work scope is addressed in a different agreement; compliance with E2SHB 1110 is due by June 30, 2025 (six months after the Comprehensive Plan due date).

B - While AHBL will have a role in assisting with incorporation of an updated Transportation Element, the background work and technical analyses will be conducted separately by a consultant working for the City's Public Works department and the completion date is not yet determined.

C - Climate Planning requirements of E2SHB 1181. Des Moines can apply for an receive up to \$500k in Commerce funding to add a "Climate Element" to the comprehensive plan which will be comprised of a Greenhouse Reduction sub-element and a Climate Resilience sub-element. The addition of the Climate Element (together with adjustments to the Transportation Element to meet requirements of the law) is not due until 2029. The city will also need to adjust the Land Use, Capital Facilities, Utilities and Parks and Recreation elements of the Comprehensive Plan by 2034.

Deliverables: First Draft copies of the following chapters for City Staff Review (DUE: March 30, 2024):

- Introduction
- Land Use Element
- Conservation and Environment Element
 - We anticipate that climate and resilience topics and policies will be added here
- Capital Facilities, Utilities, and Public Service Element
 - The City is updating their budget which will inform this part; Highline College recently updated their master plan which is pending city review
- Parks, Recreation, and Open Space Element
- Housing Element
 - The element will specifically address if enough land supply is available to meet Housing targets
- Economic Development Element
 - The element will specifically address if enough land supply is available to meet employment growth targets
- North Central Neighborhood Element
- Marina District Element
- Pacific Ridge Element
- Healthy Des Moines Element

Draft amendments to development regulations.

Task 3.2C: Final Draft (90% Complete)

Following receipt of City staff comments and feedback, the consultant will update the chapters into a complete first draft, together with the updated Transportation Element (produced separately) that is ready for further processing and will be circulated with a SEPA Checklist.

Deliverables: Final Draft copies of all chapters listed in Task 3.2C (DUE: June 15, 2024)

Task 3.2D: Development Regulations Update

This task focuses on implementing the revisions to planning policy materials in relation to the development of the Comprehensive Plan Update. The Consultant will provide revisions based on the gap analysis done in Task 1 and within the context of final language of planning policy materials developed in Task 3.

The Consultant will compare the updated comprehensive plan's policies with the City's adopted development regulations through a gap analysis matrix, identifying those areas where the codes will need changing to comply with policy direction, outlining options for prioritizing code amendments by overall importance. The consultant will also identify and recommend changes deemed necessary to comply with state law, the King County Planning Policies and PSRC VISION 2050. The Consultant will include suggestions for updating the City's zoning map and zoning code to be consistent with the updated land use designation map and Comprehensive Plan.

Deliverables: Development Regulation Gap Analysis, Draft Amendments to applicable chapters within the Des Moines Municipal Code resulting from amendments to the Comprehensive Plan. (DUE: June 15, 2024)

TASK 4: SEPA ENVIRONMENTAL REVIEW AND 60-DAY NOTICE TO COMMERCE (to be completed following GMA

The draft plan will propose an overall vision and policy framework in compliance with GMA. AHBL intends to integrate environmental documentation in the updated Comprehensive Plan. This task will culminate

with a non-project draft SEPA Checklist prepared by AHBL for city review and public comment.

EXCEPTIONS:

A – The City will do distribution / noticing such as transmittal to Ecology and interested agencies during environmental review

B – The City will likewise provide a 60-day notice of Intent to Adopt to Commerce

Task 4.1: Preparation of draft SEPA Checklist and threshold determination

Deliverables: Completed SEPA Non-Project Checklist (Section B will be omitted) and DNS (DUE: August 1, 2024).

TASK 5: FINAL REVIEW, NOTICING, AND ADOPTION

This task, driven by the Public Participation Plan, puts the adoption process into action and involves final document production. The Consultant shall participate in up to two study sessions City Council Economic Development Committee and up to two study sessions and a public hearing before the City Council and make revisions to the plan as necessary to conform to the direction of the City Council. Additional hearings or more extensive plan revisions may require increased City staff participation to maintain the project's budget.

EXCEPTIONS:

A – The City will work with PSRC for plan Certification.

Task 5.1: City Council Economic Development Committee Meetings

The Consultant will present the plan at up to two committee study sessions, to answer questions and facilitate discussion and consideration.

Deliverable: Materials prepared for the study session(s) and public hearing (DUE: September 30, 2024)

Task 5.2: City Council Public Hearings

The Consultant will present the plan at up to two City Council public hearings, to answer questions and facilitate discussion and consideration.

Deliverable: Materials prepared for the study session(s) and public hearing (DUE: November 30, 2024)

Task 5.3: Final Plan (100% Complete)

The Consultant will make one final plan revision to incorporate changes directed by the City Council, delivering the final Plans in both PDF and Microsoft Word formats for City reproduction and distribution, including Dept. of Commerce notice of final action.

Deliverables: Final Adopted Comprehensive Plan Update, all supporting material/data that have been created, including GIS data, plans, and graphics (DUE: December 15, 2024)

EXHIBIT B BUDGET AMENDMENT

AHBL Project Number 2220342.30

**DES MOINES COMPREHENSIVE PLAN UPDATE
WASHINGTON STATE DEPARTMENT OF COMMERCE GRANT NUMBER 24-63335-209**

ADDENDUM #1: This budget details the budget for the work to be completed from July 1, 2023 to December 31, 2024 to support the City's completion of the update process. Although the deadline for adoption is December 31, 2024 the remaining grant funding is tied to the end of the state's fiscal year and so only items completed by June 15, 2024 are eligible for reimbursement from Commerce (in the amount of up to \$62,500).

TASK 2: PUBLIC ENGAGEMENT **\$28,000**

TASK 3: DRAFT COMPREHENSIVE PLAN UPDATE AND DEVELOPMENT REGULATIONS UPDATE **\$76,000**

Task 3 Breakdown:

Task 3.2A: Economic Feasibility Status Report *\$12,000*

Task 3.2B: 75% Complete First Draft *\$24,000*

Task 3.2C: Final Draft (90% Complete) *\$12,000*

Task 3.2D: Development Regulations Update *\$28,000*

TASK 4: SEPA ENVIRONMENTAL REVIEW AND 60-DAY NOTICE TO COMMERCE **\$18,000**

TASK 5: FINAL DRAFT / REVIEW, NOTICING, AND ADOPTION **\$14,000**

TOTAL ADDITIONAL BUDGET: **\$136,000**

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 24th Ave S Improvements Project –
Puget Sound Energy Easement
Amendment

FOR AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: December 6, 2023

ATTACHMENTS:

1. Puget Sound Energy Easement Amendment Request Letter
2. PSE Real Property Voucher Form
3. Amendment of Easement and Confirmation Agreement
4. Exhibit “A” – Legal Description
5. Recorded PSE Easement

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval for an amendment to the recorded Puget Sound Energy (PSE) Easement (Attachment 3) on City of Des Moines’s property at the Public Works Operations Facility, Tax Parcel No. 0922049018. The easement will grant Puget Sound Energy the right to use the amended easement area in and upon Tax Parcel No. 0922049018, to relocate existing overhead facilities in order to accommodate the City’s 24th Ave S Improvements Project. The following motion will appear on the consent agenda:

Suggested Motion

“I move to approve the Puget Sound Energy Easement Amendment on Tax Parcel No. 0922049018, and further authorize the City Manager to sign said easement substantially in the form as submitted.”

Background

The 24th Ave S Improvements Project (Kent-Des Moines Rd. (SR 516) to S 223rd St) is an element of the adopted City of Des Moines Comprehensive Transportation Plan (CTP), Transportation Improvement Plan (TIP), and Capital Improvement Plan (CIP). This project is Segment 2 of the 24th Ave S Corridor Improvements, with future Segment 1 improvements designated between S 223rd St and S 216th St.

This project will construct sidewalks, bike lanes, reduced travel lane widths for traffic calming, two-way left turn lane, storm drainage, and illumination. The project will improve non-motorized user safety by the construction of bike lanes and ADA sidewalks on both sides of the roadway and enhanced pedestrian crossings near Midway Elementary and Pacific Middle schools.

At the May 7, 2020 City Council meeting, the City Council directed staff to make the necessary arrangements to have all of the existing overhead utilities relocated aurally, as needed for construction, on the 24th Ave S Improvements Project (Kent-Des Moines Rd. (SR 516) to S 223rd St), waiving the requirement for undergrounding of utilities in accordance with DMMC 12.25.110.

At the April 13, 2023 City Council meeting, the City Council approved a PSE Easement , which granted PSE the right to relocate existing overhead facilities within an easement on the City's property at the Public Works Operation Facility, in order to accommodate the City 24th Ave S Improvements Project.

Discussion

Puget Sound Energy owns and maintains existing overhead power facilities throughout the 24th Ave S corridor. Many of the existing Puget Sound Energy facilities are in direct conflict with the proposed improvements on the 24th Ave S Improvements Project and must be relocated per the City's franchise agreement. To facilitate their relocation efforts, Puget Sound Energy requested and was granted a permanent utility easement to relocate a portion of their infrastructure to City property at the Public Works Operations Facility, Tax Parcel No. 0922049018.

The recorded easement extends along the length of the City's Public Works Operations Facility's eastern property line, totaling 7,271.95 square feet. Puget Sound Energy has now requested an amendment to the recorded easement, seeking the City's consideration for an additional 135 square feet of easement area. The amended easement area would allow Puget Sound Energy to install the appropriate anchor for a transmission pole to accommodate the City 24th Improvements Project. City staff has reviewed the amended easement and determined that it will not have a negative impact on the current or future needs of the City's property.

To determine compensation of the recorded Puget Sound Energy easement, the City tasked Austin Appraisal with preparing an Appraisal Report for before/after valuation of the City's Public Works Operations Facility's parcel. The Appraisal Report determined that the Total Just Compensation of the proposed Puget Sound Energy easement was \$30,210.00. Puget Sound Energy agreed with the appraisal and compensated the City in the full amount.

Puget Sound Energy has offered the City compensation for the amended easement area (135 SF) in the amount of \$840. This value is based on the compensation of the originally approved easement area.

Alternatives

The City Council could elect not to grant an amended easement to Puget Sound Energy and request alternative locations for their overhead facilities. This will delay the City's 24th Ave S Improvements Project construction schedule.

Financial Impact

Revenue from the Puget Sound Energy easement amendment will be utilized for project construction funding.

Recommendation

Staff recommends adoption of the motion.

Council Committee Review

Not Applicable



November 22, 2023

City of Des Moines
Attn: Andrew Merges
Public Works Director
21630 11th Ave S, Ste. A
Des Moines, WA 98198

RE: PSE Des Moines 24th Ave S PI Relocation Project
King County Parcel #092204-9018
PSE WO# 101137534

Dear Mr. Merges,

On April 19, 2023, City of Des Moines has granted Puget Sound Energy an easement for the electric facilities that will be relocated on the above mentioned City property as part of the City project. Enclosed is a copy of the recorded easement for reference. PSE needs additional easement for the anchor on the south side of the property and respectfully requests City's consideration in granting the additional 5'x27' easement for a compensation of \$840 (r). Enclosed is the proposed easement amendment for your review and signature. An exhibit showing the new easement area is also included along with the design.

If you have any questions regarding the enclosed easement amendment, please contact me at 425-229-4869. You can also reach me by email at emeline.burgos@pse.com.

Thank you for your time and consideration.

Sincerely,

Myla Burgos
Sr. Real Estate Representative
Central Right of Way Department

Puget Sound Energy, Inc. Real Property Voucher Form

<p>AGENCY NAME:</p> <p>Puget Sound Energy, Inc. P.O. Box 97034 (BOT-02O) Attn: Amber Yang Bellevue, WA 98009-9734</p>	<p>City of Des Moines</p> <p>By: _____</p> <p>As: _____ Date _____</p> <p>By: _____</p> <p>As: _____ Date _____</p> <p>Phone #: _____</p>
<p>GRANTOR OR CLAIMANT:</p> <p>City of Des Moines 21630 11th Ave S, Ste. A Des Moines, WA 98198</p>	
<p>PROJECT NAME: PUGET SOUND ENERGY Des Moines 24th Ave S PI Relocation Project W/O# 101137534</p> <p>ASSESSOR PARCEL NUMBER: 092204-9018</p>	

In Full and Final Payment for the title or interest conveyed or released, as fully set forth in the attached document:

Permanent Easement (#0922049018):	\$840.00
Notes:	
Total of Final Settlement:	\$840.00

<p>Puget Sound Energy, Inc:</p>	<p>_____</p> <p>Myla Burgos PO Box 97034 (BEL-08W) Bellevue, WA 98009-0868</p>	<p>_____</p> <p>Date</p>
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RETURN ADDRESS:
Puget Sound Energy, Inc.
Attention: R/W Department (MB)
PO Box 97034 / EST-06W
Bellevue, WA 98009-9734



AMENDMENT OF EASEMENT AND CONFIRMATION AGREEMENT

REFERENCE #: **20230516000263**
GRANTOR (Owner): **CITY OF DES MOINES**
GRANTEE (PSE): **PUGET SOUND ENERGY, INC.**
SHORT LEGAL: **Por. of SW09, T22N, R04E, King County**
ASSESSOR'S PROPERTY TAX PARCEL: **092204-9018**

This Amendment of Easement and Confirmation Agreement ("Agreement" herein) is made and entered into this _____ of _____, 20____, by and between **CITY OF DES MOINES, a municipality in the State of Washington** ("Grantor"), and **Puget Sound Energy, Inc.**, a Washington corporation ("PSE").

PSE is the holder of certain perpetual easement rights pursuant to those certain easements (the "Easement") from between **CITY OF DES MOINES, a municipality in the State of Washington** dated **April 19, 2023** and recorded under Auditor File Number **20230516000263**, in the Real Property Records of King County, Washington. The Grantor herein is the present owner of the real property described in **Exhibit "A"** attached hereto and by this reference made a part hereof which is a portion of the property encumbered by said easements. The Grantor herein and PSE wish to clarify certain matters regarding the above mentioned easement.

NOW, THEREFORE, for and in consideration of good and valuable consideration in hand paid, the parties hereto confirm and agree as follows:

Section 1. The Easement, as granted in April 2023, as hereinafter amended, remains in full force and effect.

Section 2. The legal description of the Easement Area lying within the property described in said Exhibit "A" is hereby amended to read as follows:

THAT PORTION OF THE HEREIN DESCRIBED REAL PROPERTY DESCRIBED AS FOLLOWS:

THE EAST NINETEEN (19) FEET;

TOGETHER WITH THE NORTH 5 FEET OF THE SOUTH 25 FEET OF THE WEST 34 FEET OF THE EAST 53 FEET.

LESS RIGHT OF WAY DEDICATED TO THE CITY OF DES MOINES, IF ANY, LOCATED IN THE NORTH 5 FEET OF THE EAST 5 FEET.

A DIAGRAM IS ATTACHED HERETO AS EXHIBIT "B" AS A VISUAL AID ONLY.

Section 3. This Agreement shall be binding upon and inure to the benefit of Successors and Assignees of both parties.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first set forth above.

GRANTOR:

CITY OF DES MOINES, a municipality in the State of Washington

By: _____
(name)

Its: _____
(title)

**PUGET SOUND ENERGY, INC.,
a Washington corporation**

By: _____
ELIM YOON
Supervisor, Real Estate

STATE OF WASHINGTON)
) SS
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the person(s) who signed as _____, of **CITY OF DES MOINES, a municipality in the State of Washington**, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be his/her free and voluntary act and deed and the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned; and on oath stated that he/she was authorized to execute the said instrument on behalf of said limited liability company.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Washington, residing at _____

My Appointment Expires: _____

Notary seal, text and all notations must be inside 1" margins

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this _____ day of _____, 20_____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **ELIM YOON**, to me known to be the person who signed as **Supervisor Real Estate** of Puget Sound Energy, Inc., the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be her free and voluntary act and deed and the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned; and on oath stated that she was authorized to execute the said instruction on behalf of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Appointment Expires: _____

Notary seal, text and all notations must not be within 1" margins

EXHIBIT "A"
LEGAL DESCRIPTION
092204-9018

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON; WHICH LIES SOUTH OF FRED RUSSELL COUNTY ROAD, (S. 223RD STREET) AND EAST OF A LINE DRAWN FROM A POINT 711.12 FEET EAST OF THE SOUTHWEST CORNER TO A POINT 711 FEET EAST OF THE NORTHWEST CORNER OF SAID LINE:

EXCEPT THE EASTERLY 30 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD PURPOSES BY DEED RECORDED UNDER RECORDING NO. 787611, KING COUNTY, WASHINGTON.

SITUATE IN COUNTY OF KING, STATE OF WASHINGTON.

S 223RD ST

Parcel: 0922049018
2255 S 223RD ST
DES MOINES, 98198

7352 SQ FT EASEMENT

24TH AVE S

19

353

34

5

20

19

EASEMENT 2
SCALE: 1" = 40'

Attachment #5

RETURN ADDRESS:
Puget Sound Energy, Inc.
Attn: ROW Department (MB)
PO Box 97034 / BOT-020
Bellevue, WA 98009-9734



EASEMENT

REFERENCE #:
GRANTOR (Owner): **CITY OF DES MOINES**
GRANTEE (PSE): **PUGET SOUND ENERGY, INC.**
SHORT LEGAL: **PTN SE ¼ SW ¼ S09-T22N-R4E, W.M.**
ASSESSOR'S PROPERTY TAX PARCEL: **0922049018**

For and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **CITY OF DES MOINES, a municipality of the State of Washington** ("Owner" herein), hereby grants and conveys to **PUGET SOUND ENERGY, INC.**, a Washington corporation ("PSE" herein), for the purposes described below, a nonexclusive perpetual easement over, under, along across and through the following described real property (the "Property" herein) in King County, Washington:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON; WHICH LIES SOUTH OF FRED RUSSELL COUNTY ROAD, (S. 223RD STREET) AND EAST OF A LINE DRAWN FROM A POINT 711.12 FEET EAST OF THE SOUTHWEST CORNER TO A POINT 711 FEET EAST OF THE NORTHWEST CORNER OF SAID LINE:

EXCEPT THE EASTERLY 30 FEET THEREOF CONVEYED TO KING COUNTY FOR ROAD PURPOSES BY DEED RECORDED UNDER RECORDING NO. 787611, KING COUNTY, WASHINGTON.

SITUATE IN COUNTY OF KING, STATE OF WASHINGTON.

Except as may be otherwise set forth herein PSE's rights shall be exercised upon that portion of the Property ("Easement Area" herein) described as follows:

THAT PORTION OF THE HEREIN DESCRIBED REAL PROPERTY DESCRIBED AS FOLLOWS:

THE EAST NINETEEN (19) FEET;

TOGETHER WITH THE NORTH 5 FEET OF THE SOUTH 25 FEET OF THE WEST 7 FEET OF THE EAST 26 FEET;

LESS RIGHT OF WAY DEDICATED TO THE CITY OF DES MOINES, IF ANY, LOCATED IN THE NORTH 5 FEET OF THE EAST 5 FEET.

A DIAGRAM IS ATTACHED HERETO AS EXHIBIT "A" AS A VISUAL AID ONLY.

PSE Easement 2014
WO# 101137534
Page 1 of 4

1. Purpose. PSE shall have the right to use the Easement Area to construct, operate, maintain, repair, replace, improve, remove, upgrade and extend one or more utility systems for purposes of transmission, distribution and sale of electricity. Such systems may include, but are not limited to:

Overhead facilities. Poles and other support structures with crossarms, braces, guys and anchors; electric transmission and distribution lines; fiber optic cable and other lines, cables and facilities for communications; transformers, street lights, meters, fixtures, attachments and any and all other facilities or appurtenances necessary or convenient to any or all of the foregoing.

Following the initial construction of all or a portion of its systems, PSE may, from time to time, construct such additional facilities as it may require for such systems. PSE shall have the right of access to the Easement Area over and across the Property to enable PSE to exercise its rights granted in this easement.

2. Easement Area Clearing and Maintenance. PSE shall have the right, but not the obligation to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Area. PSE shall also have the right, but not the obligation, to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees or other vegetation in the Easement Area.

3. Trees Outside Easement Area. PSE shall have the right to cut, trim remove and dispose of any trees located on the Property outside the Easement Area that could, in PSE's sole judgment, interfere with or create a hazard to PSE's systems. PSE shall, except in the event of an emergency, prior to the exercise of such right, identify such trees and make a reasonable effort to give Owner prior notice that such trees will be cut, trimmed, removed or disposed. Owner shall be entitled to compensation for the actual market value of merchantable timber (if any) cut and removed from the Property by PSE.

4. Restoration. Following initial installation, repair or extension of its facilities, PSE shall, to the extent reasonably practicable, restore landscaping and surfaces and portions of the Property affected by PSE's work to the condition existing immediately prior to such work, unless said work was done at the request of Owner, in which case Owner shall be responsible for such restoration. All restoration which is the responsibility of PSE shall be performed as soon as reasonably possible after the completion of PSE's work and shall be coordinated with Owner so as to cause the minimum amount of disruption to Owner's use of the Property.

5. Owner's Use of Easement Area. Owner reserves the right to use the Easement Area for any purpose not inconsistent with the rights herein granted, provided, however, Owner shall not excavate within or otherwise change the grade of the Easement Area or construct or maintain any buildings or structures on the Easement Area and Owner shall do no blasting within 300 feet of PSE's facilities without PSE's prior written consent.

6. Indemnity. PSE agrees to indemnify Owner from and against liability incurred by Owner as a result of the negligence of PSE or its contractors in the exercise of the rights herein granted to PSE, but nothing herein shall require PSE to indemnify Owner for that portion of any such liability attributable to the negligence of Owner or the negligence of others.

7. Termination. The rights herein granted shall continue until such time as PSE terminates such right by written instrument. If terminated, any improvements remaining in the Easement Area shall become the property of Owner. No termination shall be deemed to have occurred by PSE's failure to install its systems on the Easement Area.

8. Successors and Assigns. PSE shall have the right to assign, apportion or otherwise transfer any or all of its rights, benefits, privileges and interests arising in and under this easement. Without limiting the generality of the foregoing, the rights and obligations of the parties shall be binding upon their respective successors and assigns.

[signatures to follow next page]

DATED this 19 day of April, 2023.

OWNER: CITY OF DES MOINES, a municipality of the State of Washington

BY: *Ken Thomas*

AS: Acting City Manager

STATE OF Washington)
) ss
COUNTY OF _____)

On this 19 day of April, 2023 before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Ken Thomas to me known to be the individual who executed the within and foregoing instrument as Acting City Manager of the City of Des Moines, a municipality of the State of Washington, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned; and on oath stated that they were authorized to execute the said instrument.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate first above written.



Bonnie S. Wilkins
(Signature of Notary)

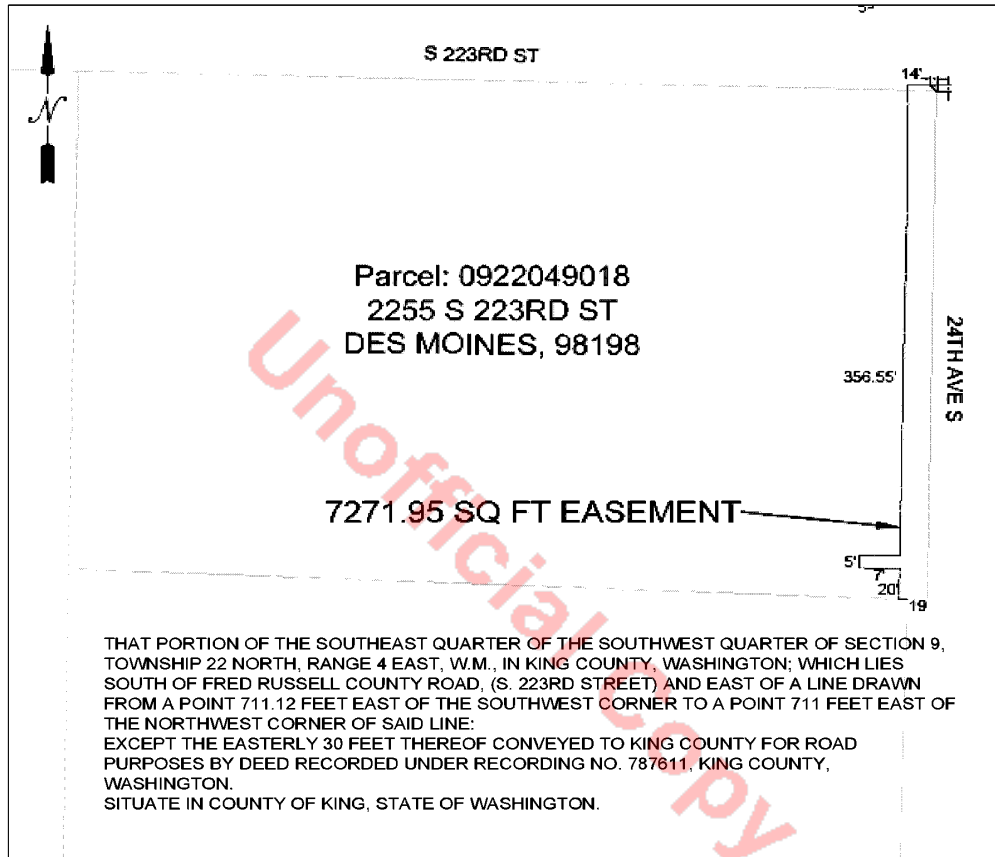
Bonnie S. Wilkins
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Washington, residing

at Des Moines, Washington

My Appointment Expires: 1-09-2025

EXHIBIT "A"
EASEMENT DEPICTION

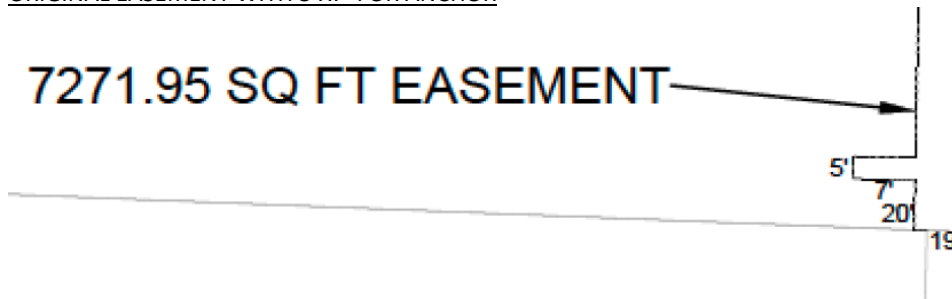


ADDITIONAL EASEMENT DIAGRAM

(AS SHOWN IN THE EXHIBITS OF ORIGINAL EASEMENT AND PROPOSED EASEMENT AMENDMENT)

ORIGINAL EASEMENT WITH 5'X7' FOR ANCHOR

7271.95 SQ FT EASEMENT

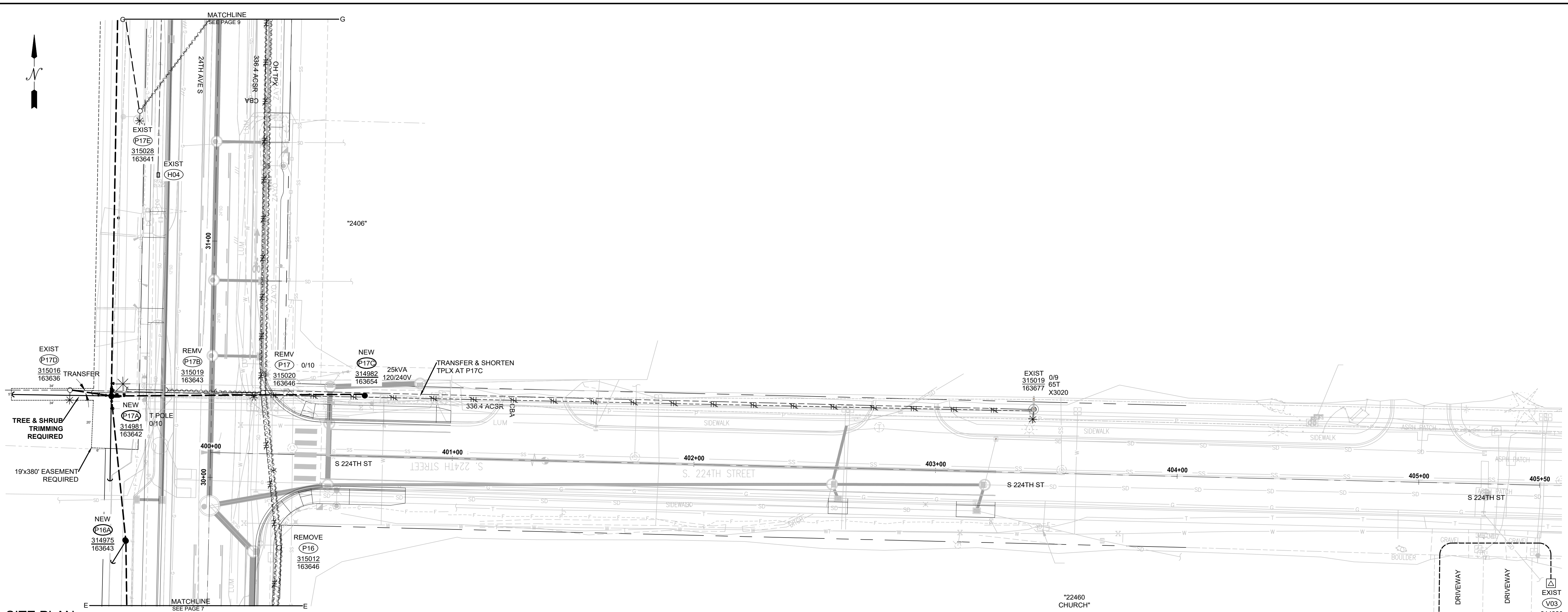


PROPOSED EASEMENT AREA AMENDMENT WITH ADDITIONAL 5'X27' FOR A TOTAL OF 5'X34' EASEMENT FOR ANCHOR

7352 SQ FT EASEMENT



Nov 17, 2023 - 10:00am C:\Users\p63118\appdata\local\temp\temp\p63118\p63118_19112_2023-11-10_101137534_Des Moines 24th Ave S Pole Relocate.dwg



SITE PLAN
SCALE: 1" = 20'

WIRE REMOVAL TABLE

Location	From	To	Wire Size & Type	Quantity	Length (per conductor)	Remarks
	P16	P17	336.4 MCM ACSR	3	65'	
	P16	P17	NEUTRAL	1	65'	
	P16	P17	SPAN GUY	1	65'	
	P17	P17B	SPAN GUY	1	40'	
	P17	P18	336.4 MCM ACSR	3	190'	
	P17	P18	NEUTRAL	1	190'	
TOTAL 765 FEET (336.4 MCM ACSR) ACTUAL						FEET REMOVED
TOTAL 255 FEET (NEUTRAL) ACTUAL						FEET REMOVED
TOTAL 105 FEET (SPAN GUY) ACTUAL						FEET REMOVED

SECONDARY WIRE REMOVAL TABLE

Location	From	To	Wire Size & Type	Quantity	Length (per conductor)	Remarks
	P17	P17B	1/0 AL (SEC TPX)	1	40'	
	P17	P18	1/0 AL (SEC TPX)	1	190'	
	P17E	P18	1/0 AL (SEC TPX)	1	90'	
TOTAL 320 FEET (1/0 AL) ACTUAL						FEET REMOVED

WIRE STRINGING PRIMARY & SECONDARY

Location	From	To	Pri	Sec	Wire Size & Type	Quantity	Length (Per conductor)	Total	Actual
	2-15	P16A	P17A	XX	397 AAC	3	65		
	2-15	P17A	P17C	XX	397 AAC	3	105		
	2-20A	P17A	P17C	XX	4/0 OH TPLX	1	105		
	2-15	P17A	P18A	XX	397 AAC	3	180		
	2-20A	P17E	P18A	XX	1/0 AL TPLX	1	60		

POLE RETIREMENT TABLE

SITE #	POLE DATA					TEMP TRANSFERS				ST. LIGHT TRANSFERS			
	GRID #	HEIGHT	CLASS	YEAR	TOPPED	RMVD	TEL	TV	FIBER	TRAN	RMVD	ID NUMBER	
2-129	P16	315012-163646	45	UNK	1987	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2-129	P17	315020-163646	70	1	1962	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2-129	P17B	315019-163643	40	UNK	1911	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

POLE TABLE (NEW)

Site #	Pole Data					Remarks / Location Ref.
	Grid #	Height	Class	Year		
P16A	314975-163643	50	1		PSE Equip #	
P17C	314982-163654	45	1		PSE Equip #	

SECONDARY HH/PEDESTAL TABLE

Site	Vault Size & Cover	Type & Size Equipment in Vault	Remarks
H04	EXISTING		

SITE SPECIFIC NOTES:

- ▲ P16A (314975-163643) NEW
 - INSTALL NEW 50' CL1 POLE AS STAKED (PD501) 6010.1000
 - INSTALL (1) 8P DOUBLE STD 11' CROSSARM (ARD2S11) 6011.1010
 - INSTALL (2) 7/16" PRIMARY DOWN GUYS WEST (GYD7SA) 6013.0100
 - INSTALL (1) 3/8" NEUTRAL DOWN GUY (GYD3SAN) 6013.0100
 - INSTALL 20" ANCHOR PLATE 10' L WEST OF POLE (ANDP20) 6012.1000
- ▲ P17 (315020-163646) REMOVE
 - TRANSMISSION TO REMOVE POLE UNDER W.O. 111026445
- ▲ P17A (314981-163642) NEW
 - TRANSMISSION TO INSTALL NEW POLE UNDER W.O. 111026445
 - UNDERBUILD DISTRIBUTION
 - INSTALL (1) 8P DOUBLE STD 11' CROSSARM (ARD2S11) 6011.1010 (31.5' FROM TOP OF POLE)
 - INSTALL (1) 12 KV PRIMARY NEUTRAL DOUBLE 11' ARM 397 AAC (TOP) NORTH - SOUTH (TAPD313)
 - INSTALL (1) 8P DOUBLE EXT DA BOLTS HD 11' CROSSARM (ARD4H11) 6011.1020
 - INSTALL (1) 12 KV DEADEND, UNDERBUILD 397 AAC (BOTTOM) EAST (DEH315) 6034.1042
 - INSTALL 3-PH TAP EAST (LAT315) 6033.5100
 - INSTALL NEW 1/0 OH TPLX TO P17C
 - TRANSFER OH TPLX TO P17D
- 2-10A -TRANSMISSION TO INSTALL NEW ANCHOR PLATE 40' L WEST OF POLE
 - INSTALL (1) 7/16" PRIMARY DOWN GUY WEST (GYD7SA) 6013.0100
 - INSTALL (1) 3/8" NEUTRAL DOWN GUY WEST (GYD3SAN) 6013.0100
- ▲ P17E (314975-163643) NEW
 - INSTALL NEW 45' CL1 POLE AS STAKED (PD451) 6010.1000
 - INSTALL 8P DOUBLE STD 9' CROSSARM (ARD2S09) 6011.1010
 - INSTALL NEW 25KVA TRANSFORMER (TRFN25) 6025.1000
 - INSTALL INS 4" RIGID CLEVIS (INDRCR) 6015.1000
- ▲ P17E (315028-163641) EXISTING
 - EXIST POLE TO REMAIN
 - INSTALL NEW 1/0 OH TPLX NORTH TO P18A

NOTE: STREET LIGHTING SERVICE TO STAY LIVE UNTIL NEW LIGHTS ARE INSTALLED

TRANSFORMER INSTALLATION (OH)
 Installed at site: **P17C**
 Grid Number: 314981-163642
 kVA Rating: 25kVA 120/240v
 Material ID#: 6211250
Foreman to reline the following information
 Company ID#: _____
 Primary phase connected to: _____
 Tested Secondary Voltage: _____

REAL ESTATE/EASEMENT REQUIRED				PERMIT DES MOINES			
FUNCTION	CONTACT	PHONE NO	DATE	FUNCTION	CONTACT	PHONE NO	DATE
PROJECT MGR	DUSTIN WELLER	206-379-4347	11/17/23	ENGR - POWER	DAVID SANTIAGO	425-738-8705	11/17/23
ENGR - GAS	N/A	N/A	N/A	DRAWN BY	DAVID SANTIAGO	425-738-8705	11/17/23
CHECKED BY				APPROVED BY			
FOREMAN #1				FOREMAN #2			
MAPPING							
JOINT FACILITIES ARRANGEMENTS							
UTILITIES	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CONTACT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PHONE#	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PUGET SOUND ENERGY Des Moines 24th Ave POLE RELOCATION 22900 24th Ave S, Des Moines, WA 98198				INCIDENT N/A MAOP N/A Gas Order N/A Elect Order 101137534 SCALE AS NOTED PAGE 8 / 11			

101137534 R2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Right of Way Dedication – Des
Moines Theater

FOR AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: December 6, 2023

- 1. Right of Way Dedication Legal Description and Exhibit
- 2. Aerial Map of Proposed Dedication

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is to seek City Council’s approval to accept a right-of-way dedication granting a portion of the Des Moines Theater property, Tax Parcel No. 2006600100, to be designated as City right-of-way (Attachment 1). The following motion will appear on the consent agenda:

Suggested Motion

Motion: “I move to authorize the City Manager to accept a Right-of-Way dedication from the Des Moines Theater, King County Tax Parcel No. 2006600100, which is located along the Marine View Drive property frontage.”

Background

Pursuant to RCW 35A.11.010, code cities may, through its legislative body, purchase, lease, receive, or otherwise acquire real property to hold, convey, or otherwise dispose of for common benefit. The dedication of a portion of the Des Moines Theater property along Marine View Drive S would allow the existing sidewalk, parking, and utilities to be located within City right-of-way (Attachment 2).

The Des Moines Theater property was redeveloped under City Building Permit BLD2016-0719. During the permit review process it was found that the City held a 15' wide sidewalk, parking, and utility easement for public use along the Marine View Drive S frontage of the Des Moines Theater property. As a condition of the Building Permit, the development was required to dedicate the sidewalk, parking, and utility easement to the City for right-of-way purposes.

Discussion

The dedication of right-of-way is required to adjust the property line such that the frontage improvements associated with the Des Moines Theater and previously constructed public facilities are located within City right-of-way. While these facilities are currently located within a City held easement for public use, it is not typical and a dedication would clearly delineate the public use and maintenance of the area.

Alternatives

The City Council may choose not to accept the right-of-way dedication and utilize the existing sidewalk, parking, and utility easement for public use.

Financial Impact

None

Recommendation

Staff recommends the adoption of the motion.

Council Committee Review

Not Applicable

EXHIBIT A

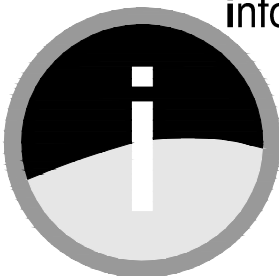
RIGHT-OF-WAY DEDICATION LEGAL DESCRIPTION

THE EASTERLY 15.00 FEET OF LOT A OF CITY OF DES MOINES LOT
LINE ADJUSTMENT RECORDING NUMBER 20160509900001, RECORDS OF
KING COUNTY, WASHINGTON;

CONTAINING 2,746 SQUARE FEET;

SITUATE IN THE CITY OF DES MOINES, COUNTY OF KING, STATE OF
WASHINGTON.

A PORTION OF THE NE 1/4 OF THE NW 1/4 OF
SECTION 17, T22N, R4E, W.M.



informed land survey

PO Box 5137
Tacoma, WA 98415-0137

Phone: 253-627-2070
admin@i-landsurvey.com
www.i-landsurvey.com

LAND SURVEYING • MAPPING • CONSTRUCTION LAYOUT

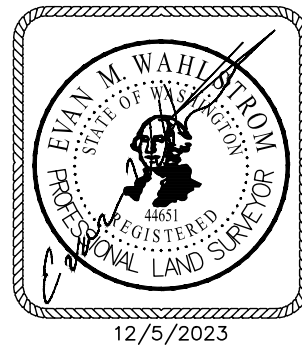
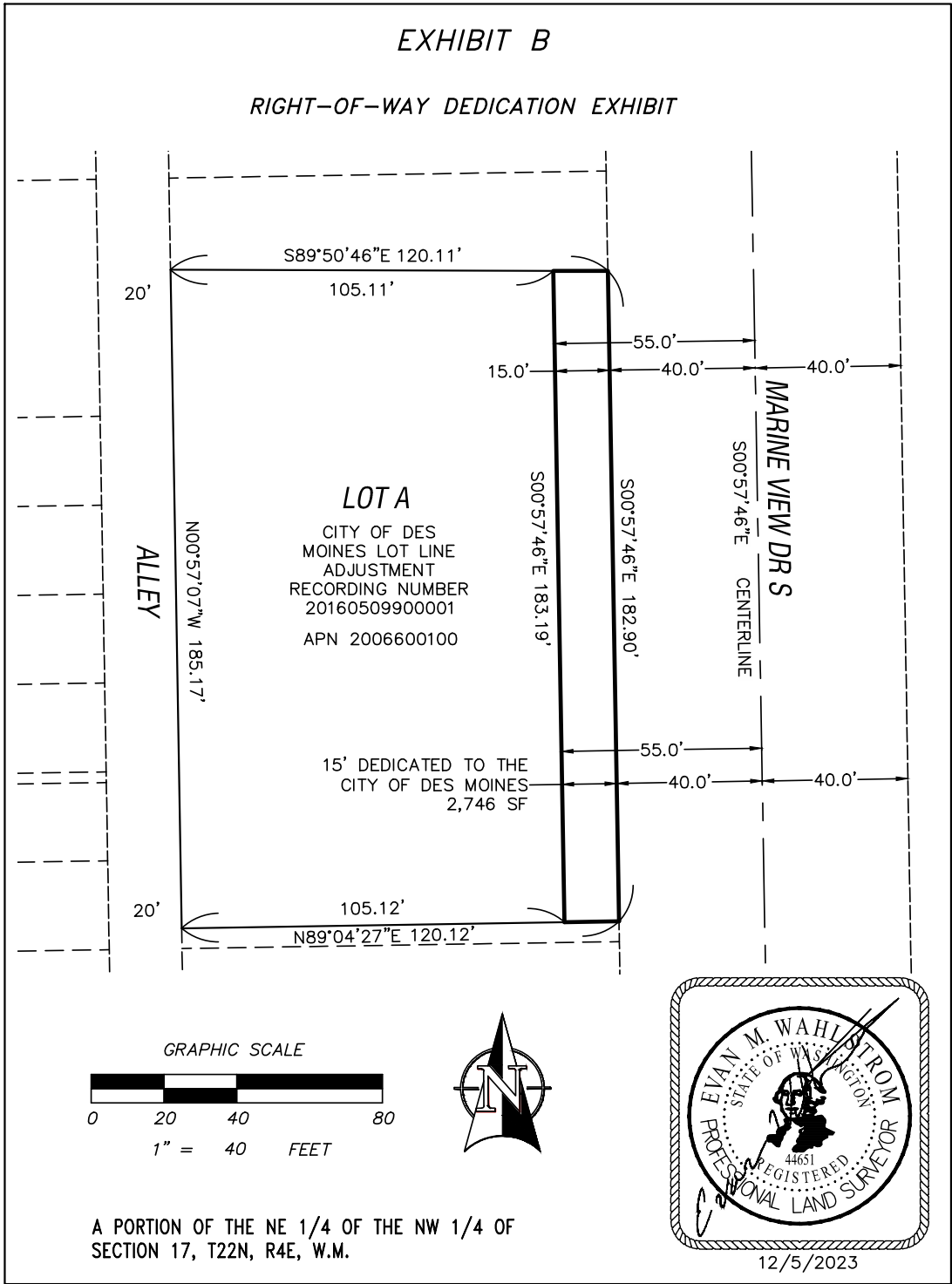


EXHIBIT B

RIGHT-OF-WAY DEDICATION EXHIBIT





South 223rd Street

Marine View Dr S

Proposed ROW Dedication

7th Ave South

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Regional Coordination Framework for Disasters and Planned Events

FOR AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: Emergency Management

ATTACHMENTS:

DATE SUBMITTED: December 7, 2023

- 1. Agreement: Regional Coordination Framework for Disasters and Planned Events for Public and Private Organizations in King County

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval for the City of Des Moines to sign and become part of the Regional Coordination Framework for Disaster and Planned Events for Public and Private Organizations in King County. The agreement establishes a cooperative and voluntary platform linking private business, nonprofit organizations, government agencies and special purpose district partners. This agreement addresses the legal and financial obligation of partners when sharing personnel, equipment, materials and/or support during disasters or planned events.

Suggested Motion

Motion: "I move to approve the agreement for the Regional Coordination Framework for Disaster and Planned Events for Public and Private Organizations and to authorize the City Manager to sign the agreement substantially in the form submitted."

Background

As part of the development of a Regional Disaster Plan beginning in 1999, the framers realized that an effective regional plan would require a mechanism to share resources between entities. From 1999 to 2001, legal advisors from King County Prosecuting Attorney's Office and several other public and private entities worked together to frame the appropriate legal and liability language to form an 'Omnibus Legal and Financial Agreement.' Many public, private and nonprofit organizations signed onto this initial Plan and Omnibus.

Over time, mutual aid methodology and practices evolved at the regional, State and Federal levels; as well as alterations in the Federal Emergency Management Agency (FEMA) public assistance arena, making it appropriate to revisit the Omnibus.

In 2012 a subcommittee of the Regional Disaster Planning Work Group began the process to revisit the Omnibus language. The subcommittee existed of legal advisors from King County, City of Auburn and City of Seattle and emergency managers from King County, Seattle, Bellevue, Zone 1, Zone 3 and Washington State. Through several meetings leveraging the guidance and expertise of the legal and mutual aid subject matter experts involved, the subcommittee finalized the current version of the *'AGREEMENT for Organizations Participating in the Regional Coordination Framework for Disasters and Planned Event for Public and Private Organizations in King County, Washington.'*

Currently, 29 King County cities are signatories to the agreement, including Seattle, Auburn, Federal Way, Kent, Normandy Park, SeaTac, and Tukwila. Des Moines and Burien are the only two south King County cities who have not signed the agreement. The City of Burien is in the process of reviewing the agreement.

Discussion

The City of Des Moines is vulnerable to numerous technological, natural and human-initiated hazards. The Regional Coordination Framework for Disasters and Planned Events for Public and Private Organizations in King County aligns the City of Des Moines with other Cities and partners in the county and allows a structure for the sharing of resources during time of emergency and during planned events.

The agreement allows a city (or other entity) to request aid in the form of materials, equipment, and/or personnel in the event of an emergency from another city that has signed onto the agreement. The agreement imposes no obligation on the responding city to provide the requested aid – response is entirely at the responding city's discretion. If aid is given, the agreement sets the terms for the responding city to recoup its actual costs and provides for the return of materials, equipment, and personnel. It also requires the requesting city to provide indemnification to the responding city for its actions in providing aid to the requestor.

Some specifics under the agreement are as follows:

- Requester shall pay to Responder all valid and invoiced Assistance Costs within 60 days of receipt of Responder's invoice, for the Emergency Assistance services provided by Responder. Invoices shall include, as applicable, specific details regarding labor costs, including but not limited to the base rate, fringe benefits rate, overhead, and the basis for each element; equipment usage detail and, material cost breakdown.
- In the event Responder provides supplies or parts, Responder shall have the option to accept payment of cash or in-kind for the supplies or parts provided.

- Reimbursement for use of equipment requested under the terms of this Agreement, such as construction equipment, road barricades, vehicles, and tools, shall be at the rate mutually agreed between Requester and Responder. The rate may reflect the rate approved and adopted by the Responder, a rate set forth in an industry standard publication, or other rate.

The Director of Emergency Management; Shannon Kirchberg will be the point of contact for the City of Des Moines and will maintain relationships in cooperation with participating Cities, Nonprofits, private organizations, and the King County Office of Emergency Management.

Alternatives

The Council could decline to approve the agreement... The City of Des Moines would still have the ability to request or provide aid in the event of an emergency, but would not be able to rely on the legal framework provided in the agreement. (Not recommended)

Financial Impact

There may be some administrative savings in following the sharing of resources during emergencies or planned events. Otherwise staff does not predict significant financial impact from the agreement.

Recommendation

Public Works, Legal and Emergency Management recommend the approval of the agreement



AGREEMENT

Regional Coordination Framework for Disasters and Planned Events

for Public and Private Organizations
in King County, Washington

February 2014

Updating Process of former “Omnibus Legal and Financial Agreement”

As the development of the ‘Regional Disaster Plan’ began in 1999, there was also a need to create a ‘mechanism to share resources.’ The Plan focused on establishing a cooperative and voluntary platform linking private businesses, nonprofit organizations, government agencies, and special purpose districts. A legal document was needed to address emergency assistance covering the legal and financial obligations of partners sharing personnel, equipment materials and/or support during a disaster.

Back in 1999 to 2001, legal advisors from King County Prosecuting Attorney’s Office and several other public and private entities worked together to frame the appropriate legal and liability language forming the ‘Omnibus Legal and Financial Agreement.’ The Agreement withstood the legal review and approval of many public, private and nonprofit organizations that thereafter signed onto the Plan and Omnibus.

As the Plan transitioned and evolved into the ‘Framework,’ the time was also appropriate to revisit the Omnibus. Over the twelve year tenure of the Omnibus, mutual aid methodology and practices had evolved at the regional, State and Federal levels; as well as alterations in the Federal Emergency Management Agency (FEMA) public assistance arena.

In 2012 a subcommittee of the Regional Disaster Planning Work Group began the process to revisit the Omnibus language. The subcommittee existed of legal advisors from King County, City of Auburn and City of Seattle and emergency managers from King County, Seattle, Bellevue, Zone 1, Zone 3 and Washington State. Through several meetings leveraging the guidance and expertise of the legal and mutual aid subject matter experts involved, the subcommittee finalized the current draft of the ‘*AGREEMENT for Organizations Participating in the Regional Coordination Framework for Disasters and Planned Event for Public and Private Organizations in King County, Washington.*’ A large percentage of the original language has stayed the same with a few language and terminology updates. The key areas of adjustment include:

New Changes
Document re-titled to ‘Agreement’ – simpler title; Replaced ‘Omnibus Legal and Financial Agreement’
Replaced ‘Plan’ wording throughout document with ‘Framework’
Replaced ‘Omnibus’ wording throughout document with ‘Agreement’
Terminology changes made by replacing ‘borrower’ and ‘lender’ with ‘requester’ and ‘responder’
Adjusted language in ‘Article I – Applicability’ to say “...located in King County.”; Replaced “...in and bordering geographic King County.”
Updated verbiage in ‘Article II – Definitions’ on ‘Basic Plan’ and ‘Package’ since it is now a ‘Framework’
Cleaned-up language in ‘Article II – Definitions’ on ‘Emergency’

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Cleaned-up language in ‘Article II – Definitions’ on ‘Emergency Contact Points’
Updated respective sections with correct King County Office of Emergency Management address; Former ‘7300 Perimeter Road’ address
Updated verbiage in ‘Article IV – Role of Emergency Contact Point for Signatory Partners
Renaming to and cleaned-up language in ‘Article VI – Payment and Billing’; Formerly titled ‘Article VI – Payment for Services and Assistance’
Cleaned-up language in ‘Article VIII – Requests for Emergency Assistance’
Removed section ‘IX – General Nature of Emergency Assistance’; Repetitive of existing language
Renaming to ‘Article IX – Provision of Equipment’; Formerly ‘Article X – Loans of Equipment’
Renaming to ‘Article X – Provision of Materials and Supplies’; Formerly ‘Article XI – Exchange of Materials and Supplies’
Renaming to ‘Article XI – Provision of Personnel’; Formerly ‘Article XII – Loans of Personnel’
Renaming to and cleaned-up language ‘Article XII – Record Keeping’; Formerly ‘Article XIII – Record keeping’
Renaming to and cleaned-up language ‘Article XIII – Indemnification, Limitation of Liability, and Dispute Resolution’; Formerly ‘Article XIV – Indemnification and Limitation of Liability’
Articles following have been renumbered and renamed appropriately

AGREEMENT

*for organizations participating in the
Regional Coordination Framework for Disasters and Planned Events
for Public and Private Organizations in King County, Washington*

This AGREEMENT (“Agreement”) is entered into by the public and private organizations who become signatories hereto (“Signatory Partners”) to facilitate the provision of Emergency Assistance to each other during times of emergency.

WHEREAS, the Signatory Partners have expressed a mutual interest in the establishment of an Agreement to facilitate and encourage Emergency Assistance among participants; and

WHEREAS, the Signatory Partners do not intend for this Agreement to replace or infringe on the authority granted by any federal, state, or local governments, statutes, ordinances, or regulations; and

WHEREAS, in the event of an emergency, a Signatory Partner may need Emergency Assistance in the form of supplemental personnel, equipment, materials or other support; and

WHEREAS, each Signatory Partner may own and maintain equipment, stocks materials, and employs trained personnel for a variety of services and is willing, under certain conditions, to provide its supplies, equipment and services to other Signatory Partners in the event of an emergency; and

WHEREAS, the proximity of the Signatory Partners to each other enables them to provide Emergency Assistance to each other in emergency situations.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, each Signatory Partner agrees as follows:

Article I - APPLICABILITY.

A private or public organization located in King County, Washington, may become a Signatory Partner by signing this Agreement and becoming bound thereby. This Agreement may be executed in multiple counterparts.

Article II - DEFINITIONS.

- A. 'Assistance Costs' means any direct material costs, equipment costs, equipment rental fees, fuel, and the labor costs that are incurred by the Responder in providing any asset, service, or assistance requested.
- B. 'Emergency' means an event or set of circumstances that qualifies as an emergency under any applicable statute, ordinance, or regulation.
- C. 'Emergency Assistance' means employees, services, equipment, materials, or supplies provided by a Responder in response to a request from a Requester.
- D. 'Emergency Contact Points' means persons designated by each Signatory Partner who will have (or can quickly get) the authority to commit available equipment, services, and personnel for their organization.
- E. 'King County Emergency Management Advisory Committee ("EMAC")' is the Committee established in King County Code 2.36.055.
- F. 'Regional Coordination Framework for Disasters and Planned Events for Public and Private Organizations in King County' ("Framework") means an all hazards architecture for collaboration and coordination among jurisdictional, organizational, and business entities during emergencies in King County.
- G. 'Requester' means a Signatory Partner that has made a request for Emergency Assistance.
- H. 'Responder' means a Signatory Partner providing or intending to provide Emergency Assistance to a Requester.
- I. 'Signatory Partner' means any public or private organization in King County, WA, that enters into this Agreement by signature of a person authorized to sign.
- J. 'Termination Date' is the date upon which this agreement terminates pursuant to Article V.

Article III - PARTICIPATION.

Participation in this Agreement, and the provision of personnel or resources, is purely voluntary and at the sole discretion of the requested Responder. Signatory Partners that execute the Agreement are expected to:

- A. Identify and furnish to all other Signatory Partners a list of the Organization's current Emergency Contact Points together with all contact information; and .
- B. Participate in scheduled meetings to coordinate operational and implementation issues to the maximum extent possible.

Article IV - ROLE OF EMERGENCY CONTACT POINT FOR SIGNATORY PARTNERS.

Signatory Partners agree that their Emergency Contact Points or their designees can serve as representatives of the Signatory Partner in any meeting to work out the language or implementation issues of this Agreement.

The Emergency Contact Points of a Signatory Partner shall:

- A. Act as a single point of contact for information about the availability of resources when other Signatory Partners seek assistance.
- B. Maintain a manual containing the Framework, including a master copy of this Agreement (as amended), and a list of Signatory Partners who have executed this Agreement.
- C. Each Signatory Partner will submit its Emergency Contact Information Form to the King County Office of Emergency Management ("KCOEM"). KCOEM will maintain a list showing the succession in all the Signatory Partners. This list will include names, addresses, and 24-hour phone numbers of the Emergency contact points (2-3 deep) of each Signatory Partner. Note: the phone number of a dispatch office staffed 24 hours a day that is capable of contacting the Emergency contact point(s) is acceptable.

Article V - TERM AND TERMINATION.

- A. This Agreement is effective upon execution by a Signatory Partner.

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- B. A Signatory Partner may terminate its participation in this Agreement by providing written termination notification to the EMAC, care of the KCOEM, 3211 NE 2nd Street, Renton WA 98056, or by Fax at 206-205-4056. Notice of termination becomes effective upon receipt by EMAC which shall, in turn, notify all Signatory Partners. Any terminating Signatory Partner shall remain liable for all obligations incurred during its period of participation, until the obligation is satisfied.

Article VI - PAYMENT AND BILLING.

- a. Requester shall pay to Responder all valid and invoiced Assistance Costs within 60 days of receipt of Responder's invoice, for the Emergency Assistance services provided by Responder. Invoices shall include, as applicable, specific details regarding labor costs, including but not limited to the base rate, fringe benefits rate, overhead, and the basis for each element; equipment usage detail and, material cost breakdown.
- b. In the event Responder provides supplies or parts, Responder shall have the option to accept payment of cash or in-kind for the supplies or parts provided.
- c. Reimbursement for use of equipment requested under the terms of this Agreement, such as construction equipment, road barricades, vehicles, and tools, shall be at the rate mutually agreed between Requester and Responder. The rate may reflect the rate approved and adopted by the Responder, a rate set forth in an industry standard publication, or other rate.

Article VII - INDEPENDENT CONTRACTOR.

Responder shall be and operate as an independent contractor of Requester in the performance of any Emergency Assistance. Employees of Responder shall at all times while performing Emergency Assistance continue to be employees of Responder and shall not be deemed employees of Requester for any purpose. Wages, hours, and other terms and conditions of employment of Responder shall remain applicable to all of its employees who perform Emergency Assistance. Responder shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. Requester shall not be responsible for paying any wages, benefits, taxes, or other compensation directly to the Responder's employees. The costs associated with requested personnel are subject to the reimbursement process outlined in Article XI. In no event shall Responder or its officers, employees, agents, or representatives be authorized (or

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represent that they are authorized) to make any representation, enter into any agreement, waive any right or incur any obligation in the name of, on behalf of or as agent for Requester under or by virtue of this Agreement.

Article VIII - REQUESTS FOR EMERGENCY ASSISTANCE.

Requests for Emergency Assistance shall be made by a person authorized by the Requester to make such requests and approved by a person authorized by Responder to approve such requests. If this request is verbal, it must be confirmed in writing within thirty days after the date of the request.

Article IX - PROVISION OF EQUIPMENT.

Provision of equipment and tools loans is subject to the following conditions:

1. At the option of Responder, equipment may be provided with an operator. See Article XI for terms and conditions applicable to use of personnel.
2. Provided equipment shall be returned to Responder upon release by Requester, or immediately upon Requester's receipt of an oral or written notice from Responder for the return of the equipment. When notified to return equipment to Responder, Requester shall make every effort to return the equipment to Responder's possession within 24 hours following notification. Equipment shall be returned in the same condition as when it was provided to Requester.
3. During the time the equipment has been provided, Requester shall, at its own expense, supply all fuel, lubrication and maintenance for Responder's equipment. Requester shall take proper precaution in its operation, storage and maintenance of Responder's equipment. Equipment shall be used only by properly trained and supervised operators. Responder shall endeavor to provide equipment in good working order. All equipment is provided "as is", with no representations or warranties as to its condition, fitness for a particular purpose, or merchantability.
4. Responder's cost related to the transportation, handling, and loading/unloading of equipment shall be chargeable to Requester. Responder shall submit copies of invoices from outside sources that perform such services and shall provide accounting of time and hourly costs for Responder's employees who perform such services.

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5. Without prejudice to Responder's right to indemnification under Article XIII herein, in the event equipment is lost, stolen or damaged from the point the Requestor has the beneficial use of the equipment, or while in the custody and use of Requester, or until the Requestor no longer has the beneficial use of the equipment, Requester shall reimburse Responder for the reasonable cost of repairing or replacing said damaged equipment. If the equipment cannot be repaired within a time period required by Responder, then Requester shall reimburse Responder for the cost of replacing such equipment with equipment which is of equal condition and capability. Any determinations of what constitutes "equal condition and capability" shall be at the discretion of Responder. If Responder must lease or rent a piece of equipment while Responder's equipment is being repaired or replaced, Requester shall reimburse Responder for such costs. Requester shall have the right of subrogation for all claims against persons other than parties to this Agreement that may be responsible in whole or in part for damage to the equipment. Requester shall not be liable for damage caused by the sole negligence of Responder's operator(s).

Article X - PROVISION OF MATERIALS AND SUPPLIES.

Requester shall reimburse Responder in kind or at Responder's actual replacement cost, plus handling charges, for use of partially consumed, fully consumed, or non-returnable materials and supplies, as mutually agreed between Requester and Responder. Other reusable materials and supplies which are returned to Responder in clean, damage-free condition shall not be charged to the Requester and no rental fee will be charged. Responder shall determine whether returned materials and supplies are "clean and damage-free" and shall treat material and supplies as "partially consumed" or "non-returnable" if found to be damaged.

Article XI - PROVISION OF PERSONNEL.

Responder may, at its option, make such employees as are willing to participate available to Requester at Requester's expense equal to Responder's full cost, including employee's salary or hourly wages, call back or overtime costs, benefits and overhead, and consistent with Responder's personnel union contracts, if any, or other conditions of employment. Costs to feed and house Responder's personnel, if necessary, shall be chargeable to and paid by Requester. Requester is responsible for assuring such arrangements as may be necessary for the safety, housing, meals, and transportation to and from job sites/housing sites (if necessary) for Responder's personnel. Responder shall bill all costs to Requester, who is responsible for paying

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all billed costs. Responder may require that its personnel providing Emergency Assistance shall be under the control of their regular leaders, but the organizational units will come under the operational control of the command structure of Requester. Responder's employees may decline to perform any assigned tasks if said employees judge such task to be unsafe. A request for Responder's personnel to direct the activities of others during a particular response operation does not relieve Requester of any responsibility or create any liability on the part of Responder for decisions and/or consequences of the response operation. Responder's personnel may refuse to direct the activities of others. Responder's personnel holding a license, certificate, or other permit evidencing qualification in a professional, mechanical, or other skill, issued by the state of Washington or a political subdivision thereof, is deemed to be licensed, certified, or permitted in any Signatory Partner's jurisdiction for the duration of the emergency, subject to any limitations and conditions the chief executive officer and/or elected and appointed officials of the applicable Signatory Partners jurisdiction may prescribe in writing. When notified to return personnel to Responder, Requester shall make every effort to return the personnel to Responder promptly after notification.

Article XII - RECORD KEEPING.

Time sheets and/or daily logs showing hours worked and equipment and materials used or provided by Responder will be recorded on a shift-by-shift basis by the Responder and will be submitted to Requester as needed. If no personnel are provided, Responder will submit shipping records for materials and equipment, and Requester is responsible for any required documentation of use of material and equipment for state or federal reimbursement. Under all circumstances, Requester remains responsible for ensuring that the amount and quality of all documentation is adequate to enable reimbursement.

Article XIII – INDEMNIFICATION, LIMITATION OF LIABILITY, AND DISPUTE RESOLUTION.

A. INDEMNIFICATION. Except as provided in section B., to the fullest extent permitted by applicable law, Requester releases and shall indemnify, hold harmless and defend each Responder, its officers, employees and agents from and against any and all costs, including costs of defense, claims, judgments or awards of damages asserted or arising directly or indirectly from, on account of, or in connection with providing, or declining to provide, or not being asked to provide, Emergency Assistance to Requester, whether arising before, during, or after performance of the Emergency Assistance and whether suffered by any of the Signatory Partners or any other person or entity.

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Requester agrees that its obligation under this section extends to any claim, demand and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, Requester, by mutual negotiation, hereby waives, as respects any indemnitee only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW of the State of Washington and similar laws of other states.

B. **ACTIVITIES IN BAD FAITH OR BEYOND SCOPE.** Any Signatory Partner shall not be required under this Agreement to indemnify, hold harmless and defend any other Signatory Partner from any claim, loss, harm, liability, damage, cost or expense caused by or resulting from the activities of any Signatory Partners' officers, employees, or agents acting in bad faith or performing activities beyond the scope of their duties.

C. **LIABILITY FOR PARTICIPATION.** In the event of any liability, claim, demand, action or proceeding, of whatever kind or nature arising out of rendering of Emergency Assistance through this Agreement, Requester agrees to indemnify, hold harmless, and defend, to the fullest extent of the law, each Signatory Partner, whose only involvement in the transaction or occurrence which is the subject of such claim, action, demand, or other proceeding, is the execution and approval of this Agreement.

D. **DELAY/FAILURE TO RESPOND.** No Signatory Partner shall be liable to another Signatory Partner for, or be considered to be in breach of or default under, this Agreement on account of any delay in or failure to perform any obligation under this Agreement, except to make payment as specified in this Agreement.

E. **MEDIATION AND ARBITRATION.** If a dispute arises under the terms of this Agreement, the Signatory Partners involved in the dispute shall first attempt to resolve the matter by direct negotiation. If the dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

F. **SIGNATORY PARTNERS LITIGATION PROCEDURES.** Each Signatory Partner seeking to be released, indemnified, held harmless or defended under this Article with respect to any claim shall promptly notify Requester of such claim and shall not settle such claim without the prior consent of Requester. Such Signatory Partners shall have the right to

Regional Coordination Framework AGREEMENT

participate in the defense of said claim to the extent of its own interest. Signatory Partners' personnel shall cooperate and participate in legal proceedings if so requested by Requester, and/or required by a court of competent jurisdiction.

Article XIV - SUBROGATION.

A. REQUESTER'S WAIVER. Requester expressly waives any rights of subrogation against Responder, which it may have on account of, or in connection with, Responder providing Emergency Assistance to Requester under this Agreement.

B. RESPONDER'S RESERVATION AND WAIVER. Responder expressly reserves its right to subrogation against Requester to the extent Responder incurs any self-insured, self-insured retention or deductible loss. Responder expressly waives its rights to subrogation for all insured losses only to the extent Responder's insurance policies, then in force, permit such waiver.

Article XV - WORKER'S COMPENSATION AND EMPLOYEE CLAIMS.

Responder's employees, officers or agents, made available to Requester, shall remain the general employees of Responder while engaged in carrying out duties, functions or activities pursuant to this Agreement, and each Signatory Partner shall remain fully responsible as employer for all taxes, assessments, fees, premiums, wages, withholdings, workers' compensation, and other direct and indirect compensation, benefits, and related obligations with respect to its own employees. Likewise, each Signatory Partner shall provide worker's compensation in compliance with statutory requirements of the state of residency.

Article XVI - MODIFICATIONS.

Modifications to this Agreement must be in writing and will become effective upon approval by a two-thirds affirmative vote of the Signatory Partners. Modifications must be signed by an authorized representative of each Signatory Partner. EMAC will be the coordinating body for facilitating modifications of this Agreement.

Article XVII- NON-EXCLUSIVENESS AND PRIOR AGREEMENTS.

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This Agreement shall not supersede any existing mutual aid agreement or agreements between two or more governmental agencies, and as to assistance requested by a party to such mutual aid agreement within the scope of the mutual aid agreement, such assistance shall be governed by the terms of the mutual aid agreement and not by this Agreement. This Agreement shall, however, apply to all requests for assistance beyond the scope of any mutual aid agreement or agreements in place prior to the event.

Article XVIII - GOVERNMENTAL AUTHORITY.

This Agreement is subject to laws, rules, regulations, orders, and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over the emergencies covered by this Agreement or the Signatory Partner. Provided that a governmental authority may alter its obligations under this Agreement only as to future obligations, not obligations already incurred.

Article XIX - NO DEDICATION OF FACILITIES.

No undertaking by one Signatory Partner to the other Signatory Partners under any provision of this Agreement shall constitute a dedication of the facilities or assets of such Signatory Partners, or any portion thereof, to the public or to the other Signatory Partners. Nothing in this Agreement shall be construed to give a Signatory Partner any right of ownership, possession, use or control of the facilities or assets of the other Signatory Partners.

Article XX - NO PARTNERSHIP.

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Signatory Partners or to impose any partnership obligation or liability upon any Signatory Partner. Further, no Signatory Partner shall have any undertaking for or on behalf of, or to act as or be an agent or representative of, or to otherwise bind any other Signatory Partner.

Article XXI - NO THIRD PARTY BENEFICIARY.

Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the Signatory Partners. This Agreement shall not release or discharge any obligation or liability of any third party to any Signatory Partners.

Article XXII - ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement and supersedes any and all prior agreements of the Parties, with respect to the subject matters hereof.

Article XXIII - SUCCESSORS AND ASSIGNS.

This Agreement is not transferable or assignable, in whole or in part, and any Signatory Partner may terminate its participation in this Agreement subject to Article V.

Article XXIV - GOVERNING LAW.

This Agreement shall be interpreted, construed, and enforced in accordance with the laws of Washington State.

Article XXV - VENUE.

Any action which may arise out of this Agreement shall be brought in Washington State and King County. Provided, that any action against a participating County may be brought in accordance with RCW 36.01.050.

Article XXVI - TORT CLAIMS.

It is not the intention of this Agreement to remove from any of the Signatory Partners any protection provided by any applicable Tort Claims Act. However, between Requester and Responder, Requester retains full liability to Responder for any claims brought against Responder as described in other provisions of this agreement.

Article XXVII - WAIVER OF RIGHTS.

Any waiver at any time by any Signatory Partner of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay short of the statutory period of limitations, in asserting or enforcing any right, shall not constitute or be deemed a waiver.

Article XXVIII - INVALID PROVISION.

The invalidity or unenforceability of any provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Article XXIX - NOTICES.

Any notice, demand, information, report, or item otherwise required, authorized, or provided for in this Agreement shall be conveyed and facilitated by EMAC, care of the KCOEM, 3511 NE 2nd Street, Renton WA 98056, Phone: 206-296-3830, Fax: 206-205-4056. Such notices, given in writing, and shall be deemed properly given if (i) delivered personally, (ii) transmitted and received by telephone facsimile device and confirmed by telephone, (iii) transmitted by electronic mail, or (iv) sent by United States Mail, postage prepaid, to the EMAC.

Signatory Documentation Sheet

The Regional Coordination Framework for Disasters and Planned Events for Public and Private Organizations in King County, Washington is intended to be adopted as the framework for participating organizations, within King County, to assist each other in disaster situations when their response capabilities have been overloaded. Components, as of January 2014, are the following:

- Regional Coordination Framework for Disasters and Planned Events for Public and Private Organizations in King County
- Agreement (legal and financial)

IN WITNESS WHEREOF, the Signatory Partner hereto has caused this Regional Coordination Framework for Disasters and Planned Events to be executed by duly authorized representatives as of the date of their signature:

ORGANIZATION:

ADDRESS:

AUTHORIZED SIGNATURE:

DATE: _____

Please submit this form to the King County Office of Emergency Management
3511 NE 2nd Street
Renton, WA 98056

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2024-2025 Recycling Program
Professional Services Contract

FOR AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: Community Development

ATTACHMENTS:

DATE SUBMITTED: December 6, 2023

1. Draft Agreement between the City of Des Moines and Olympic Environmental Resources for the 2024-2025 Des Moines Recycling Program

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is to provide information, enabling the Council to take action on the contracting of professional services for the City’s Recycling Program for the service period of 2024-2025.

Suggested Motion

Motion 1: “I move to approve the Professional Services Contract for the 2024-2025 Recycling Program between the City of Des Moines and Olympic Environmental Resources and to authorize the City Manager to sign substantially in the form as submitted.”

Background

Recycling Grants

The City uses a combination of three grants from King County and the State of Washington to sponsor recycling and collection events for Des Moines residents. The King County Solid Waste Division Waste Reduction and Recycling Grant (WRR) is effective January 1, 2023 through June 30, 2025. This grant provides funding to further the development and/or enhancement of local waste reduction and recycling projects and for broader resource conservation projects that integrate with waste reduction and recycling programs and services. The Seattle & King County Public Health Local Hazardous Waste Management Plan Grant (LHWMP) is effective January 1, 2023 through March 31, 2025. These grant funds are allocated to implement hazardous waste programs and/or services. The WA Department of Ecology Solid Waste Management Local Solid Waste Financial Assistance Agreement (LSWFA) is effective July 1, 2023 through June 30, 2025. These grant funds are allocated to provide regional solutions and intergovernmental cooperation, prevent or minimize environmental contamination through planning and project implementation, and to comply with state and local solid and hazardous waste management plans and laws. In the event that expected grant funds don't become available, the project budget will be reduced accordingly.

Professional Services Contract

Staff is requesting Council to authorize the City Manager to sign a contract for professional services for planned residential recycling events in 2024 and 2025. Specifically, a contract between the City of Des Moines and Olympic Environmental Resources (OER) is requested to be approved (Attachment 1). Under the consultant contract, OER will be the event coordinator for all City residential recycling and collection events through December 2025 as well as assist in the preparation of 2026-2027 recycling grant applications and prepare written reports and reimbursement requests after each collection event for the grantors.

Discussion

For the 2024-2025 Recycling Program, the City will sponsor two residential recycling collection events per year, one in the Spring and one in the Fall. The timing of these events are coordinated with the curbside garbage collection event covered in the Recology CleanScapes Solid Waste Collection Agreement. A separate paint collection event may be held as well.

Through these grants and contract, the City will continue to reduce the amount of hazardous and non-hazardous materials going into the local waste stream at no additional cost to the City.

The Spring and Fall Events have proven to be very popular among Des Moines residents because they provide a local site to recycle materials that are not accepted by the curbside recycling program. Residents will be able to recycle items including bulky wood, CFC appliances, ferrous and non-ferrous metals, reusable textiles, reusable household goods, tires, lead-acid batteries, alkaline batteries, porcelain toilets and sinks, cardboard, propane tanks, electronic and computer equipment and mattresses. Additional items continue to be explored as the number and type of materials collected curbside have increased under the solid waste contract with Recology King County. For the 2024 and 2025 events, OER will assist the City with the purchase of rain barrels/compost bins made from recycled materials and distribute for a user fee of \$25-\$30 each.

Since 2000, the City has negotiated a contract with Olympic Environmental Resources (OER) to be the Recycling Event coordinator. The 2022-2023 contract with OER will expire on December 31, 2023. The estimated budget for the 2024-2025 Recycling Program is for up to \$116,049.76 depending on grant

funding. Should expected grant funds not become available, the contract budget will be reduced accordingly.

Alternatives

1. The City Council may authorize the City Manager to sign the Professional Services Contract for the 2024-2025 Recycling Program between the City of Des Moines and Olympic Environmental Resources.
2. The City Council may decline to authorize the City Manager to sign the Professional Services Contract with Olympic Environmental Resources. (Not recommended).
3. The City Council may continue this Agenda Item and request that staff provides additional information on the OER Professional Services Contract. Continuance of this item may result in loss of grant funds for the 2024-2025 grant cycle. (Not recommended).

Financial Impact

As the contract with Olympic Environmental Resources is funded by grants, there will be no fiscal impact to the City related to the consulting contract.

Recommendation

Staff recommends that the City Council choose Alternative 1, thereby authorizing the City Manager to sign the 2024-2025 OER Professional Services Contract substantially in the form as submitted.

**AGREEMENT BETWEEN THE CITY OF DES MOINES
AND OLYMPIC ENVIRONMENTAL RESOURCES FOR THE
2024-2025 DES MOINES RECYCLING PROGRAM**

THIS AGREEMENT, entered into as of this 4th day of December, 2023, is by and between the CITY OF DES MOINES, a Washington municipal corporation, hereinafter referred to as the "City", and OLYMPIC ENVIRONMENTAL RESOURCES, hereinafter referred to as the "Contractor".

In consideration of the covenants and conditions set forth below, the parties agree as follows:

- 1. Purpose.** The purpose of this Agreement is to retain the Contractor to provide professional services for the 2024-2025 Recycling Program for the residents of the City as set forth below.
- 2. Scope of Work.** Contractor agrees to furnish all materials, labor and other incidentals and to perform all services and work as described in this Agreement and the Contract Documents, which consist of this Agreement and the following Attachment A, which is by this reference incorporated herein:

Attachment A: Scope of Work – 2024/25 Recycling Collection Events and Bin/Barrel Sales

The following provisions modify and/or supersede any contrary language found in Attachment A, which shall remain in full force and effect except as expressly modified below:

- The City may call upon the Contractor for additional services that will be negotiated at that time; and,
 - The Contractor will ensure compliance with applicable State Prevailing Wage Rates, which are set by the Washington Department of Labor and Industries.
- 3. Project Schedule.** Contractor agrees to hold the Residential Recycling Collection Events in the parking area of the Des Moines Marina or another suitable location during March and October/November 2024 and 2025. All bin and barrel sales will be held in conjunction with the Recycling Collection Events.
 - 4. Payment.** As full and adequate consideration for all work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work, the Contractor shall be paid a maximum amount of **\$105,799.76. (one hundred and five thousand, seven hundred, ninety-nine dollars, and seventy-six cents)** pending receipt of additional 2025 Local Hazardous Waste Management Plan, King County Waste Reduction and Recycling, and WA State Department of Ecology grant funds. At the completion of any task described in the Scope of Work, the Contractor will submit an invoice to the City's designated representative. The invoice must include documentation of all work performed, vendor's billings, and receipts of purchase. Payment shall be made through the City's

ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.

5. City Administrative Costs. The Contractor agrees to reduce the total contract amount by up ten percent to account for City staff involvement in overseeing recycling activities and programs.

6. Insurance. By the date of execution of this Contract, the Contractor and its Subcontractors, if authorized, shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Contractor, its agents, representative, employees, and/or subcontractors. The Contractor or subcontractor shall pay the cost of such insurance. By requiring such minimum insurance, the City shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintains greater limits and/or broader coverage. Coverage should also include Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal Law. Any deductibles or self-insured retention must be declared to, and approved by, the City. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the City and shall be the sole responsibility of the Contractor.

The Contractor and its Subcontractors shall secure and maintain in force throughout the duration of this Agreement, insurance coverage sufficient to satisfy the following minimums:

Comprehensive Commercial General Liability:

\$1,000,000 combined single limit per occurrence.
\$2,000,000 aggregate.

The Contractor's Subcontractors shall secure and maintain in force throughout the duration of this Agreement, insurance coverage sufficient to satisfy the following minimums:

Commercial Automobile Liability:

\$1,000,000 combined single limit per accident for bodily injury and property damage.

The Contractor's Subcontractor(s) that accept batteries and petroleum-based products shall name the City of Des Moines and its officials, officers, agents, and employees as an additional named insured and shall provide a certificate of insurance and policy endorsements to the City. The Contractor's Subcontractor(s) are required to carry the following insurance coverage sufficient to satisfy the following minimums:

Pollution Legal Liability Insurance:

\$1,000,000 per occurrence.

\$2,000,000 aggregate.

The Contractor's general liability policies shall name the City of Des Moines and its officials, officers, agents and employees as an additional named insured. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete certified copies of all required insurance policies at any time. A thirty (30) days advance written notice to the City is required in the event the insurer for the Contractor or the insurer for any subcontractor to the Contractor cancels or modifies the policy. Certificates of coverage, as set forth in this section shall be delivered to the City within fifteen (15) days of execution of this Agreement.

7. Performance Standards. Contractor's services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and competently and in accordance with professional standards of conduct and performance, and consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

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

9. Independent Contractor Status. The Contractor is considered an independent Contractor who shall at all times perform its duties and responsibilities and carry out all services as an independent Contractor and shall never represent or construe its status to be that of an agent or employee of the City, nor shall the Contractor be eligible for any employee benefits.

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.

The Contractor shall provide, at its sole expense, all materials, manpower, equipment and utility services, and other necessities to perform fully and timely its duties and services under this Agreement, unless otherwise specified in writing.

The Contractor, at its sole expense, shall obtain and keep in force any and all necessary licenses, permits, and tax certificates. The Contractor shall maintain all necessary insurance as specified in Section 6 to protect Contractor from losses and claims which may arise out of or result from performance of duties related to this Agreement, including Worker's Compensation and general liability, and others as may be required in writing.

The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations, and shall assist the City in complying with all conditions concerning grants and other federal assistance under the laws of the City of Des Moines, King County, the State of Washington, and the United States of America. Contractor shall obtain a business license under Des Moines Municipal Code § 5.04.020 and shall pay business and occupation taxes as required by Des Moines Municipal Code § 3.84.060.

10. Business Licenses. The Contractor shall obtain, at its own expense, all permits and licenses required by the City or any other governmental authority and maintain the same in full force and effect during the terms of this Agreement.

13. Assignment. The Contractor shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Agreement or for any of the compensation due it hereunder, in whole or in part, except as authorized in writing by the City.

12. Indemnification. The Contractor and its Subcontractors shall defend, indemnify and hold the City, King County, City of Seattle or the State of Washington (when any funds for this Contract are provided by King County, City of Seattle or the State of Washington) its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

The Contractor shall protect, indemnify and save harmless the City and its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits or taxes; and/or (2) the supplying to the Contractor of work, services, materials, and/or supplies by Contractor employees or other suppliers in connection with or in support of the performance of this Contract.

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 Agreement.

13. Amendments and Termination. Amendments to this agreement must be in writing and be signed by authorized representatives of each party hereto. Either party may terminate this agreement with thirty (30) days' written notice provided to the individuals set forth in Section 21 below. Upon receipt of the notice of termination, no additional services shall be performed beyond the fifth day following the notice unless the parties agree in writing to a later stop work date. The City shall only be responsible for the payment of services as provided under the terms of this Contract.

14. Alternative Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this agreement, including any question regarding breach, termination or invalidity thereof, shall be resolved by arbitration in Seattle, Washington in accordance with the American Arbitration Association, or Judicial Dispute Resolution which rules are deemed to be incorporated by reference into this clause. The maximum number of arbitrators shall be three in any claim, suit, action or other proceeding relating in any way to this agreement or any claims arising out of this agreement, except as otherwise ordered. All arbitration fees shall be borne equally by the parties and the parties shall pay their own attorneys' fees and costs.

15. Applicable Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method is arbitration as set forth above, in the event any claim, dispute or action arising from or relating to this agreement 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. The prevailing party in any such action before the courts shall be entitled to recover its costs of suit and reasonable attorneys' fees.

16 Unenforceable Clauses: If one or more of the clauses of this Agreement is found to be unenforceable, illegal or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

17. Severability. Should any term, provision, condition or other portion of this Agreement or its application be held to be inoperative, invalid or unenforceable, and the remainder of this Agreement still fulfills its purposes, the balance of this Agreement or its application or other circumstances shall not be affected thereby and shall continue in full force and effect.

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

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

20. Time of Essence. The Contractor acknowledges the importance to the City of the City's project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with that schedule as attached hereto. The City understands, however, that the Contractor's performance must be governed by sound professional practices.

21. Notices. Any Notice required or permitted to be given under this Agreement shall be deemed sufficient if given in writing and deposited into any post office as first-class, postage prepaid, certified mail, return receipt requested, and addressed to:

City of Des Moines:

Technical Matters

Laura Techico, Principal Planner
21630 13th Ave. S., Suite D
Des Moines, WA 98198
Phone: 206-870-6595
Fax: 206-870-6544
Email: ltechico@desmoineswa.gov

Company:

Contractual Matters

Paul Devine
Olympic Environmental Resources
4715 SW Walker St
Seattle, WA 98116
Phone: 206-938-8262
Email: pauldevine@msn.com

Technical Matters

Paul Devine, same

22. Concurrent Originals. This Agreement may be signed in counterpart originals.

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

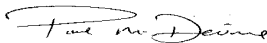
24. Entire Agreement: This Agreement constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter, and may be modified only by a writing signed by both parties. Each party hereby acknowledges receipt of a copy of this Agreement executed by both parties.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.

CITY OF DES MOINES

CONTRACTOR

By _____
Michael Matthias
City Manager
City of Des Moines

By  _____
Paul M. Devine
General Manager
Olympic Environmental Resources

Dated _____

Dated December 4, 2023

APPROVED AS TO FORM:

Pat Bosmans
City Attorney

Dated _____

Attachment A Des Moines-OER 2024-25 Contract

TASK ONE – Residential Recycling Collection Events

In 2024 and 2025, Olympic Environmental Resources (OER) will implement one spring and one fall Residential Recycling Collection Event. A separate paint collection event may be held as well. A total of four or more events will be implemented. Event hours will be 9:00 a.m. to 3:00 p.m. The parking lot at the Des Moines Marina or other suitable location will be the site of the events. Materials collected at the events will be bulky wood, CFC appliances*, ferrous and non-ferrous metals*, reusable textiles/reusable household goods (if service provider can be located), tires*, lead acid batteries, alkaline batteries, porcelain toilets and sinks*, cardboard, propane tanks*, TV sets and computer monitors**, electronic and computer equipment, and mattresses*. Other materials, such as paper shredding and paint*** collection, will be added if budget permits.

Schedule – 2024 and 2025 – Spring Event – March, April; Fall Event – October, November.

Subcontractors – A Plus Demolition & Excavation, INC, All Battery Sales and Service, Tire Disposal and Recycling, Northwest Center, Seattle Goodwill, Uptekk, Inc., E-Waste, Inc., Girard Resources, DTG, Inc., as well as flyer production/distribution and supply and rental vendors.

*The consultant/subcontractors will charge a user fee to offset the cost of collecting and recycling these items.

**TV set and computer monitor collection will be paid for by the Washington Materials Management & Financing Authority.

***Paint collection will be paid for by the Washington State PaintCare Program.

Cost: \$92,799.76

Estimated Costs	2024	2025	TOTAL
Management/Staffing/Admin/Graphics	\$18,949.88	\$18,949.88	\$37,899.76
Event Staff Costs	\$6,000.00	\$6,000.00	\$12,000.00
Collection/Hauling Costs			
Wood Waste	\$2,000.00	\$2,000.00	\$4,000.00
Scrap Metal, Appliances, Cardboard, material hauling, etc.	\$6,000.00	\$6,000.00	\$12,000.00
Tires	\$1,600.00	\$1,600.00	\$3,200.00
Batteries	\$1,400.00	\$1,600.00	\$3,000.00
Other Materials	\$1,500.00	\$1,500.00	\$3,000.00
Printing/Mailing*	\$6,200.00	\$6,300.00	\$12,500.00
Event Supplies	\$600.00	\$600.00	\$1,200.00
Other Expenses - rentals, etc	\$2,000.00	\$2,000.00	\$4,000.00
TOTALS	\$46,249.88	\$46,549.88	\$92,799.76

*Event flyers will be sent to all Des Moines single-family households.

TASK TWO – Purchase Products Made From Recycled Materials

In order to support the recycling industry and close the recycling loop, OER will assist the City with the purchase products made from recycled materials. Doing so will support recycling collection programs and help ensure the success of the recycling industry. The City will support recycling programs by purchasing items such as recycle content rain barrels, compost bins, and worm bins for distribution to City residents. OER will distribute the rain barrels, compost bins, and worm bins at City Recycling Collection Events. OER will assist the City with the purchase of rain barrel, compost bins, and worm bins and grant reimbursement of project costs. Residents will be charged a user fee of \$25-\$30 for each rain barrel, compost bin, and worm bin.

Schedule – 2024 and 2025. Total cost: \$13,000.00 (\$6,500.00 each year).

Total Cost: \$105,799.76.

2024/25 Des Moines Recycling Grants

The King County Health Department Local Hazardous Waste Management Plan Grant

2024 grant total	\$14,380.75
2025 King County Health Department Grant - estimate	\$15,000.00
Subtotal	\$29,380.75

The King County Waste Reduction and Recycling Grant Program

2024 grant total	\$23,313.01
2025 King County Solid Waste Division WRR Grant - estimate	\$21,000.00
Subtotal	\$44,313.01

The Washington State Department of Ecology Grant

2024 grant total	\$20,856.00
2025 WA State Dept of Ecology CPG Grant + 7/1/25-12/31/25 - estimate	\$21,500.00
Subtotal	\$42,356.00

TOTAL: \$116,049.76

Total OER Costs **\$105,799.76**

City staff costs for event oversight (\$10,250.00) **\$ 10,250.00**

TOTAL: \$116,049.76*

*The project budget is estimated based on grant funds both available and expected. In the event that expected grant funds don't come available or are reduced, the project budget will be reduced accordingly.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Department of Ecology 2023-2025
Water Quality Stormwater
Capacity Grant Award

FOR AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: December 5, 2023

- 1. Water Quality Stormwater Capacity Agreement No. WQSWCAP-2325-DeMSWD-00069

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to seek City Council acceptance of the State of Washington Department of Ecology Grant Agreement (Attachment 1). For Fiscal Years 2023-2025, the Department of Ecology has offered the City of Des Moines a \$130,000 grant to be used in support of National Pollutant Discharge Elimination System, commonly referred to as NPDES, permit required activities. The following motion will appear on the Consent Agenda:

Suggested Motion

Motion: "I move to accept the State of Washington Department of Ecology 2023-2025 Water Quality Stormwater Capacity Grant Agreement between the State of Washington Department of Ecology and the City of Des Moines, and authorize the City Manager to sign the Grant Agreement substantially in the form as submitted."

Background

On January 17, 2007, the Department of Ecology issued to the City of Des Moines the NPDES Western Washington Phase II Municipal Stormwater Permit, which regulates discharges to all waters under the jurisdiction of the United States and requires the City to develop programs to prevent and prohibit pollutant discharges to the City’s stormwater system, surface waters, and groundwater. The City is currently operating under the August 1, 2019 version of this permit.

As a part of the State’s Local Governments Stormwater Grants Program, the City has received a \$130,000 grant offer from Ecology to be used for NPDES permit implementation activities. This grant program is offered every two (2) years to each Phase II jurisdiction to assist with the costs associated with implementing the Stormwater Management Program.

The City has been awarded eight previous grants from the Local Governments Stormwater Grants Program (\$75,000 for 2007-2009, \$50,000 for 2010, \$197,425 for 2011-2013, \$170,000 for 2013-2015, \$25,000 for 2015-2017, \$50,000 for 2017-2019, \$50,000 for 2019-2021, and \$50,000 for 2021-2023).

Discussion

In previous years, grant funds have been used to cover staff costs for developing drainage inventory maps, preparing planning documents and manuals, purchasing field equipment such as pipe camera systems and GPS PDAs (personal digital assistants) used for field mapping, implementing the CityWorks software program for managing maintenance to the drainage system and tracking associated costs, as well as several software upgrades to the mapping system. During the grant term, staff will review the program’s needs with the emphasis that grant funds be used toward one-time expense items.

Alternatives

If the City were to not accept this grant offer, the funds will be made available to other jurisdictions.

Financial Impact

The \$130,000 operation grant does not require a local funding match and expenses are eligible for funding from July 1, 2023 through March 31, 2025.

Recommendation

Staff recommends adoption of the motion.

Council Committee Review

Council Environment Committee has been routinely updated on the status and progress of the City’s NPDES program.



Agreement No. WQSWCAP-2325-DeMSWD-00069

WATER QUALITY STORMWATER CAPACITY AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF DES MOINES

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and City of Des Moines, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	2023-2025 Biennial Stormwater Capacity Grants
Total Cost:	\$130,000.00
Total Eligible Cost:	\$130,000.00
Ecology Share:	\$130,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2023
The Expiration Date of this Agreement is no later than:	03/31/2025
Project Type:	Capacity Grant

Project Short Description:

This project will assist Phase I and II Permittees in implementation or management of municipal stormwater programs.

Project Long Description:

N/A

Overall Goal:

This project will improve water quality in the State of Washington by reducing stormwater pollutants discharged to state water bodies.

Agreement No: WQSWCAP-2325-DeMSWD-00069
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Des Moines

RECIPIENT INFORMATION

Organization Name: City of Des Moines

Federal Tax ID: 91-6016496
UEI Number: NY7AZ9H2VK25

Mailing Address: 21650 11th Ave S
Des Moines, WA 98198

Physical Address: 21650 11th Ave S
Des Moines, Washington 98198

Organization Email: townen@desmoineswa.gov
Organization Fax: (206) 870-6596

Contacts

Agreement No: WQSWCAP-2325-DeMSWD-00069
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Des Moines

Project Manager	Michael Posey Engineering Technician 21650 11th Ave S Des Moines, Washington 98198 Email: mposey@desmoineswa.gov Phone: (206) 870-6870
Billing Contact	Jackson Sweigart Staff Accountant 21650 11th Ave S Des Moines, Washington 98198 Email: jsweigart@desmoineswa.gov Phone: (206) 870-6870
Authorized Signatory	Tyler Austin Beekley Surface Water Manager 21650 11th Ave S Des Moines, Washington 98098 Email: tbeekley@desmoineswa.gov Phone: (206) 870-6869

State of Washington Department of Ecology
Agreement No: WQSWCAP-2325-DeMSWD-00069
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Des Moines

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Water Quality
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Water Quality
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 628-3890
Financial Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 628-3890

State of Washington Department of Ecology
Agreement No: WQSWCAP-2325-DeMSWD-00069
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Des Moines

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
Department of Ecology

City of Des Moines

By: _____

By: _____

Vincent McGowan, P.E. Date
Water Quality
Program Manager

Tyler Austin Beekley Date
Surface Water Manager

Template Approved to Form by
Attorney General's Office

SCOPE OF WORK

Task Number: 1 **Task Cost: \$0.00**

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: Maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and the EAGL (Ecology Administration of Grants and Loans) recipient closeout report (including photos, if applicable). In the event that the RECIPIENT elects to use a contractor to complete project elements, the RECIPIENT shall retain responsibility for the oversight and management of this funding agreement.

B. The RECIPIENT shall keep documentation that demonstrates the project is in compliance with applicable procurement, contracting, and interlocal agreement requirements; permitting requirements, including application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items. This documentation shall be available upon request.

C. The RECIPIENT shall maintain effective communication with ECOLOGY and maintain up-to-date staff contact information in the EAGL system. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY’s grant and loan administrative requirements.

Task Expected Outcome:

- * Timely and complete submittal of requests for reimbursement, quarterly progress reports, and Recipient Closeout Report.
- * Properly maintained project documentation.

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges or changes in the project schedule. Submitted at least quarterly.	
1.2	Recipient Closeout Report (EAGL Form).	

Agreement No: WQSWCAP-2325-DeMSWD-00069
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Des Moines

SCOPE OF WORK

Task Number: 2 **Task Cost: \$130,000.00**

Task Title: Permit Implementation

Task Description:

Conduct work related to implementation of municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit requirements. If the RECIPIENT is out of compliance with the Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT will use funds to attain compliance where applicable. The following is a list of elements projects may include:

- 1) Public education and outreach activities, including stewardship activities.
- 2) Public involvement and participation activities.
- 3) Illicit discharge detection and elimination (IDDE) program activities, including:
 - a) Mapping of municipal separate storm sewer systems (MS4s).
 - b) Staff training.
 - c) Activities to identify and remove illicit stormwater discharges.
 - d) Field screening procedures.
 - e) Complaint hotline database or tracking system improvements.
- 4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 - a) Development of an ordinance and associated technical manual or update of applicable codes.
 - b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
 - c) Training for plan review or inspection staff.
 - d) Participation in applicable watershed planning effort.
- 5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 - a) Inspecting and/or maintaining the MS4 infrastructure.
 - b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
- 6) Annual reporting activities.
- 7) Establishing and refining stormwater utilities, including stable rate structures.
- 8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (Total Maximum Daily Load (TMDL)). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that ECOLOGY approves prior to awarding funding for monitoring. Monitoring must directly meet a Phase I or II permit requirement.
- 9) Structural stormwater controls program activities (Phase I permit requirement).
- 10) Source control for existing development (Phase I permit requirement), including:
 - a) Inventory and inspection program.
 - b) Technical assistance and enforcement.
 - c) Staff training.
- 11) Equipment purchases that result directly in improved permit compliance. Equipment purchases must be specific to implementing a permit requirement (such as a vector truck) rather than general use (such as a pick-up truck). Equipment purchases over \$5,000.00 must be pre-approved by ECOLOGY.

Agreement No: WQSWCAP-2325-DeMSWD-00069
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Des Moines

Documentation of all tasks completed is required. Documentation may include field reports, dates and number of inspections conducted, dates of trainings held and participant lists, number of illicit discharges investigated and removed, summaries of planning, stormwater utility or procedural updates, annual reports, copies of approved QAPPs, summaries of structural or source control activities, summaries of how equipment purchases have increased or improved permit compliance.

Ineligible expenses include capital construction projects, incentives or give-a-ways, grant application preparation, Technology Assessment Protocol - Ecology (TAPE) review for proprietary treatment systems, or tasks that do not support Municipal Stormwater Permit implementation.

Task Goal Statement:

This task will improve water quality in the State of Washington by reducing the pollutants delivered by stormwater to lakes, streams, and the Puget Sound by implementing measures required by Phase I and II NPDES permits.

Task Expected Outcome:

RECIPIENTS will implement measures required by Phase I and II NPDES permits.

Permit Implementation

Deliverables

Number	Description	Due Date
2.1	Documentation of tasks completed	

State of Washington Department of Ecology
 Agreement No: WQSWCAP-2325-DeMSWD-00069
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Des Moines

BUDGET

Funding Distribution EG240248

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: 2023-25 Stormwater Capacity Grant Funding Type: Grant
 Funding Effective Date: 07/01/2023 Funding Expiration Date: 03/31/2025

Funding Source:

Title: Model Toxics Control Stormwater Account (MTCSA)
 Fund: FD
 Type: State
 Funding Source %: 100%
 Description: MTCSA

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%
 Recipient Match %: 0%
 InKind Interlocal Allowed: No
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

2023-25 Stormwater Capacity Grant	Task Total
Permit Implementation	\$ 130,000.00

Total: \$ 130,000.00

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
2023-25 Stormwater Capacity Grant	0.00 %	\$ 0.00	\$ 130,000.00	\$ 130,000.00
Total		\$ 0.00	\$ 130,000.00	\$ 130,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered

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transaction complies with certification of suspension and debarment requirements.

7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$30,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required Unique Entity Identifier in www.sam.gov <http://www.sam.gov> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

For more details on FFATA requirements, see www.fsr.gov <http://www.fsr.gov>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in

State of Washington Department of Ecology

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the [System for Award Management \(SAM\) <https://sam.gov/SAM/>](https://sam.gov/SAM/) exclusion list.

GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

07/01/2023 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/2301002.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
 - Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff, volunteers, and contractors working at the project site.
 - Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

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j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

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.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

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The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

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

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16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN’S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT’s communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY’s review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY’s logo shall comply with ECOLOGY’s graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY’s logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

Template Version 12/10/2020

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- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 - 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 - 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

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Recipient Name: City of Des Moines

22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. 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, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

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27. SUSTAINABLE PRACTICES

In order to sustain Washington’s natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY’s web page, Green Purchasing, <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY’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 the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

Agreement No: WQSWCAP-2325-DeMSWD-00069
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Des Moines

event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Commerce Middle Housing Grant Agreement

FOR AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: December 6, 2023

ATTACHMENTS:

1. Interagency Agreement with City, Contract No. 24-63326-113
2. Consultant Services Contract with AHBL

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: _____

Purpose and Recommendation

The purpose of this agenda item is to provide information enabling the Council to take action on the acceptance of the Washington State Department of Commerce Middle Housing FY2024-2025 Grant Agreement for the City of Des Moines, to approve the Consultant Services Contract with AHBL, and to authorize the City Manager to sign, substantially in the form as attached.

Suggested Motion

Motion 1: "I move to authorize the City Manager to sign the Middle Housing Grant Agreement (Contract No. 24-63326-113) between the City of Des Moines and the Washington State Department of Commerce, substantially in the form as attached."

Motion 2: “I move to authorize the City Manager to sign the Consultant Services Contract between the City of Des Moines and AHBL, substantially in the form as attached.”

Background

The Department of Commerce provided the City of Des Moines a \$75,000 grant to help fund the preparation and adoption of comprehensive plan policies and development regulations to implement the requirements of House Bill (HB) 1110 related to middle housing. There is no requirement for the City to provide matching funds in order to accept this grant; however, consultant services are needed to complete the work.

Discussion

Staff is requesting that the City Council authorize acceptance of the Washington State Department of Commerce (Commerce) FY2024-2025 grant funds in the amount of \$75,000 (Attachment 1) that would provide funding for the City to complete the comprehensive plan policies and development regulations to implement the requirements of House Bill (HB) 1110 related to middle housing.

The City is currently working on the periodic review and update to our comprehensive plan that is due by December 31, 2024. The initial work on the Middle Housing Grant project will run concurrently with the comprehensive plan update and will inform potential policy updates for the Housing Element as well as the Land Use, Transportation and Capital Facilities, Utilities and Public Services Elements of the Comprehensive Plan. The review and adoption of the development regulations to implement HB 1110 will occur between January and June 2025.

The City of Des Moines will require consultant support to fulfill the legislative mandate of HB 1110. We have teamed with AHBL, Inc. and ECONorthwest who helped prepare our Housing Action Plan (HAP) and are currently working on our comprehensive plan periodic review and update. Their familiarity with Des Moines and our housing dynamics will ensure efficient use of the limited grant funding (Attachment 2).

Alternatives

1. The City Council may decline the Middle Housing Grant Agreement (Contract No. 24-63326-113) between the City of Des Moines and the Washington State Department of Commerce and forego the grant funds; however, that would not relieve the City from meeting the requirements of HB 1110 and would necessitate the use of other city funding sources to complete this work. In addition, if Council declines to approve the Consultant Services Contract with AHBL, there would be workload impacts for Community Development staff that could impact other Departmental operations such as permit reviews and other planning efforts.
2. The City Council may continue this Agenda Item and request that staff provides additional information on the Commerce Grant or Professional Services Contract.

Financial Impact

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

Recommendation

Staff recommends that the City Council accept the Middle Housing Grant Agreement (Contract No. 24-63326-113) and approve the Consultant Services Contract with AHBL.



**Interagency Agreement with
City of Des Moines
through
Growth Management Services**

Contract Number:

24-63326-113

For

Middle Housing Grant

Dated:

Date of Execution

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Face Sheet

Contract Number: 24-63326-113

Local Government Division Growth Management Services Middle Housing Grants

1. Contractor City of Des Moines 21630 11th Ave S, Suite D Des Moines, WA-98198		2. Regional Planner Carol Holman Carol.Holman@commerce.wa.gov	
3. Contractor Representative Laura Techico Planning and Development Services Manager 206-870-6596 ltechico@desmoineswa.gov		4. COMMERCE Representative Anne Aurelia Fritzel 1011 Plum Street SE Housing Planning Manager Olympia, WA 98504 360-259-5216 Anne.Fritzel@commerce.wa.gov	
5. Contract Amount \$75000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date Date of Execution	8. End Date June 15, 2025
9. Federal Funds (as applicable) N/A		Federal Agency: N/A	
10. Tax ID # N/A		11. SWV # 0000307	12. UBI # 600-016-906
13. UEI # N/A			
14. Contract Purpose For activities that support the preparation and adoption of policies and/or codes and other measures specific to implement middle housing (RCW 36.70A.030(26)) by applicable statutory deadlines.			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, and Attachment "B" – Budget.			
FOR CONTRACTOR _____ Michael Matthias, City Manager _____ Signature _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director Local Government Division _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

Special Terms and Conditions

1. AUTHORITY

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

2. CONTRACT MANAGEMENT

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

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

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

3. COMPENSATION

COMMERCE shall pay an amount not to exceed \$75000 (seventy-five thousand dollars), for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

4. BILLING PROCEDURES AND PAYMENT

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

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 24-63326-113.

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

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

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

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. Any payment made by COMMERCE for costs that are determined to be duplicate, in Commerce's sole determination, shall be subject to recapture and may result in suspension or termination of this Contract.

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.).

5. **SUBCONTRACTOR DATA COLLECTION**

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

6. **INSURANCE**

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

7. **FRAUD AND OTHER LOSS REPORTING**

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

8. **ORDER OF PRECEDENCE**

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

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



General Terms and Conditions

1. DEFINITIONS

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

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

2. ALL WRITINGS CONTAINED HEREIN

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

3. AMENDMENTS

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

4. ASSIGNMENT

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

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

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

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

- B.** The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

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

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

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

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

7. DISPUTES

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



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

8. GOVERNING LAW AND VENUE

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

9. INDEMNIFICATION

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

10. LICENSING, ACCREDITATION AND REGISTRATION

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

11. RECAPTURE

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

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

12. RECORDS MAINTENANCE

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

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

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

13. SAVINGS

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

14. SEVERABILITY

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



15. SUBCONTRACTING

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

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

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

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

16. SURVIVAL

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

17. TERMINATION FOR CAUSE

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

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

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

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

18. TERMINATION FOR CONVENIENCE

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

19. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or



acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

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

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

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

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

20. TREATMENT OF ASSETS

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



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

21. WAIVER

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

Attachment A: Scope of Work

Grant Objectives: Along with public engagement and public hearing(s), prepare and adopt a Middle Housing Ordinance that implements the requirements of HB 1110 (Middle Housing)			
Actions/Steps/ Deliverables	Description	Start Date	End Date
Action 1	Middle Housing Public Engagement Plan	September 2023	June 15, 2024
Step 1.1	The City will prepare a Public Engagement Plan (PEP). The PEP will involve participants in the City’s recently completed Housing Action Plan as well as the community at large. The outreach associated with integrating Middle Housing into the City’s policies and regulatory structure will occur concurrent with and in addition to the City’s ongoing public engagement efforts for the periodic update to its Comprehensive Plan, but Middle Housing funds shall not be used for general Comprehensive Plan outreach.	September 2023	January 2024
Step 1.2	Prepare meeting collateral associated with hosting meetings with stakeholders and the community. Examples of meeting collateral include website content, media/social media publications, posters/boards, PowerPoint presentations, handouts, surveys, etc.	January 2024	February 2024
Step 1.3	Consistent with the PEP prepared in Step 1.1 above, meetings with stakeholders and the community will occur. The design of the meetings will be identified in the PEP and may include workshops, open houses, and roundtables.	January 2024	April 2024
Deliverable 1	Middle Housing Public Engagement Plan	November 2023	June 15, 2024

Grant Objectives: Along with public engagement and public hearing(s), prepare and adopt a Middle Housing Ordinance that implements the requirements of HB 1110 (Middle Housing)			
Actions/Steps/Deliverables	Description	Start Date	End Date
Action 2	Station Area Influence Mapping	July 2024	September 2024
Step 2.1	Prepare maps that identify existing land uses, impervious surface coverage, and critical areas. The maps will also depict utilities and identify areas where system upgrades and enhancements may be necessary to support middle housing densities. The purpose of the map will be to establish land capacity for the construction of middle housing units and areas that will require additional infrastructure support.	January 2024	March 2024
Step 2.2	Prepare maps that depict the location of high-capacity transit stations and the influence that the location of the stations have on the location of middle housing within the City.	January 2024	March 2024
Deliverable 2	Map Folio depicting opportunity areas for middle housing units		March 30, 2024
Action 3	Prepare Draft Middle Housing Comprehensive Plan Policies	January 2024	June 15, 2024
Step 3.1	Based on the City's recently completed work on its Housing Action Plan, a memorandum will be prepared that identifies the menu of choices (Middle Housing Options Memo) that City decision-makers can use to evaluate options for the production of middle housing within the City of Des Moines.	January 2024	February 2024

Grant Objectives: Along with public engagement and public hearing(s), prepare and adopt a Middle Housing Ordinance that implements the requirements of HB 1110 (Middle Housing)			
Actions/Steps/Deliverables	Description	Start Date	End Date
Step 3.2	Meet with the Des Moines City Council Economic Development Committee to review the Middle Housing Options Memo. The purpose of the meeting will be to review the memo and seek direction from the Council Economic Development Committee related to which strategies should be further developed.	March 2024	April 2024
Step 3.3	After receiving direction from the Council Economic Development Committee, City staff will review the land use, housing, and capital facilities elements of the City's draft Comprehensive Plan to explore opportunities to remove impediments and incentivize the production of middle housing units within the City of Des Moines.	April 2024	June 2024
Deliverable 3	Middle Housing Options Memo and Draft Middle Housing Comprehensive Plan Policies		June 15, 2024; Comprehensive Plan Update Adoption December 31, 2024
Action 4	Prepare Draft Middle Housing Development Regulation Amendments and Public Engagement Report	February 2024	September 2024
Step 4.1	Based on the Department of Commerce's Middle Housing Model Ordinance slated for release in January 2024, the City will review and evaluate existing development regulations for ways to remove impediments and incentivize the construction of middle housing.	February 2024	March 2024

Grant Objectives: Along with public engagement and public hearing(s), prepare and adopt a Middle Housing Ordinance that implements the requirements of HB 1110 (Middle Housing)			
Actions/Steps/Deliverables	Description	Start Date	End Date
Step 4.2	Prepare a “Marketplace of Standards Memo” that evaluates the City’s existing Municipal Code related to middle housing, the Department of Commerce’s Middle Housing Model Ordinance, and the draft and/or final codes from early participants in Commerce’s Middle Housing Grant Program. The purpose of the memo will be to identify the marketplace of standards that peer communities in the region are using to facilitate the production of middle housing units.	March 2024	June 2024
Step 4.3	Meet with the Council Economic Development Committee to review the Middle Housing Options Memo. The purpose of the meeting will be to review the memo and seek direction from the Council Economic Development Committee related to which strategies should be further developed.	June 2024	July 2024
Step 4.4	Prepare amendments to the Des Moines Municipal Code to facilitate the production of middle housing in residential zones. The work will be produced in legislative bill format (underline/strikeout) for subsequent consideration under Action 6 by the Des Moines City Council.	July 2024	September 2024
Step 4.5	Compile, analyze, and summarize the results from public engagement activities into a summary report and materials used to achieve those results.		September 2024

Grant Objectives: Along with public engagement and public hearing(s), prepare and adopt a Middle Housing Ordinance that implements the requirements of HB 1110 (Middle Housing)			
Actions/Steps/ Deliverables	Description	Start Date	End Date
Deliverable 4	Marketplace of Standards Memorandum, Public Engagement Report and Materials, and Draft Middle Housing Ordinance		September 30, 2024
Action 5	Adopt Middle Housing development regulation amendments and Comp Plan update	January 2025	June 15, 2025
Step 5.1	City Council Economic Development Committee Briefing/Study Session	January 2025	January 2025
Step 5.2	Open House to Review Draft Regulations	February 2025	February 2025
Step 5.3	Transmit draft Middle Housing ordinance to the Department of Commerce for State agency review (RCW 36.70A.106)	March 2025	April 2025
Step 5.4	City Council Briefing/Study Session	April 2025	May 2025
Step 5.5	City Council Public Hearing (adoption)	May 2025	June 2025
Deliverable 5	Adopted Middle Housing Ordinance and Comp Plan Update		June 15, 2025

Attachment B: Budget

Grant Objective: Along with public engagement and public hearing(s), prepare and adopt a Middle Housing Ordinance that implements the requirements of HB 1110 (Middle Housing)	FY	Commerce Funds
Deliverable 1. Middle Housing Public Engagement Plan	FY1 – June 15, 2024	\$8,000
Deliverable 2. Map Folio depicting opportunity areas for middle housing units	FY1 – March 2024	\$12,000
Deliverable 3. Middle Housing Options Memo and Draft Middle Housing Comprehensive Plan Policies	FY1 – June 15, 2024	\$17,500
Adoption of Comprehensive Plan Update (GMA Update Grant)	December 31, 2024	
Deliverable 4. Marketplace of Standards Memorandum, Public Engagement Report and Materials, and Draft Middle Housing Ordinance	FY2 – September 2024	\$22,500
Deliverable 5. Adopted Middle Housing Ordinance	FY2 – June 15, 2025	\$15,000
Total:		\$75,000



CONSULTANT SERVICES CONTRACT between the City of Des Moines and AHBL, Inc.

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and AHBL, Inc. organized under the laws of the State of Washington, located and doing business at 2215 N 30th Street, Suite 300, Tacoma, WA 98403-3350 (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:

The scope of services to be performed, and the schedule and compensation for performing those services, shall be as described in Exhibit "A", attached, and hereby incorporated into this Contract.

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 June 15, 2025, or as amended.

III. COMPENSATION.

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed Seventy Five Thousand Dollars (\$75,000.00) 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 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.

CONSULTANT SERVICES CONTRACT
(Various)

- B. The Consultant shall submit quarterly (per Commerce Grant No. 24-63326-113) payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

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

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

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

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

CONSULTANT SERVICES CONTRACT 2
(Various)

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

CONSULTANT SERVICES CONTRACT 3
(Various)

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

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

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

X. INDEMNIFICATION. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the 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

CONSULTANT SERVICES CONTRACT 4
(Various)

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

CONSULTANT SERVICES CONTRACT 5
(Various)

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

CONSULTANT SERVICES CONTRACT 6
(Various)

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

XVI. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

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

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

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

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

CONSULTANT SERVICES CONTRACT 7
(Various)

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

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

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

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

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

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

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

CONSULTANT: By: _____ (<i>signature</i>) Print Name: _____ Its _____ (<i>Title</i>) DATE: _____	CITY OF DES MOINES: By: _____ (<i>signature</i>) Print Name: <u>Tim George</u> Its <u>City Manager</u> (<i>Title</i>) DATE: _____ Approved as to form: _____ City Attorney DATE: _____
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NOTICES TO BE SENT TO: CONSULTANT: Wayne Carlson, FAICP, Principal AHBL 2215 North 30th Street, Suite 300 Tacoma, WA 98403-3350 253-383-2422 (telephone) 253-383-2572 (facsimile)	NOTICES TO BE SENT TO: CITY OF DES MOINES: Laura Techico, AICP, Planning & Development Services Manager City of Des Moines 21630 11 th Avenue S., Suite A Des Moines, WA 98198 206-870-6595 (telephone) (<i>facsimile</i>)
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CONSULTANT SERVICES CONTRACT 9
(Various)

**EXHIBIT A
SCOPE OF WORK**

AHBL Project Number 2220834.30

DES MOINES MIDDLE HOUSING REGULATIONS

Overview: The City of Des Moines must prepare and adopt a Middle Housing Ordinance that implements the requirements of HB 1110 (Middle Housing). The process to develop and adopt the ordinance (regulations) requires a public process. The City is receiving a Washington State Department of Commerce Grant (No. 24-63326-113) to defray the costs of this work. This scope of work outlines how AHBL (together with subconsultant to AHBL: EConorthwest) will assist the City through this process, and the scope of work is aligned with the city’s grant contract with the state (“steps” in the grant paperwork are referred to as “Tasks” in this contract).

Commerce funds are available to the City according to the contract between the two parties. AHBL understands that the Commerce funding to the city is available in the 2023-2024 Fiscal year (“FY1”) in the amount of \$37,500, and another \$37,500 of funding is available to the city in the 2024-2025 Fiscal year (“FY2”). Accordingly, Tasks 1-3 are scheduled to occur for delivery in FY1 and tasks 4-5 will occur in FY2.

TASK 1: MIDDLE HOUSING PUBLIC ENGAGEMENT PLAN

1.1 AHBL will prepare a Public Engagement Plan (PEP) for city approval / use. The PEP will involve participants in the City’s recently completed Housing Action Plan as well as the community at large. The outreach associated with integrating Middle Housing into the City’s policies and regulatory structure will occur concurrent with and in addition to the City’s ongoing public engagement efforts for the periodic update to its Comprehensive Plan, but Middle Housing funds shall not be used for general Comprehensive Plan outreach.

1.2 AHBL will prepare meeting collateral associated with hosting meetings with stakeholders and the community. Examples of meeting collateral include website content, media/social media publications, posters/boards, PowerPoint presentations, handouts, surveys, etc.

1.3 Consistent with the PEP, the City will host meetings with stakeholders and the community. The design of the meetings will be identified in the PEP and may include workshops, open houses, and roundtables. AHBL will support the city staff with meeting preparation and one AHBL staff member will attend a meeting.

Deliverable: Middle Housing Public Engagement Plan (by June 15, 2024)

Budget: T&E based on AHBL hourly rates and fees paid to EConorthwest	NTE \$8,000 (FY1 grant funds)
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TASK 2: STATION AREA INFLUENCE MAPPING

2.1 AHBL will prepare maps that identify existing land uses, impervious surface coverage, and critical areas. The maps will also depict utilities and identify areas where system upgrades and enhancements may be necessary to support middle housing densities. The purpose of the map will be to establish land capacity for the construction of middle housing units and areas that will require additional infrastructure support.

2.2 AHBL will prepare maps that depict the location of high-capacity transit stations and the influence that the location of the stations have on the location of middle housing within the City.

Deliverable: Map Folio depicting opportunity areas for middle housing units (by March 30, 2024)

Budget: T&E based on AHBL hourly rates and fees paid to EConorthwest	NTE \$12,000 (FY1 grant funds)
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TASK 3: PREPARE DRAFT MIDDLE HOUSING COMPREHENSIVE PLAN POLICIES

3.1 Based on the City’s recently completed work on its Housing Action Plan, AHBL will prepare a memorandum that identifies the menu of choices (Middle Housing Options Memo) that City decision-makers can use to evaluate options for the production of middle housing within the City of Des Moines.

3.2 AHBL staff will join city staff and meet with the Des Moines City Council Economic Development Committee to review the Middle Housing Options Memo. The purpose of the meeting will be to review the memo and seek direction from the Council Economic Development Committee related to which strategies should be further developed.

3.3 After receiving direction from the Council Economic Development Committee, AHBL will support City staff in reviewing the land use, housing, and capital facilities elements of the City’s draft Comprehensive Plan to explore opportunities to remove impediments and incentivize the production of middle housing units within the City of Des Moines.

Deliverable: Middle Housing Options Memo and Draft Middle Housing Comprehensive Plan Policies (by June 15, 2024)

Budget: T&E based on AHBL hourly rates and fees paid to ECONorthwest NTE \$17,500 (FY1 grant funds)

TASK 4: PREPARE DRAFT MIDDLE HOUSING DEVELOPMENT REGULATION AMENDMENTS AND PUBLIC ENGAGEMENT REPORT

4.1 Based on the Department of Commerce’s Middle Housing Model Ordinance slated for release in January 2024, AHBL will assist the City staff will review and evaluate existing development regulations for ways to remove impediments and incentivize the construction of middle housing.

4.2 AHBL will prepare a “Marketplace of Standards Memo” that evaluates the City’s existing Municipal Code related to middle housing, the Department of Commerce’s Middle Housing Model Ordinance, and the draft and/or final codes from early participants in Commerce’s Middle Housing Grant Program. The purpose of the memo will be to identify the marketplace of standards that peer communities in the region are using to facilitate the production of middle housing units.

4.3 AHBL will prepare amendments to the Des Moines Municipal Code to facilitate the production of middle housing in residential zones. The work will be produced in legislative bill format (underline/strikeout) for subsequent consideration under by the Des Moines City Council (as shown in Task 6).

4.4 AHBL staff will join city staff and meet with the Council Economic Development Committee to review the Middle Housing Options Memo. The purpose of the meeting will be to review the memo and seek direction from the Council Economic Development Committee related to which strategies should be further developed.

4.5 AHBL will compile, analyze, and summarize the results from public engagement activities into a summary report and materials used to achieve those results.

Deliverable: Marketplace of Standards Memorandum, Public Engagement Report and Materials, and Draft Middle Housing Ordinance (by September 30, 2024)

Budget: T&E based on AHBL hourly rates and fees paid to ECONorthwest NTE \$22,500 (FY2 grant funds)

TASK 5: ADOPT MIDDLE HOUSING DEVELOPMENT REGULATION AMENDMENTS AND COMP PLAN UPDATE

5.1 City Council Economic Development Committee Briefing/Study Session – *Expected in January 2025*

5.2 Open House to Review Draft Regulations – *Expected in February 2025*

5.3 AHBL will assist the city in transmitting draft Middle Housing ordinance to the Department of Commerce for State agency review (RCW 36.70A.106) – *Expected by April 2025*

5.4 City Council Briefing/Study Session – *expected by May 2025*

5.5 City Council Public Hearing (adoption) – *expected by June 2025*

Deliverable: Adopted Middle Housing Ordinance and Comp Plan Update (by June 15, 2025)

Budget: T&E based on AHBL hourly rates and fees paid to ECONorthwest NTE \$15,000 (FY2 grant funds)

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Reconsideration of Ordinances no. 1782 and 1783

FOR AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: December 7, 2023

ATTACHMENTS:

- 1. Draft Ordinance no. 23-082
- 2. Draft Ordinance no. 23-083
- 3. Ordinance No. 1782
- 4. Ordinance No. 1783

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is for reconsideration of actions taken by the City Council on November 9, 2023, enacting Ordinance no. 1782, creating an enterprise fund related to events and facilities, and Ordinance no. 1783, authorizing an interfund loan to the newly created enterprise fund.

Potential Motions

- Motion 1:** "I move to approve Draft Ordinance no. 23-082, repealing Ordinance no. 1782."
- Motion 2:** "I move to approve Draft Ordinance no. 23-083, repealing Ordinance no. 1783."

Background

The City of Des Moines owns a number of facilities available for rental to private parties or other public entities for holding events, including the Field House, the Activity Center, and the Beach Park. As staff presented to Council at the November 9, 2023 regular City Council meeting, the City has frequently seen overall losses on facility rentals when there has likely been an opportunity for facility rentals to provide positive revenue for the City to help supplement the general fund.

Staff began to develop a plan that was hoped to help facility rentals operate more like a business and bring the City's facility rentals into the black. The plan was to begin with the creation of an enterprise fund into which facility rental income would flow and from which expenses supporting the facility rental enterprise would be paid. The second proposal was to provide the fund startup capital to pay the expenses, such as payroll, benefits, and advertising, until sufficient revenues come in to meet the expenses. This capital was proposed to come from an interfund loan from the City's surface water fund, with the intent that the loan would be paid back with interest by facility rental revenue. The hope was that putting events and facilities into its own isolated enterprise fund would make it easier to identify and track the real costs of running the enterprise and to develop a business plan that would make it a profit center for the City rather than a liability.

The plan and two draft ordinances implementing these two steps were presented to Council at the November 9, 2023 regular City Council meeting. The draft that would become Ordinance no. 1782 created a new enterprise fund, and the future Ordinance no. 1783 authorized an interfund loan from the surface water fund to the newly created events and facilities enterprise fund. The two ordinances each passed by a 4-3 vote. Following the vote, both ordinances were signed and filed with the City Clerk in the normal course of business.

At the following meeting on November 16, 2023, Council member Steinmetz made motions to reconsider both items. Each motion passed 5-2. The discussion was scheduled to occur at this meeting.

Discussion

The intent of the ordinances passed on November 9 was for event and facilities expenses to be paid initially from the fund balance of the new enterprise fund, and that expenses would in time be entirely supported by incoming revenue. Once the enterprise became self-supporting and cash positive, the interfund loan would be repaid with interest, essentially returning the seed money to surface water once the events and facilities fund was on its feet. In the unfortunate event that the enterprise continued to be cash negative, the general fund would make up for the loss in making the surface water fund whole.

If Ordinances 1782 and 1783 are repealed, facility operations will continue as they are currently: expenses are paid out of the general fund, revenues are deposited into the general fund, and any losses come out of the general fund.

Choosing either model does not rule out taking future actions to make events and facilities into a successful business enterprise.

Because the action taken by Council on November 9, 2023 was to enact ordinances, they can only be undone by ordinance. Should Council find it appropriate to repeal one or both of the previously passed ordinances, draft Ordinances have been prepared by staff to do so and are included with this agenda item.

Alternatives

The City Council may:

1. Repeal both ordinances, nos. 1782 and 1783
2. Decline to repeal either ordinance
3. Repeal one ordinance and decline to repeal the other. Should Ordinance no. 1782 be repealed and 1783 remain, 1783 will have no effect.

Financial Impact

Whether facility rental expenses are paid out of the general fund or its own dedicated enterprise fund should have little financial impact. Whether the increased transparency and ability to properly allocate true expenses of the enterprise that the enterprise fund may allow will allow the enterprise to run more effectively and generate profits is unknown at this time.

Recommendation

Staff makes no recommendation.

Council Committee Review

N/A

CITY ATTORNEY'S FIRST DRAFT 12/14/2023

DRAFT ORDINANCE NO. 23-082

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance and repealing Ordinance no. 1782 enacting DMMC 3.52.420, *Events and Facility Rentals Fund*.

WHEREAS, Ordinance No. 1782 was passed by the City Council on November 9, 2023, creating a new enterprise fund of the City of Des Moines and enacting a new section of the Des Moines Municipal Code, and

WHEREAS, at the following regular City Council meeting, the Council voted to reconsider the Ordinance, and

WHEREAS, the City Council finds after further deliberation that it was not in the best interest of the public to enact Ordinance no. 1782 at this time, and

WHEREAS, the City Council finds that the repeal of DMMC 3.52.420 and section 1 of Ordinance No. 1782 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. DMMC 3.52.420 and section 1 of Ordinance No. 1782 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.

Ordinance No. ____
Page 2 of 2

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 _____, 2023 and signed in authentication thereof this ____ day of _____, 2023.

M A Y O R

APPROVED AS TO FORM:

Acting City Attorney

ATTEST:

City Clerk

Published:

CITY ATTORNEY'S FIRST DRAFT 12/14/2023

DRAFT ORDINANCE NO. 23-083

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to revenue and finance and repealing Sections 1 through 3 of Ordinance no. 1783 (uncodified).

WHEREAS, Ordinance No. 1783 was passed by the City Council on November 9, 2023, authorizing an interfund loan from the surface water fund to a newly created events and facilities enterprise fund, and

WHEREAS, at the following regular City Council meeting, the Council voted to reconsider the Ordinance, and

WHEREAS, the City Council finds after further deliberation that it was not in the best interest of the public to enact Ordinance no. 1783 at this time, and

WHEREAS, the City Council finds that the repeal of Ordinance No. 1783 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. Sections 1 through 3 of Ordinance No. 1783 (uncodified) 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.

Ordinance No. ____
Page 2 of 2

PASSED BY the City Council of the City of Des Moines this
__ day of _____, 2023 and signed in authentication thereof
this __ day of _____, 2023.

M A Y O R

APPROVED AS TO FORM:

Acting City Attorney

ATTEST:

City Clerk

Published:

ORDINANCE NO. 1782

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance, adding and codifying a new section in chapter 3.52 DMMC establishing an "Enterprise Fund" entitled "Events and Facility Rentals Fund."

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

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

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

WHEREAS, an enterprise fund may be used to report any activity for which a fee is charged to external users for goods or services, and

WHEREAS, there is a need to create a new Enterprise fund entitled "Events and Facility Rentals Fund", and

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

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

Sec. 1. A new section is added to Chapter 3.52 DMMC to read as follows:

3.52.420 Events and Facility Rentals Fund

- (1) There is created an "Events and Facility Rentals Fund."
- (2) The purpose of the fund is for the accounting of funds related to special events and rental of City facilities.

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

Sec. 3. Severability - Construction.

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

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

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

PASSED BY the City Council of the City of Des Moines this 9th day of November, 2023 and signed in authentication thereof this 9th day of November, 2023.


M A Y O R

APPROVED AS TO FORM:

/s/ Tim George
City Attorney

ATTEST:


City Clerk

Published: November 15, 2023

ORDINANCE NO. 1783

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON authorizing an interfund loan to the Events and Facility Rentals Fund in the amount of \$750,000 from the Surface Water Management Fund, and setting the schedule for repayment and interest calculations on or before January 1, 2027.

WHEREAS, the 2024 Preliminary Annual Budget recommends a an interfund loan to aid in establishing a new Events and Facility Rentals enterprise fund, and

WHEREAS, the City plans to establish a new Events and Facility Rentals Fund with a 3-year loan arrangement, with a three percent (3.00%) interest rate, and

WHEREAS, in the event the Events and Facility Rentals Fund is unable to repay the loan in full during the three-year term, the loan will be repaid with General Fund resources, and

WHEREAS, the interfund loan will be repaid on or before January 1, 2027; now therefore,

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

Sec. 1. The Surface Water Management Fund will provide the Events and Facility Rentals Fund with interfund loan proceeds of \$750,000.

Sec. 2. The Events and Facility Rentals Fund will pay interest on the outstanding loan to the Surface Water Management Fund at an interest rate of three percent (3.00%).

Sec. 3. Upon the availability of Events and Facility Rentals Fund resources, the Events and Facility Rentals Fund will repay the outstanding interfund loan to the Surface Water Management Fund, but no later than January 1, 2027.

Sec. 4. Severability - Construction. If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by a court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance.

//

Ordinance No. 1783
Page 2 of 2

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

PASSED BY a majority of the City Council of the City of Des Moines, Washington this 9th day of November, 2023 and signed in authentication thereof this 9th day of November, 2023.


MAYOR

APPROVED AS TO FORM:

/s/ Tim George
City Attorney

ATTEST:

Jaia Keane
City Clerk

Published: November 15, 2023

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Cecil Powell Neighborhood Park
Improvements – Public Works
Construction Contract Award

FOR AGENDA OF: December 14, 2023

DEPT. OF ORIGIN: PRSS

ATTACHMENTS:

1. CIP Project Budget Worksheet
2. Public Works Contract
3. Bid Proposal (Responsive Low Bid)

DATE SUBMITTED: December 6, 2023

CLEARANCES:

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

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

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval of the Public Works Contract (Attachment 2), with McCann Construction Enterprises, Inc.

Suggested Motion

Motion: “I move to approve the Public Works Contract with McCann Construction Enterprises, Inc. (Contractor), for the Cecil Powell Neighborhood Park Improvements project, in the amount of \$163,113.15, authorize a project construction contingency in the amount of \$22,000.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.”

Background

Cecil Powell Neighborhood Park is a small neighborhood park located in the Zenith neighborhood of Des Moines. In 2014, the play structure was deemed structurally unsafe, and taken down.

The goal has been to provide a safe and functional neighborhood park, and the 2022-2027 Parks, Recreation, and Senior Services Master Plan identifies several needs at this site:

- Replace play structure that was removed
- Renovation for ADA compliance
- Improve trail connection to South 250th St.
- Picnic table and bench replacement
- Fence Replacement
- Replace irrigation
- Vegetation management

This project proposes to install all new play equipment, upgrade park access to meet ADA compliance, and picnic table and bench replacement.

Solicitation for Bids was published on September 26, 2023 and October 3, 2023 in both the Seattle Times and the Daily Journal of Commerce, with a Public Bid Opening held on October 17, 2023 at 11:00 AM.

Discussion

Public Works Contract

The Cecil Powell Neighborhood Park Improvements were advertised for bids in accordance with State law, WSDOT LAG Manual, and requirements for competitive bidding of public works contracts. Bids from five contractors were received. Bids were publicly opened and read aloud on October 17, 2023 by the City Clerk designee and are summarized below.

BID RESULTS

<u>Engineer’s Estimate (including tax)</u>	<u>\$171,827.57</u>
<u>Contractor Name</u>	<u>Bid Proposal</u>
McCann Construction Enterprises, Inc.	\$163,113.15 (Responsive Low Bid)
Blackfish Civil Infrastructure, Inc.	\$186,919.48
Judha of Lion Landscaping & Services LLC	\$229,536.48
EIB Group LLC	\$264,240.00
Northwest Cascade, Inc.	\$289,507.95

McCann Construction Enterprises, Inc. is the Responsive Low Bidder (Attachment 3). 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 McCann Construction Enterprises, Inc.

Alternatives

Reject All Bids

The City Council could direct staff to reject all Bid Proposals and re-submit for construction bids at a later time. However, the current low bidder proposal is below the Engineer's estimated construction cost and there is no reason to believe project bids would be lower given the present extremely busy bidding climate, construction material inflationary pressures, and national labor shortages across all sectors.

Financial Impact

The City's CIP Budget Worksheet includes revenues to achieve full project funding (Attachment 1).

Recommendation

Staff recommends the adoption of the motion.

Council Committee Review

Not Applicable

**CITY OF DES MOINES
2024-2029 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)**

Attachment #1

Cecil Powell Play Equipment

Project # MJCIP0006
310,073

Summary Project Description:

Replace the play structure that was removed for safety reasons due to age and deterioration. Park renovation will include ADA compliance, picnic table and bench replacement.

CLP Category: Park Facility & Playground Projects

Managing Department: Parks, Rec & Sr Services

Justification/Benefits: Cecil Powell Park was transferred to the city by the Powell family in 1991. The play equipment is over 25 years old, in poor condition and doesn't meet current Play Equipment ASTM and ADA standards. The installation of new equipment will require meeting current ADA access standards.

PROJECT SCOPE			
Expenditures	Current Budget	Requested Change	Total Budget
Design	33	16	49
Land & Right of Way	-	-	-
Construction	151	74	225
Contingency	-	22	22
Total Expenditures	184	112	296

ANNUAL ALLOCATION									
Project to Date	Scheduled Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year
12/31/22	2023	2024	2025	2026	2027	2028	2029		
	36	13	-	-	-	-	-	-	-
	-	-	50	174	-	-	-	-	-
	1	5	17	-	-	-	-	-	-
	-	68	191	-	-	-	-	-	-

Funding Sources	Current Budget	Requested Change	Total Budget
REET 2	184	112	296
Total Funding	184	112	296
Funding Shortfall/Excess	-	-	-

Project to Date	Scheduled Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year
12/31/22	2023	2024	2025	2026	2027	2028	2029
	36	68	192	-	-	-	-
	-	-	-	-	-	-	-

OPERATING IMPACT			
	Current Budget	Requested Change	6 Year Total
Revenue	-	-	-
Expenses	-	-	-
Net Impact	-	-	-

ANNUAL OPERATING IMPACT							
12/31/22	2023	2024	2025	2026	2027	2028	2029
	-	-	-	-	-	-	-
	-	-	-	-	-	-	-
	-	-	-	-	-	-	-



PUBLIC WORKS CONTRACT
between City of Des Moines and
McCann Construction Enterprises, Inc.

THIS CONTRACT is made and entered into by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and McCann Construction Enterprises, Inc. organized under the laws of the State of Washington, located and doing business at P. O. Box 3211, Renton, WA 98056, (425) 228-2316, Matthew Wagester (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 of Work shown in the approved project plans and specifications, incorporated herein by reference.

Removal and salvage of existing tables and benches. Installation of new playground equipment and other appurtenances per Exhibit "A", Scope of Work shown in the approved project 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, including APWA General Special Provisions, if they are included,
- 5. Contract Plans,
- 6. Amendments to the Standard Specifications,
- 7. WSDOT Standard Specifications for Road, Bridge and Municipal Construction,
- 8. Contracting Agency's Standard Plans (if any), and
- 9. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

II. TIME OF COMPLETION. The parties agree that work on the tasks described in Section I above and more specifically detailed in Exhibit "A" attached hereto will begin immediately upon execution of this Contract. Upon the effective date of this Contract, the Contractor shall complete the work described in Section I within **40 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 \$148,150.00, plus any applicable Washington State Sales Tax, for the work and services contemplated in this Contract per attached Exhibit "A". Total amount of contract, including applicable sales tax, not to exceed \$163,113.15. 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. 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 **\$611.67** [*Liquidated Damages = (0.15*Contract Amount)/Time for Completion*] shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

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

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

and Industries must be submitted to the City by Contractor. It shall be the responsibility of Contractor to require all subcontractors to comply with Chapter 39.12 RCW and this section of the Contract.

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

IX. COMPLIANCE WITH WAGE, HOUR, SAFETY, AND HEALTH LAWS. The Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 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.

G. 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.

H. 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 BONDS 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/companies providing such bonds 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 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 \$150,000.00, 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 bonds, elect to have the City retain 10% 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.

<p>CONTRACTOR:</p> <p>By: _____ <i>(Signature)</i></p> <p>Print Name: _____</p> <p>Its: _____ <i>(Title)</i></p> <p>DATE: _____</p>	<p>CITY OF DES MOINES:</p> <p>By: _____ <i>(Signature)</i></p> <p>Print Name: _____ Tim George</p> <p>Its: _____ Interim City Manager <i>(Title)</i></p> <p>DATE: _____</p> <p style="text-align: right;">Approved as to Form:</p> <p style="text-align: right;">_____ City Attorney</p> <p style="text-align: right;">DATE: _____</p>
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<p>NOTICES TO BE SENT TO:</p> <p>CONTRACTOR:</p> <p>Matthew Wagester McCann Construction Enterprises, Inc. P. O. Box 3211 Renton, WA 98056 (425) 228-2316 (telephone) matt@mccannconst.com (e-mail address)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Scott J. Romano City of Des Moines 21650 11th Avenue South Des Moines, WA 98198 (206) 870-6539 (telephone) sromano@desmoineswa.gov (e-mail address)</p>
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At the direction of the Des Moines
City Council taken at an open
Public meeting on _____.

**PUBLIC WORKS PAYMENT BOND
to City of Des Moines, WA**

Bond No. _____

The City of Des Moines, Washington, (City) has awarded to _____ (Principal), a contract for the construction of the project designated as _____ (Contract), and said Principal is required under the terms of that Contract to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and _____ (Surety), a corporation organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of _____ US Dollars (\$ _____) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW Titles 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work; and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond shall be executed in four (4) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature

Date

Surety Signature

Date

Printed Name

Printed Name

Title

Title

Name, address, and telephone of local office/agent of Surety Company is:

PUBLIC WORKS PERFORMANCE BOND
to City of Des Moines, WA

Bond No. _____

The City of Des Moines, Washington, (City) has awarded to _____ (Principal), a contract for the construction of the project designated as _____ (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of _____ US Dollars (\$ _____) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all the terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond shall be executed in four (4) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature

Date

Surety Signature

Date

Printed Name

Printed Name

Title

Title

Name, address, and telephone of local office/agent of Surety Company is:

BIDDER CHECKLIST

THE BIDDER'S ATTENTION IS ESPECIALLY CALLED TO THE FOLLOWING FORMS WHICH MUST BE EXECUTED IN FULL AS REQUIRED:

(a) Proposal ✓

The unit prices bid must be shown in the space provided. Final sheet on proposal must be filled in and signed by the bidder. Refer to "Instructions for Bidders" regarding submittal of proposals.

(b) Bond Accompanying Bid ✓

This form is to be executed by the Bidder and the surety company unless bid is accompanied by a cashier's check or certified check. The amount of this bond shall be not less than five percent (5%) of the total bid, including sales tax, if applicable, and may be shown in dollars or on a percentage basis. On federally funded projects, a surety's name must also appear on the United States' Treasury Department's list of authorized sureties - Circular 570 as amended.

(c) Non-Collusion Affidavit ✓

This form must be filled in, signed, and notarized.

(d) Certificate of Non-segregated Facilities ✓

Must be completed and accompany each bid.

(e) Statement of Bidder's Qualifications ✓

(f) Certification of Compliance with Wage Payment Statutes ✓

(g) Statement of Bidder Responsibility Criteria ✓

(h) Statement of Proposed Subcontractors and Material Suppliers ✓

All subcontractors must be approved in writing by the Engineer prior to commencing any work.

**BIDDER CHECKLIST
1 OF 1**

PROPOSAL

Cecil Powell Neighborhood Park Improvements

This document is a proposed form of agreement. It is subject to revision by agreement of the parties, following award of the contract, and prior to execution of the final agreement.

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.

NOTE: The Bidder shall complete the entire proposal or the bid may be considered non-responsive. Additionally, the Owner has the right to correct obvious mathematical errors and reserves the right to update and/or modify contract documents before final execution.

Basis for award shall be the lowest total bid amount for all schedules included in the Proposal.

The Owner reserves the right to award all schedules, just a single schedule, any combination of schedules or no schedules at all.

**PROPOSAL
1 OF 3**

PROPOSAL (cont'd)

Name of Bidder: McCann Construction Enterprises, Inc.

Registration or license, Division of Professional Licensing:

1. License number: MCCANNT979K3

Date: 4 / 07 / 03

2. Bidder's Signature: _____

Title: Matthew Wagester, Vice President

Address of Bidder: P.O. Box 3211, Renton, WA 98056
Street City Zip Code

Bidder Telephone Number: 425-228-2316 425-531-0371
Office Cell

Bidder E-mail Address: bids@mccannconst.com

Date of Bid: 10 / 17 / 23

The undersigned Bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date for this Project, 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 (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Bidder's Signature:  Date: 10/17/23

Receipt is hereby acknowledged for the following Addenda:

<u>Addendum No.</u>	<u>Date Received</u>	<u>Signature</u>
_____	<u>/ /</u>	_____
_____	<u>/ /</u>	_____
_____	<u>/ /</u>	_____
_____	<u>/ /</u>	_____
_____	<u>/ /</u>	_____

PROPOSAL FORM – CECIL POWELL NEIGHBORHOOD PARK – 40 WORKING DAYS

The Contractor shall be reimbursed at the following rates:

NO.	ITEM	QTY	UNIT	UNIT PRICE	AMOUNT
A1.	Mobilization & Traffic Control	1	LS	\$ 14,000.00	\$ 14,000.00
A2.	Clearing, Grubbing, Grading & Installation for approximately 1,150 square feet of paving	1	LS	\$ 6,500.00	\$ 6,500.00
A3.	Removal and salvage of existing benches and tables to be returned to the City.	1	LS	\$ 5,000.00	\$ 5,000.00
A4.	Excavation, Grading, Site Erosion Control TESC BMPs per plans, compacting and installation of area drainage system at new Playground Area	1	LS	\$ 25,000.00	\$ 25,000.00
A5.	Installation of approximately 200 linear feet of cement concrete curbing and ADA ramp adjacent to new Playground Area	1	LS	\$ 10,000.00	\$ 10,000.00
A6.	Install all new playground equipment, safety surfacing, and signage as shown on Plans	1	LS	\$ 61,650.00	\$ 61,650.00
A7.	Install approximately 1,014 square feet of Hot Mix Asphalt path	1	LS	\$ 8,000.00	\$ 8,000.00
A8.	Install approximately 122 square feet of concrete pavement pads	1	LS	\$ 7,000.00	\$ 7,000.00
A9.	Regrading and seeding of disturbed areas adjacent to new construction, including topsoil	1	LS	\$ 9,000.00	\$ 9,000.00
A10.	Cutting & capping existing irrigation if encountered in limits of new improvements.	1	LS	\$ 2,000.00	\$ 2,000.00

Subtotal: \$ 148,150.00

Washington State Sales Tax (10.1%): \$ 14,963.15

TOTAL PROPOSAL COST: \$ 163,113.15

**PROPOSAL
3 OF 3**

FORM OF A BID BOND

BID BOND DEPOSIT

Herewith find deposit in the form of a _____
(state whether certified check, cashier's check, postal money order, or bid bond) for the amount
of _____, which amount is not less than five
percent (5%) of the total bid, including sales tax.

Signature

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, McCann Construction Enterprises, Inc., as Principal,
and The Gray Insurance 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 Bid Amount
dollars (\$ 5% of Bid Amount) 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 **Cecil Powell Neighborhood Park Improvements**, 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 17th DAY OF October
2023.

McCann Construction Enterprises, Inc.

Matthew Wagester
PRINCIPAL Matthew Wagester, Vice-President
The Gray Insurance Company

Julie R. Truitt
SURETY Julie R. Truitt, Attorney-in-Fact

Received return of deposit in the sum of _____

Date: _____

Signature: _____

**THE GRAY INSURANCE COMPANY
THE GRAY CASUALTY & SURETY COMPANY**

GENERAL POWER OF ATTORNEY

Bond Number: Bid **Principal:** McCann Construction Enterprises, Inc.
Project: Cecil Powell Neighborhood Park Improvements

KNOW ALL BY THESE PRESENTS, THAT The Gray Insurance Company and The Gray Casualty & Surety Company, corporations duly organized and existing under the laws of Louisiana, and having their principal offices in Metairie, Louisiana, do hereby make, constitute, and appoint: **Carley Espiritu, Jamie L. Marques, Amber Lynn Reese, Aliceon A. Keltner, Justin Dean Price, Tamara A. Ringeisen, Amelia G. Burrill, Alyssa J. Lopez, Alexa Manley, Christopher Kinyon, Lori J. Kelly, Wesley V. Dasher, Sarah Whitaker, Sherri W. Hill, Annelies M. Richie, Julie R. Truitt, Holli Albers, Lois F. Weathers, Cynthia L. Jay, Katharine J. Snider, and Lindsey Elaine Jorgensen of Tacoma, Washington jointly and severally** on behalf of each of the Companies named above its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its deed, bonds, or other writings obligatory in the nature of a bond, as surety, contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed the amount of \$25,000,000.00.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both The Gray Insurance Company and The Gray Casualty & Surety Company at meetings duly called and held on the 26th day of June, 2003.

"RESOLVED; that the President, Executive Vice President, any Vice President, or the Secretary be and each or any of them hereby is authorized to execute a power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings, and all contracts of surety, and that each or any of them is hereby authorized to attest to the execution of such Power of Attorney, and to attach the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be binding upon the Company now and in the future when so affixed with regard to any bond, undertaking or contract of surety to which it is attached.

IN WITNESS WHEREOF, The Gray Insurance Company and The Gray Casualty & Surety Company have caused their official seals to be hereinto affixed, and these presents to be signed by their authorized officers this 4th day of November, 2022.



By:

Michael T. Gray

Michael T. Gray
President

The Gray Insurance Company

State of Louisiana

Cullen S. Piske

Cullen S. Piske
President

The Gray Casualty & Surety Company



ss:

Parish of Jefferson

On this 4th day of November, 2022, before me, a Notary Public, personally appeared Michael T. Gray, President of The Gray Insurance Company, and Cullen S. Piske, President of The Gray Casualty & Surety Company, personally known to me, being duly sworn, acknowledged that they signed the above Power of Attorney and affixed the seals of the companies as officers of, and acknowledged said instrument to be the voluntary act and deed, of their companies.



Leigh Anne Henican
Notary Public
Notary ID No. 92653
Orleans Parish, Louisiana

Leigh Anne Henican

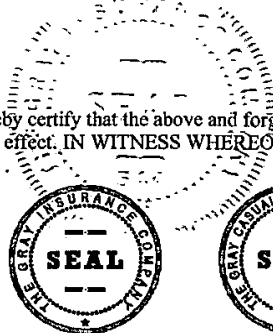
Leigh Anne Henican
Notary Public, Parish of Orleans State of Louisiana
My Commission is for Life

I, Mark S. Manguno, Secretary of The Gray Insurance Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 17th day of October, 2023

Mark S. Manguno

I, Leigh Anne Henican, Secretary of The Gray Casualty & Surety Company, do hereby certify that the above and forgoing is a true and correct copy of a Power of Attorney given by the companies, which is still in full force and effect. IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Company this 17th day of October, 2023

Leigh Anne Henican



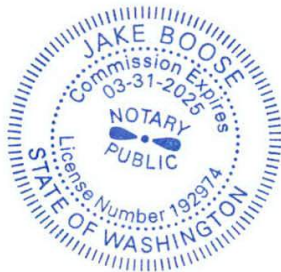
CITY OF DES MOINES
NON-COLLUSION AFFIDAVIT


STATE OF WASHINGTON)) ss.
County of King)

Matthew Wgester, being first duly sworn on his oath, says he is Vice President 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

Subscribed and sworn to before me this 17th day
of October, 20 23.




Notary Public in and for the State of Washington,
Residing at Everett, WA
My commission expires 3-31-25

NON-COLLUSION AFFIDAVIT
1 OF 1


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: 10/17/23 _____

Signature:  _____

Name/Title: Matthew Wagester, Vice President _____

Bidder Name: McCann Construction Enterprises, Inc. _____

Address: P.O. Box 3211 _____

City/State/Zip: Renton, WA 98056 _____

CERTIFICATION OF NON-SEGREGATED FACILITIES

1 OF 1

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: McCann Construction Enterprises, Inc.
2. Business address and telephone number:
P.O. 3211 Renton, WA 98056
425-2282316
3. Name of Owner: Jeffrey M. Kanyer
4. Year Business Originated: 2003
5. How many years has said bidder been engaged in the contracting business under present firm name: 20 Years
6. Have you operated three years without interruption? Yes No
7. Contracts now in hand (gross amount): \$ 9 Million
8. Bank references:
Banner Bank - Bellevue Branch
3001 112th Ave. NE, STE 100
Bellevue, WA 98004
Contact: Andy Tubb
Phone: (425) 739-1009 Fax: (425) 576-4389
9. Dept. of Labor and Industries' firm number: 895,521-02
10. Dept. of Revenue registration number: 000-225277-00-0
11. Washington State Business License Number: 602-286-020
12. **Identify at least two other public agencies that the company has provided equivalent services to within the past three years. Identify other work performed in the past three years to detail additional experience and qualifications.**
 - 1) Customer Reference: See Attached
Dollar value of work on an annualized basis: \$ _____

STATEMENT OF BIDDER'S QUALIFICATIONS
1 OF 2

Customer Phone Number: _____

Date of Work: _____

May we Contact the Named Customer? Yes _____ No _____

2) Customer Reference: _____

Dollar value of work on an annualized basis: \$ _____

Customer Phone Number: _____

Date of Work: _____

May we Contact the Named Customer? Yes _____ No _____

3) Customer Reference: _____

Dollar value of work on an annualized basis: \$ _____

Customer Phone Number: _____

Date of Work: _____

May we Contact the Named Customer? Yes _____ No _____

4) Customer Reference: _____

Dollar value of work on an annualized basis: \$ _____

Customer Phone Number: _____

Date of Work: _____

May we Contact the Named Customer? Yes _____ No _____

McCann Construction Enterprises, Inc.

Name of Bidder

By:  _____

Title: Matthew Wagester, Vice President _____

Date: 10/17/2023 _____

STATEMENT OF BIDDER'S QUALIFICATIONS
2 OF 2



Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (October 17, 2023), 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 declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

McCann Construction Enterprises, Inc.

Bidder's Business Name

Signature of Authorized Official*

Matthew Wagester

Printed Name

Vice President

Title

10/17/2023

Everett

WA

Date

City

State or country

Check One:

Sole Proprietorship Partnership Joint Venture Corporation

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

WA

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

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

Statement of Bidder Responsibility Criteria

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

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

Contract Title: Cecil Powell Neighborhood Park Improvements

Bidder's Business Name: McCann Construction Enterprises, Inc.

Bidder's Name: Matthew Wagester

Bidder's Signature: 

Bidders Title: Vice President

Date: 10/17/2023

STATEMENT OF PROPOSED SUBCONTRACTORS AND MATERIAL SUPPLIERS

Subcontractor's Name, Address and Phone Number	Description of Work
TBD	

Material Suppliers	Material (major items only)
TBD	

McCann Construction Enterprises, Inc. - Project Experience and References

JOB TITLE	OWNER/GENERAL (GC)	ADDRESS	AMOUNT	COMPLETE	OWNER CONTACT	CONTACT PHONE
Lynnwood RideStore Remodel	City of Lynnwood PCL Construction Services	20110 46th AVE W Lynnwood, WA 98036	\$90,916.24	Ongoing	Joshua Hunter	425-454-8020
Erosion and sediment control, Street Sweeping, Inlet Protection, Perimeter Wattle Protection, Site Clearing and Grubbing, Tree Removal, Site Excavation, Crushed Surfacing Under Concrete Surfaces, Excavate for Footings/Pads, Footing/Pads Backfill, Fine Grade Site, Cut and Cap Existing Storm Sewer Pipe, Remove Existing Storm Sewer Pipe and Cleanout, Storm Sewer Pipe, Storm Sewer Cleanouts, Footing Drain, Perforated Stub-out Connection, Roof Drain/Downspout Connections, Relocate Water Meter.						
164th Avenue NE	City of Bellevue Parks & Community Services	450 110th Avenue NE Bellevue, WA 98009	\$561,801.77	Ongoing		
NE 8th ST to Northrup Way LID Retrofit						
Grub and Clear Existing Grass Lined Swales/Planter Areas, Excavate and Regrade Existing Grass Lined Swales, Remove Storm Drain Structures and Obstructions, Limited HMA removal, Install Storm Drainage Modifications, Install Bioretention Soil, Topsoil, Compost, Planting and Drip Irrigation Property Restoration and Miscellaneous Work						
Terminal Solid Waste	Port of Seattle PCL Construction Services, Inc.	13920 SE Eastgate Way, Suite 400 Bellevue, Washington 98005	\$694,356.00	Ongoing	Marc Pineda	425-301-7539
Site Demolition, Excavation, & Utilities						
PD-WP-2022-09 Fire Damage Roadway Repairs	Port of Everett FORMA Construction Company	500 Columbia St. NW, Suite #201 Olympia, WA 98501	\$259,811.00	Jun-23	Jesse Tax	425-766-7324
Site Demolition, Grind and Overlay Asphalt, Striping						
Port of SEA Gate A12 Modifications	Port of Seattle AERO BridgeWorks, Inc.	2700 Delk Road SE Suite 150 Marietta, GA 30067	\$219,849.00	Feb-23	Steve Henry	770-423-4200
Site Demolition, Excavation, & Foundation Install						
SEA ACC Bulldozer	Delta Air Lines, Inc. PCL Construction Services, Inc.	13920 SE Eastgate Way, Suite 400 Bellevue, Washington 98005	\$187,169.00	Aug-22	Robb Ruppel	206-719-6327
Civil, Excavation, Site Utilities, and Asphalt Paving						
Parking Revenue Infrastructure	Port of Seattle PCL Construction Services, Inc.	13920 SE Eastgate Way, Suite 400 Bellevue, Washington 98005	\$239,004.00	Jan-23	Marc Pineda	425-301-7539
Civil, Excavation, Site Utilities, and Asphalt Paving						
Safedock Upgrade and Expansion	Port of Seattle AERO BridgeWorks, Inc.	2700 Delk Road SE Suite 150 Marietta, GA 30067	\$211,725	Jul-21	Steve Henry	770-423-4200
CROSSING IMPROVEMENTS						
Site Demolition, Excavation, & Utilities						
Infrastructure Development Heritage Place	Seritage SRC Finance, LLC PCL Construction Services	13920 SE Eastgate Way, Suite 400 Bellevue, Washington 98005	\$7,947,011	Ongoing	Josh Hunter	425-454-8020
Site Demolition, Excavation, & Utilities						
Olympic Tower	LLC dba Skyline, a Washington Limited Liability Com PCL Construction Services	13920 SE Eastgate Way, Suite 400 Bellevue, Washington 98005	\$1,195,493	Jul-22	Davis Hester	425-454-8020
Civil, Excavation, Site Utilities, Asphalt Paving and Striping						
Siemens Healthineers Issaquah Renovation	Siemens Medical Solutions USA PCL Construction Services	13920 SE Eastgate Way, Suite 400 Bellevue, Washington 98005	\$22,542	Jun-20	Cory Brown	425-454-8020
Earthwork, Utilities						
238th St SW Island Improvements and Pedestrian Curb Ramp Barrier Removals Project	City of Edmonds McCann Construction Enterprises, Inc.	121 5th Ave. N Edmonds, WA 98020	\$374,323	Oct-19	Ryan Hague	425-275-4808
Installation of approximately 2 curb ramps, a traffic island.						
Cavalero Park Improvements	Snohomish County McCann Construction Enterprises, Inc.	3000 Rockefeller Ave Everett, Washington 98201	\$3,180,482	Jun-21	Kevin Teague	425-388-3488
Mass grading of 2 Acre park, installation of underground utilities and several Skatopark bowl, basketball court and pervious walkways. Installation of curb and gutter, HMA, driveway and parking lot.						
Riverside Business Park Public Access Trails & Viewpoints	Port of Everett McCann Construction Enterprises, Inc.	1205 Craftsman Way Suite 200 Everett, Washington 98201	\$717,918	Nov-19	Eise Gronswald	425-388-0630
Construction of approximately 2,000 LF of asphalt trails, concrete sidewalk and two viewpoints. Construction and restoration will include approximately 150,000 SF of landscaping along the shoreline and upland area.						
240 th ST SE RAILROAD	Snohomish County	3000 Rockefeller Ave Everett, Washington 98201	\$484,563	Mar-20	Fred Bushby	425-388-3488
CROSSING IMPROVEMENTS						

Improvement of the railroad crossing at 240th St SE east of Snohomish Woodinville Road by re-grading the roadway from Snohomish-Woodinville Rd to the railroad crossing, constructing a reinforced railroad crossing, installing drainage, replacing rail, relocating railroad flashing assemblies, connecting sidewalk on the north side of the road, improving associated ADA facilities to current standards, traffic control							
JOB TITLE	OWNER/GENERAL (GC)	ADDRESS	AMOUNT	COMPLETE	OWNER CONTACT	CONTACT PHONE	
N. BROADWAY TRANSIT IMPROVEMENT PROJECT	City of Everett	3200 CEDAR STREET	\$2,235,903	Jun-19	Mike Kangas	425-257-8800	
McCann Construction Enterprises, Inc. EVERETT, WA 98201							
Installing ADA accessible bus stop curb bulb-out along North Broadway corridor between 34th Street to Tower St. All locations, except two, will have bus shelter, and other transit amenities.							
Airfield Waterline Replacement	City of Monroe	806 West Main St	\$279,085	Nov-18	Jammi Gulon	360 794-7400	
McCann Construction Enterprises, Inc. Monroe, WA 98272							
Installation of approximately 900 linear feet of 12-inch ductile iron water main.							
SB 236 St to 44 Ave W Peak Transit Shoulder Use	WSDOT	310 Maple Park Avenue SE	\$385,218	Nov-18	Mark Sawyer	425-225-8770	
McCann Construction Enterprises, Inc. Olympia, WA 98504							
Improvement of 1-5 in Snohomish County, MP 178.62 to MP 180.22, SB 236TH ST SW TO 44TH AVE W; PEAK TRANSIT SHOULDER USE by furnishing, removing and replacing existing catch basin frame, grate and adjustment sections, installing pull box and induction loop, pavement marking and delineation, signing, temporary erosion and water pollution control, traffic control							
SR 520 NE 40TH & 51ST STREET EASTBOUND C-D RAMP MODIFICATION	City of Redmond	15670 NE 85th Street	\$1,049,810	May-19	Ashraf Habbak	425-556-2749	
McCann Construction Enterprises, Inc. Redmond, WA 98073							
Removing or relocating existing precast concrete barriers, upgrading drainage facilities, installing an impact attenuator, revising signage and sign brackets, grinding and asphalt paving to provide curve super-elevation for a new off ramp, replacing a signal induction loop, pavement marking, temporary traffic control							
2018 Sanitary Sewer Replacement Project	City of Edmonds	121 5th Ave. N	\$1,568,081	Feb-19	Ryan Hague	425-275-4808	
McCann Construction Enterprises, Inc. Edmonds, WA 98020							
Construction of sanitary sewer main improvements of several locations within the City of Edmonds. Work at all project sites included roadway and surface restoration. The project included installing approximately 1,460 linear feet of 8-inch diameter PVC, spot repair of an existing 8-inch diameter concrete sanitary sewer main; replacement of approximately 220 linear feet of existing 8-inch diameter concrete sanitary sewer main with 10-inch diameter HDPE sanitary sewer main using trenchless installation methods; replacement of 4 manholes; installation of 3 new manholes; connection to 4 existing manholes; replacement of sewer service connections and approximately 700 linear feet of roadway restoration.							
The Ridge at Cougar Mountain - Short Plat Part II	BSB Enterprises, Inc	PO Box 3211	\$367,243	Jan-19	Owner- Dan Bourgin	425-941-4615	
McCann Construction Enterprises, Inc. Renton WA 98056							
Earthwork, Utilities							
Smith Street & Park Street Utilities Replacement	City of Monroe	806 West Main St	\$669,419	Jul-18	Jammi Gulon	360 794-7400	
McCann Construction Enterprises, Inc. Monroe, WA 98272							
Replacement of approximately 1,150 linear feet of 8-inch water main and 700 linear feet of sewer main, street resurfacing and other work.							
Richmond Beach Rd Rechannelization	City of Shoreline	PO Box 3211	\$321,404	Jun-18	Alisa Arment	206 801-2473	
McCann Construction Enterprises, Inc. Renton, WA 98056							
Traffic Markings, Excavation, Paving, Striping associated with Richmond Beach Road Rechannelization							
NE 184th PL & Cambria Hills Water Main Replacement / NE 185th St Sewer Repair	City of Bothell	PO Box 3211	\$233,976	May-18	Peter Pearson	425 806-6786	
McCann Construction Enterprises, Inc. Renton, WA 98056							
184th - Replacement of approximately 290 linear feet of 8-inch AC water main with 10-inch HDPE water main using the Horizontal Directional Drill (HDD) construction method including installation of water appurtenances, water connections, traffic control, construction surveying, and project restoration. Cambria Hills Development involved installation of approximately 160 linear feet of 6-inch DI water main including installation of water appurtenances, water connections, traffic control, construction surveying, and project restoration.							
2017 Pavement Repair and Iron Adjustment	Alderwood Water and Wastewater District	PO Box 7305	\$188,158	Ongoing	Catherine Forrest	425-741-7982	
Kennewick, WA 99338 cforrest@awwd.com							
Removing existing pavement and pavement base over settlement area and existing lift station sites, over-excavating, backfilling, asphalt paving, and adjusting manholes, vault, and water valve box lids							
Inspirus Credit Union Office Addition	PCL Construction Services		\$186,817	Ongoing	Chris Murdoch	425-454-8020	
cmurdoch@pcl.com							
Excavation							
2017 Small Drainage Program	City of Tukwila	P.O. Box 481	\$451,823	1/18/2018	Mike Perfetti	206-433-7182	
Renton WA 98057 Mike.Perfetti@TukwilaWA.gov							
Drainage, Roadway, Curb and Gutter							
POS Baggage Optimization	PCL Construction Services	3911 Lake Washington Blvd SE	\$320,000	Ongoing	Jared Gothard	425-519-7324	
Bellevue WA 98006							
Earthwork, excavation and backfill							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	

620 Terry Senior Housing Seattle, WA	Terry Care Group, LLC PCL Construction Services	3911 Lake Washington Blvd SE Bellevue WA 98006	\$2,042,826	ongoing Feb-18	Tyler Kautz/Dan Johnson	425-454-8020
<i>Mass Excavation, Installation of underground utilities, Paving, concrete panel replacement</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Renton RHA House Demolition Phase I Renton, WA	City of Renton FORMA Construction	PO BOX 11489 Olympia, WA 98508	\$22,601	Dec-16	Lon Weaver	206-626-0256
<i>Demolition of 2 Story 4-Plex Residential Building located in the Renton Highlands. With cut and capping. Utilities and water services.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
North Satellite Renovation & Expansion Seattle, WA	Port of Seattle Hensel Phelps Construction Co	11832 S BLOOMFIELD AVE SANTA FE SPRINGS CA 90670	\$25,000	Nov-18	Barbara Schultz	562-968-9771
<i>Provided excavation and backfilling services</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Brightwater Treatment Plant Field Pavilion Woodinville, WA	King County BNBuilders	2601 4th Avenue, Suite 350 Seattle, WA 98121	\$18,790	Dec-15	Andrew Marsters	202-382-3443
<i>Clearing, grubbing and grading. Site demolition and Earthworks including: Trail Excavation Incl. Haul to Stockpile in Work zone: 39 cy, Toilet Structure Excavation Incl. Haul to Stockpile in Work zone: 20 cy, Foundation Excavation Incl. Haul to Stockpile in Work zone: 6 cy, Trail Surfacing WSDOT Crushed, Surfacing Top Course: 72 ton, Under Toilet WSDOT Crushed Surfacing Top Course: 6 ton, Fine Grading: 1,366 sf</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Meridian Center 2 for Health PH Burien, WA	King County McCann Construction Enterprises	P.O. Box 481 Renton WA 98057	\$ 893,000.00	Aug-16	David Millar	206-477-9360
<i>Remove a 33,000 sf 2-story health service building. Provide a 39 stall parking lot expansion. Storm water disposal, grading, irrigation, lighting and landscape restoration.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Citywide Roadway Embankment Stabilization Burien, WA	City of Burien McCann Construction Enterprises	P.O. Box 481 Renton WA 98057	\$ 198,235.00	Dec-15	Dan Radake	206-396-4089
<i>Asphalt and concrete pavement removal and grinding, placement of construction geotextile, CSTC, new pavement sections, overlay, adjustment of utilities to grade, edge restoration, channelization and other minor items of work.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Seattle Sky Club Sea Tac, WA	Delta Airlines PCL Construction Services	3911 Lake Washington Blvd SE Bellevue WA 98006	\$168,000.00	Jul-16	Ben Reinhardsen	425-749-7778
<i>Demolition of Concrete Pavement, Sawcutting Cement Concrete Pavement, Asphalt Pavement Removal, TESC Devices, Structure Excavation & Backfill, Structural Shoring, Potholing, Crushed Surfacing</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Duwamish Gardens Project Tukwila, WA	City of Tukwila McCann Construction Enterprises	P.O. Box 481 Renton WA 98057	\$ 2,447,346.00	Feb-17	Mike Perfetti	206-433-7192
<i>Construction of approximately 3 acres of shoreline habitat restoration and public park improvements along the Duwamish river. The project includes but is not limited to excavation; erosion controls; in-hand-carry boat launch installation and other work necessary water work; grading; hauling excess soil including contaminated soil; cultural resource protection, protection of sculptural art installation and interpretive signage; site furnishings, specialized concrete paving, crushed rock paving, fencing, seat wall construction, habitat elements, cobble and boulder placement, existing facilities including light rail columns, sidewalk and utilities; minor sidewalk and street repair; traffic control; planting; lawn installation, irrigation; rain garden construction and stormwater system improvements; building and underground storage tank demolition; clearing and grubbing.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
South Satellite S4 & S6 International Corridor Sea Tac, WA	Port of Seattle PCL Construction Services	15405 SE 37th St., Ste 200 Bellevue WA 98006	\$ 28,124.00	2015	Jason Stordahl	425-505-3600
<i>Demolition of Concrete Pavement, Sawcutting Cement Concrete Pavement, Bollard Removal & Relocation, Installation of Hydrant Assembly, Controlled Density Fill, Site Restoration</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Water Cabinets Replacement Seattle, WA	Amtrak McCann Construction Enterprises	P.O. Box 481 Renton WA 98057	\$ 40,942.00	2014	Dan Radake	206-396-4089
<i>Install 7 Snyder Water Cabinets provided by Snyder Equipment.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Five Newport Storm Manhole Correction Bellevue, WA	Ivanhoe Cambridge PCL Construction Services	3911 Lake Washington Blvd SE Bellevue WA 98006	\$ 28,253.00	2014	Christopher Murdoch	425-394-4200
<i>Temporary traffic control devices, street sweeping, high vis fencing, inlet protection, utility locates, sawcutting, tree removal, concrete stair removal, structure excavation class B, shoring class B, storm drain manhole adjustment, site restoration</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Alaska Airlines Ground Level Walkways Concourse C Seattle, WA	Alaska Airlines PCL Construction Services	15405 SE 37th St., Ste 200 Bellevue WA 98006	\$ 145,705.00	2015	Jason Stordahl	425-505-3600
<i>Drill & epoxy anchor bolts for structural steel columns, hold rooms, temporary power for aircraft rectifiers, temporary pedestrian walkways for ground level walkways</i>						

JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
VA Bldg 101 Mental Health Services - Phase 1	Dept. of Veterans Affairs	6890 W 52nd Avenue	\$ 4,919,932.19	2015	Jeff Richards	253-845-9544
Parking Garage and Main Entry Drive Seattle, WA <i>Earth moving, EPS Geofam, Water Utilities, Sanitary Sewerage Utilities, Storm Drainage Utilities, Foundation Drainage, Soils Report</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
NW Region Traffic Management Center	WSDOT	15405 SE 37th St., Ste 200	\$ 874,282.41	2015	Peter Losh	425-454-8020
Shoreline, WA PCL Construction Services Bellevue WA 98006 <i>Earthwork, erosion control, site utilities, asphalt paving and asphalt striping</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Relocatable for IDES Madigan Army Medical Center, JBLM WA	US Government	4904 Lake Washington Blvd NE	\$ 348,000.00	2013	Stephen Vatter	425-255-3111
Dupont, WA Global Engineering & Const. Renton WA 98056 <i>Temporary Erosion Control Devices, high vis fence, site excavation & disposal of excess soils, site cut to fill, csbc, compacted pad, riprap, ped crossing, sanitary sewer & tie-in to existing, storm drainage & tie-in to existing, bioretention/infiltration basin landscaping.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
PLB Replacement & Refurbishment	Port of Seattle	15405 SE 37th St., Ste. 200	\$ 43,660.00	2014	Jamie Clune	425-454-8020
Concourse D Seattle, WA PCL Construction Bellevue, WA 98006 <i>Remove, relocate, refurbish passenger loading bridges and gates at Concourse D at the Port of Seattle.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Rose Hill Middle School/Stella Schola	Lake Washington School Dist.	P.O. Box 280	\$ 3,914,417.00	2014	Jeff Richards	253-845-9544
Redmond, WA Abscher Construction Puyallup, WA 98371 <i>Site clearing and demolition, field subgrade establishment, erosion control, earthwork, water utility distribution utilities, sanitary sewerage utilities, field storm drainage, storm drainage utilities, foundation drainage</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Madigan Army Medical Center - Joint Base	US Government	4904 Lake Washington Blvd. NE	\$ 1,388,597.00	2011	Peter Benschke	206-571-6102
Lewis-McChord Drainfield Repair Dupont, WA Global Engineering & Const. Renton, WA 98056 <i>Develop remediation plan to restore the infiltration rates of the primary and secondary drainfield areas at MAMC to eliminate settled sediment and organic elements and return rates back to those of native soil.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Premiera Parking Lot	Premiera	15405 SE 37th St., Ste. 200	\$ 201,452.82	2012	Adam Running	206-351-5257
Mountlake Terrace, WA PCL Construction Services Bellevue, WA 98006 <i>Site Cut to Fill, Gabion Basket Install, Intersection Work, Storm Drainage, Water System, Sewer System</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
SPU Owned Cedar River Properties: Tran, Ramey, Allen & Monroe	Cascade Land Conservancy/Seattle Public Utilities/McCann Construction	P.O. Box 481	\$ 44,484.00	2011	Cyndy Holtz/SPU	206-366-1990
Seattle, WA Renton WA 98057 <i>Demolition of assorted buildings on 3 different properties, removal of above-ground fuel tank, septic tank, brush and debris piles.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Houghton Transfer Station Roof Improvement and Mitigation Project	King County Dept. of Natural Resources - Solid Waste Division/PCL Construction	15405 SE 37th St., Ste. 200 Bellevue, WA 98006	\$ 378,272.00	2011	Dana Johnson	425-577-8274
Kirkland, WA Bellevue WA 98006 <i>Selective demolition, earthwork, water, stormwater, and wastewater utilities including detention vault for the construction of the Houghton Transfer Station Roof Improvements and Mitigation Project.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
New Cascades Maintenance Facility (Phase I) and The New Warehouse & Administrative & Health & Welfare Bldg (Phase II)	AMTRAK/PCL Construction Services	15405 SE 37th St., Ste. 200 Bellevue, WA 98006	\$ 3,927,300.00	2012	Jason Goetz	206-255-7427
Bellevue WA 98006 <i>Sitework, Backfill and utilities work for the construction of the New Cascades Maintenance Facility Ph. 1 and the new Warehouse and Administration and Health and Welfare Bldg. Ph. 2.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Bravem Residential Towers 3 & 4	Bravem Residential I & II, LLC/PCL Construction	15405 SE 37th St., Ste. 200	\$ 176,247.00	2011	Aaron Wiehe	
Bellevue, WA Bellevue, WA 98006 <i>Concrete, asphalt, demolition, site grading, installation of crushed rock, asphalt paving, erosion control, striping and installation of signal loops.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
SeaTac WallyPark Parking Structure	18613 International, LLC/	15405 SE 37th St., Ste. 200	\$ 572,496.00	2011	Tony Reichstein	425-768-3699

SeaTac, WA	PCL Construction Services	Bellevue, WA 98006					
<i>Site utilities, to include furnishing and installing the water distribution system, sanitary sewer system, and storm drainage system.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
White Center Square Seattle, WA	Seattle Housing Authority / Vongs LLC / Buchanan General Contracting Co.	PO Box 40069 Bellevue, WA 98015	\$ 731,953.00	2011	Terry Buchanan	425 462-1326	
<i>Earthwork and site utilities for new retail shopping center including large detention vault, erosion control, structural excavation and backfill, sanitary sewer, sewer storm and water systems.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Picnic Point Wastewater Treatment Fac. Edmonds, WA	Alderwood Water & Sewer District / Apollo, Inc.	PO Box 7305 Kennewick, WA 99336	\$ 5,067,079.00	2012	Tim Montgomery	509 586-1104	
<i>Mass excavation, erosion control, clearing and grubbing for new wastewater treatment facility on 12 acre site including fine grading, construction entrances, demo existing utilities</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Terminal 91 Cruise Ship Terminal Seattle, WA	Port of Seattle PCL Construction Services	15405 SE 37th St, Ste 200 Bellevue, WA 98006	\$ 4,505,756.00	2009	Bernd Dreyer	425 454-8020	
<i>Site work for new cruise ship terminal building including contaminated soil removal, demo and removal of asphalt and concrete pavement, utilities including water, sanitary sewer, storm drain systems.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Safeway Distribution Center Bellevue, WA	Safeway, Inc. PCL Construction Services	15405 SE 37th St, Ste 200 Bellevue, WA 98006	\$ 3,849,783.95	2008	Kaz Robertson	425 454-8020	
<i>Earthwork for remodel of warehouse and new guardhouse including export of unsuitable soils, demo of existing utilities, utilities relocation and fire separation lines</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Tulalip Hotel and Casino Expansion Tulalip, WA	The Tulalip Tribes M.A. Mortenson Co.	14719 NE 29th PL Bellevue, WA 98007	\$ 945,834.00	2008	Bill Kent	425 895-9000	
<i>Mass excavation, footing, grade beams and pile caps excavation and backfill, fine grading of site for casino expansion and new hotel construction.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Sound Transit Commuter Rail Station Lakewood, WA	Regional Transit Authority PCL Construction Services	15405 SE 37th St, Ste 200 Bellevue, WA 98006	\$ 1,507,391.00	2008	Trever Gallagher	425 454-8020	
<i>Demolition, erosion control, earthwork and utilities for new rail commuter rail station including hauling and disposal of contaminated soils.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Microsoft Building 120 Redmond, WA	Microsoft, Inc. Skanska USA Building, Inc.	221 Yale Ave N, Ste 400 Seattle, WA 98109	\$ 398,261.00	2008	James McReynolds	206 726-8000	
<i>Selective clearing, site preparation and demolition, earthwork, waterline replacement and storm drainage for remodel of existing building on Microsoft campus.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Olympk Office Building Renton, WA	Olymco Development LLC	1222 Branson Way N, Ste 100 Renton, WA 98057	\$ 83,824.38	2008	Steve Olymky	425 228-2824	
<i>Demolition and disposal of existing structure, clearing and grubbing, erosion control, excavation and backfill of footings for new mixed use building.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
SeaTac Airport Lighting System ALSF-2 SeaTac, WA	Port of Seattle PCL Construction Services	15405 SE 37th St, Ste 200 Bellevue, WA 98006	\$ 196,188.00	2007	Phil Baker	425 454-8020	
<i>Earthwork including foundation excavation and backfill for the foundation and steel supports for high intensity approach lighting system including site clearing and preparation and erosion control.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Tulalip Hotel and Casino Expansion Tulalip, WA	The Tulalip Tribes PCL Construction Services	15405 SE 37th St, Ste 200 Bellevue, WA 98006	\$ 145,314.00	2007	Aaron Wiehe	425 454-8020	
<i>Project started under PCL contract then transferred to M.A. Mortenson. See above for full description of project.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Washington Square - Phase I Bellevue, WA	Wasatch Development Assoc. / Big-D Construction	10620 NE 8th St, Ste 101 Bellevue, WA 98004	\$ 132,478.00	2006	Patrick Derieg	425 732-3684	
<i>Misc. demolition, excavation, grading for new office building.</i>							
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE	
Discount Tire Shoreline, WA	Discount Tire Co. SGA Corporation	1501 N 200th St Shoreline, WA 98133	\$ 139,202.00	2006	Jim Rodgers	206 533-2191	
<i>Demolition of slabs, foundations, landscaping, rockeries and sidewalks, sawcut and removal of asphalt, excavate and backfill footings, site grading for new store.</i>							

JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Shoreline Watermark Credit Union	Watermark Credit Union	1501 N 200th St	\$ 80,023.00	2006	Tom Smart	206 533-2191
Shoreline, WA	SGA Corporation	Shoreline, WA 98133				
<i>Excavation and backfill of footings, importing and placing of crushed rock, erosion control and fine grading of site for new credit union.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Wells Fargo Bank	Wells Fargo Bank	850 Pacific Ave, Ste 200	\$ 89,825.00	2006	Larry Hutchinson	253 568-0500
Renton, WA	Lease Crutcher Lewis	Tacoma, WA 98402				
<i>Site preparation including clearing and grubbing, debris removal, mass excavation, structural excavation, utilities installation and fine grading for new bank.</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Snohomish Elementary School #10	Snohomish School District	12100 Northup Way	\$1,332,412.00	2007	Hans Hansen	425 885-3314
Snohomish, WA	Lydig Construction Inc.	Bellevue, WA 98005				
<i>Cut and fill 64,000 cy for school, includes maintaining erosion control and fine grading of site</i>						
JOB TITLE	OWNER/GENERAL (GC)	GC ADDRESS	AMOUNT	COMPLETE	GC PROJECT MANAGER	CONTACT PHONE
Target T-2192	Target Corporation	900 Poplar Place S	\$ 349,210.00	2006	Jason Hynes	206 728-8000
Marysville, WA	Skanska USA Building Inc	Seattle, WA 98144				
<i>Structural excavation for a 124,000 sf retail store, includes placing crushed rock, fine grade for building slab</i>						

Cecil Powell Neighborhood Park



DECEMBER 14TH, 2023
CITY OF DES MOINES

CONSTRUCTION CONTRACT AWARD

Nicole Nordholm
Director of Community Events and Services

Cecil Powell Neighborhood Park



- **BACKGROUND**

- Designated as a neighborhood ‘mini park’
- Original wooden play features removed in 2014
 - ✦ Deterioration of wood
 - ✦ Exceeded expected service life
- Improvements identified within the 2022-2027 Parks, Recreation, and Senior Services Master Plan



Cecil Powell Neighborhood Park



- PUBLIC SOLICITATION FOR CONSTRUCTION BIDS
 - Advertisement Sept. 26th and Oct. 3rd, 2023
 - ✦ Seattle Times
 - ✦ Daily Journal of Commerce
 - Bid Opening October 17th, 2023
 - ✦ (5) Bid proposals received

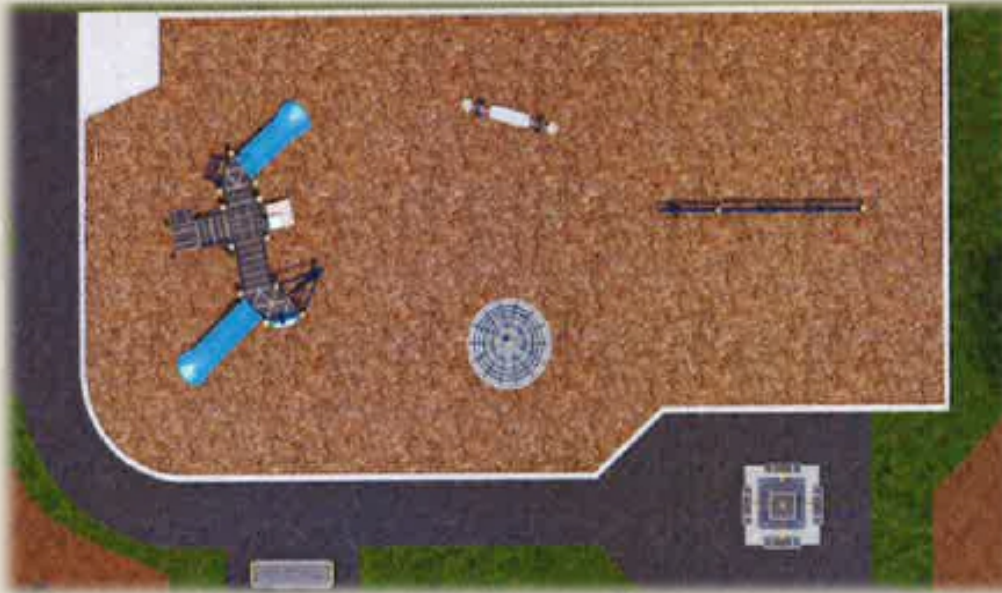
- RESPONSIVE LOW BID
 - Engineer's Estimate (including tax) \$171,827.57
 - ✦ **McCann Construction Enterprises, Inc. \$163,113.15 (Responsive Low Bid)**
 - ✦ Blackfish Civil Infrastructure, Inc. \$186,919.48
 - ✦ Judha of Lion Landscaping & Services LLC \$229,536.48
 - ✦ EIB Group LLC \$264,240.00
 - ✦ Northwest Cascade, Inc. \$289,507.95

Cecil Powell Neighborhood Park



- **PROPOSED PARK IMPROVEMENTS**

- New play Equipment
- Upgraded ADA park access
- Picnic table and bench replacement



Cecil Powell Neighborhood Park



Cecil Powell Neighborhood Park



PROPOSED COUNCIL MOTION FOR CONSIDERATION

“I move to approve the Public Works Contract with McCann Construction Enterprises, Inc. (Contractor), for the Cecil Powell Neighborhood Park Improvements project, in the amount of \$163,113.15, authorize a project contingency in the amount of \$22,000, and further authorize the City Manager to sign said Contract substantially in the form as submitted.”

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2023 Annual Budget Amendments

FOR AGENDA OF: December 14, 2023

ATTACHMENTS:

1. Draft Ordinance No. 23-081
2. Appendix A 2023 Amended Annual Budget

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: December 7, 2023

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- Legal *[Signature]*
- Finance */s/MH*
- Courts _____
- Police _____

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

Purpose and Recommendation

The purpose of this Agenda Item is for the City Council to consider Draft Ordinance 23-081, amending the 2023 Annual Budget.

Suggested Motion

MOTION: "I move to enact Draft Ordinance No. 23-081 relating to municipal finance, amending the 2023 Annual Budget adopted in Ordinance No. 1764.

Background

The City and the Des Moines City Council has adopted strong, solvent, and sustainable budgets using sound budgetary policies. This work has resulted in healthy reserves in excess of the recommended best practice of the Government Financial Officers Association. These reserves provide the City with the ability to weather ordinary economic upturns and downturns that occur without any interruption in essential services.

This has been very important, as the City of Des Moines has responded to the continuing uncertain impacts from the COVID-19 pandemic. As local economies, governmental policies, and needs of community members adapt to the economic environment impacted by recovery efforts to a global pandemic, municipal budgets need to accurately reflect the updated and informed expectations of City leadership and the community.

In reviewing the 2023 Adopted Budget and setting the goals for the 2024 Preliminary Annual Budget, the City maintains the following goals: 1) Remain solvent and strong; 2) Recover from COVID – socially, economically and programmatically; 3) Address reforms to the administration of justice; and 4) Prioritize Redevelopment.

Additional changes in revenues and expenditures, for all funds, from forecasts used to create the 2023 budget, enacted by Ordinance No. 1764 are in accordance with council direction and approval for fiscal year 2023.

Discussion

The 2023 Annual Budget presented on November 17, 2022 was based upon an estimated carry-forward of the 2022 year-end fund balances. Appendix “A” shows amended 2022 beginning fund balances, which are the actual 2022 ending fund balances. Changes reviewed and approved on November 10, 2023 were detailed in the agenda bill for that council meeting.

After the November 9, 2023 City Council meeting, it came to the Finance Director’s attention that the schedule attached to the ordinance had contained some math errors. In addition, there was a delay in expenditure information for the Equipment Rental Operations fund and an additional budget amendment is needed to ensure compliance with state law. Detail of each amendment are as follows:

1) Incorrect subtotals:

The expenditure column in the following schedule from the November 9th agenda item should have totaled \$224,900 not \$42,400; a difference of \$182,500.

GENERAL FUND	Change in Budget Increase/(Decrease)		Footnote	Description
	Revenues	Expenditures		
<i>Court</i>	100,000	175,000	3	COURT REMODEL EXPENSE
		1,500		TRANSFER IN FROM ARPA FUND 114
		6,000		UNIFORMS
		400		SMALL TOOLS AND EQUIPMENT
		10,000		PROFESSIONAL SERVICES
		30,000		JUDGE PRO TEM
		2,000		INTERPRETER SERVICES
				JURY FEES
Total Court	100,000	42,400		

The expenditure column in the following schedule from the November 9th agenda item should have totaled \$618,000 not \$628,500; a difference of \$10,500.

GENERAL FUND	Change in Budget Increase/(Decrease)		Footnote	Description
	Revenues	Expenditures		
<i>Transfers</i>		543,000	7	TRANSFER TO MUNICIPAL CAPITAL IMPROVEMENTS FUND
		75,000	8	TRANSFER TO REDONDO ZONE
	-	628,500		

Due to these errors, the total amount amending the 2022 General Fund expenditures in the draft ordinance was \$1,746,400, an amount \$172,000 less than intended. The requested amendment corrects that amount to \$1,918,400.

2) Allocation error

Included in the November 9, 2023 agenda item was a \$10,000 budget amendment for salaries and benefits expenditures in the Hotel/Motel Tax Fund. A Microsoft Excel formula pulled this amount into the wrong row in the draft ordinance schedule. The requested amendment corrects this error by moving the \$10,000 from the American Rescue Plan Act Fund to the Hotel/Motel Tax Fund where it was intended.

Hotel/Motel Tax Fund - 111		10,000		SALARIES AND BENEFITS
Total Hotel/Motel Tax Fund	-	10,000		

3) Equipment Rental Operations

In Fund 500-Equipment Rental Operations, an amendment of \$25,000 is requested to accommodate the purchase of radios for four new patrol cars as well as the purchase of a new auto lift to replace the existing lift that was deemed unsafe. Some costs related to these purchases were not recorded in the general ledger until after the November 9, 2023 Council meeting.

Alternative

Council can choose not to adopt these amendments.

Recommendation

Staff recommends enacting Draft Ordinance 23-081.

CITY ATTORNEY'S FIRST DRAFT 12/7/2023

DRAFT ORDINANCE NO. 23-081

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance, amending Ordinance No. 1764 (uncodified) (Budget 2023) and authorizing certain expenditures in the amounts specified in this Ordinance.

WHEREAS, the City Council finds that current and capital revenues and expenditures for the City differ from forecasts used to create the 2023 budget, enacted by Ordinance No. 1764, and further finds that such differences justify certain adjustments regarding obligations incurred and expenditures of proceeds for fiscal year 2023, and

WHEREAS, the City Council finds that the 2023 budget amendments to the City's budget are in the public interest; now therefore,

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

Sec. 1. Finding. Each and every of the findings expressed in the recitals to this Ordinance are hereby adopted and incorporated by reference.

Sec. 2. Amendment to 2023 Budget. Appendix "A" of Ordinance No. 1764 (Uncodified) (2023 Budget) are amended by Appendix "A" attached to this Ordinance and incorporated herein by this reference as though fully set out.

Sec. 3. Ratification and confirmation. All acts taken by City officers and staff prior to the enactment of this Ordinance that are consistent with and in furtherance of the purpose or intent of this Ordinance are hereby ratified and confirmed by the City Council.

Sec 4. 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 the 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 (5) five days after its final passage by the Des Moines City Council.

PASSED BY the City Council of the City of Des Moines this 14th day of December, 2023 and signed in authentication thereof this 14th day of December, 2023.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

ORDINANCE NO.23-081 - APPENDIX A
SUMMARY OF SOURCES AND USES - 2023 AMENDED BUDGET

FUNDS	2023 ORIGINAL BUDGET				BUDGET AMENDMENTS ADOPTED 11/9/2023		BUDGET AMENDMENTS ORDINANCE 23-081		2023 AMENDED BUDGET			
	Beginning Fund Balance	Revenue	Expenditure	Ending Fund Balance	Revenue	Expenditure	Revenue	Expenditure	Beginning Fund Balance	Revenue	Expenditure	Ending Fund Balance
General Fund	6,947,169	24,809,248	27,246,473	4,509,944	1,624,000	1,746,400	-	172,000	7,855,127	26,433,248	29,164,873	5,123,502
Special Revenue												
Streets	942,370	1,910,518	2,032,774	820,114	10,500	219,000	-	-	744,250	1,921,018	2,251,774	413,494
Arterial Pavement Pavement	2,414,956	1,642,086	3,151,000	906,042	32,500	-	-	-	1,873,574	1,674,586	3,151,000	397,160
Development	3,048,214	2,815,250	4,149,839	1,713,625	327,000	-	-	-	2,395,991	3,142,250	4,149,839	1,388,402
Police Drug Seizure	141,562	40,000	11,000	170,562	-	14,500	-	-	149,368	40,000	25,500	163,868
Hotel-Motel Tax	154,257	120,750	120,000	155,007	-	-	-	10,000	165,622	120,750	130,000	176,372
Affordable Housing Tax	57,095	34,200	30,000	61,295	-	-	-	-	88,674	34,200	30,000	93,074
American Rescue Plan Act	7,384,040	1,750	3,154,759	4,231,031	-	689,641	-	(10,000)	5,096,646	1,750	3,834,400	1,263,996
Redondo Zone	5,230	77,850	80,934	2,146	75,000	41,000	-	-	15,629	152,650	121,934	46,545
Waterfront Zone	391,642	128,350	121,692	398,300	(34,745)	72,255	-	-	211,584	93,605	193,947	111,242
PBPW Automation Fee	496,500	126,500	78,429	544,571	38,500	-	-	-	566,712	165,000	78,429	653,283
Urban Forestry	-	5,000	5,000	-	-	-	-	-	-	5,000	5,000	-
Abatement	35,319	5,400	5,000	35,719	-	-	-	-	63,219	5,400	5,000	63,619
Automated Speed Enforcement (ASE)	220,206	365,500	397,000	188,706	8,500	20,000	-	-	381,144	374,000	417,000	338,144
Transportation Benefit District	2,190,935	1,044,000	1,450,000	1,784,935	76,000	-	-	-	3,106,291	1,120,000	1,450,000	2,776,291
Total Special Revenue Funds	17,482,326	8,317,154	14,787,427	11,012,053	533,255	1,056,396	-	-	14,878,904	8,850,409	15,843,823	7,885,490
Debt Service												
REET 2 Debt Service	20,603	233,492	236,493	17,602	-	-	-	-	9,378	233,492	236,493	6,377
2023 LTGO Debt Service	-	-	-	-	12,360,000	350,000	-	-	-	12,360,000	350,000	12,010,000
2018 LTGO Debt Service	113,452	226,500	226,400	113,552	-	-	-	-	113,352	226,500	226,400	113,452
Total Debt Service Funds	134,055	459,992	462,893	131,154	12,360,000	350,000	-	-	122,730	12,819,992	812,893	12,129,829
Capital Project												
REET 1	3,251,830	810,000	1,742,000	2,319,830	35,000	-	-	-	1,899,700	845,000	1,742,000	1,002,700
REET 2	2,490,980	802,500	983,492	2,309,988	35,000	-	-	-	1,658,846	837,500	983,492	1,512,854
Park Levy	2,880	183,000	108,000	77,880	-	-	-	-	231,350	183,000	108,000	306,350
Park In Lieu	245,125	402,844	17,000	630,969	-	-	-	-	284,667	402,844	17,000	670,511
One Time Sales Tax	2,259,104	267,500	270,000	2,256,604	35,000	-	-	-	1,763,873	302,500	270,000	1,796,373
Municipal Capital Improve	649,864	4,550,000	5,074,105	125,759	793,000	-	-	-	21,980	5,343,000	5,074,105	290,875
Transportation Capital Improve	5,965,724	8,559,000	8,534,000	5,990,724	40,000	-	-	-	1,779,277	8,599,000	8,534,000	1,844,277
Traffic In Lieu	1,018,957	1,150,500	1,150,000	1,019,457	-	-	-	-	130,866	1,150,500	1,150,000	131,366
Traffic Impact - City Wide	737,165	351,250	926,000	162,415	23,000	-	-	-	896,724	374,250	926,000	344,974
Traffic Impact - Pac Ridge (S)	677,705	100,750	-	778,455	-	-	-	-	592,703	100,750	-	693,453
Total Capital Project Funds	17,299,334	17,177,344	18,804,597	15,672,081	961,000	-	-	-	9,259,986	18,138,344	18,804,597	8,593,733
Enterprise												
Marina	4,241,679	8,989,736	9,322,194	3,909,221	12,905,000	120,000	-	-	15,802,597	21,894,736	9,442,194	28,255,139
Surface Water Management	7,160,142	6,477,077	8,079,313	5,557,906	200,000	-	-	-	28,938,432	6,677,077	8,079,313	27,536,196
Total Enterprise Funds	11,401,821	15,466,813	17,401,507	9,467,127	13,105,000	120,000	-	-	44,741,029	28,571,813	17,521,507	55,791,335
Internal Service												
Equipment Rental Operations	331,963	663,109	768,629	226,443	-	75,000	-	25,000	237,535	663,109	868,629	32,015
Equipment Rental Replacement	1,607,076	1,036,106	946,000	1,697,182	415,386	163,237	-	-	4,243,066	1,451,492	1,109,237	4,585,321
Facility Repair and Replacement	378,747	301,770	540,046	140,471	-	-	-	-	690,199	301,770	540,046	451,923
Computer Replacement	1,271,186	175,203	428,079	1,018,310	-	175,000	-	-	1,519,251	175,203	603,079	1,091,375
Self Insurance	788,126	783,704	801,000	770,830	-	-	-	-	936,508	783,704	801,000	919,212
Unemployment Insurance	482,562	36,500	42,500	476,562	-	-	-	-	502,907	36,500	42,500	496,907
Total Internal Service Funds	4,859,660	2,996,392	3,526,254	4,329,798	415,386	413,237	-	25,000	8,129,467	3,411,778	3,964,491	7,576,764
Total	58,124,365	69,226,943	82,229,151	45,122,157	28,998,641	3,686,033	-	197,000	84,987,243	98,225,584	86,112,184	97,100,643

BUDGET AMENDMENT CORRECTIONS

GENERAL FUND	Change in Budget Increase/(Decrease)		Footnote	Description
	Revenues	Expenditures		
<i>Court</i>		175,000	3	COURT REMODEL EXPENSE
	100,000			TRANSFER IN FROM ARPA FUND 114
		1,500		UNIFORMS
		6,000		SMALL TOOLS AND EQUIPMENT
		400		PROFESSIONAL SERVICES
		10,000		JUDGE PRO TEM
		30,000		INTERPRETER SERVICES
		2,000		JURY FEES
Total Court	100,000	42,400		

BUDGET AMENDMENT CORRECTIONS

GENERAL FUND	Change in Budget Increase/(Decrease)		Footnote	Description
	Revenues	Expenditures		
<i>Court</i>	100,000	175,000	3	COURT REMODEL EXPENSE
				TRANSFER IN FROM ARPA FUND 114
		1,500		UNIFORMS
		6,000		SMALL TOOLS AND EQUIPMENT
		400		PROFESSIONAL SERVICES
		10,000		JUDGE PRO TEM
		30,000		INTERPRETER SERVICES
		2,000		JURY FEES
Total Court	100,000	42,400		

Total should be \$224,900

BUDGET AMENDMENT CORRECTIONS

GENERAL FUND	Change in Budget Increase/(Decrease)		Footnote	Description
	Revenues	Expenditures		
<i>Public Works</i>				
<i>Parks Maintenance</i>		3,000		PROFESSIONAL SERVICES
		7,500		JANITORIAL SERVICES
	-	10,500		
<i>Transfers</i>				
		543,000	7	TRANSFER TO MUNICIPAL CAPITAL IN
		75,000	8	TRANSFER TO REDONDO ZONE
	-	628,500		
Total General Funds	1,624,000	1,746,400		

BUDGET AMENDMENT CORRECTIONS

GENERAL FUND	Change in Budget Increase/(Decrease)		Footnote	Description
	Revenues	Expenditures		
<i>Public Works</i>				
<i>Parks Maintenance</i>		3,000		PROFESSIONAL SERVICES
		7,500		JANITORIAL SERVICES
	-	10,500		
<i>Transfers</i>				
		543,000	7	TRANSFER TO MUNICIPAL CAPITAL IM
		75,000	8	TRANSFER TO REDONDO ZONE
	-	628,500		
Total General Funds	1,624,000	1,746,400		

Total should be \$618,000

BUDGET AMENDMENT CORRECTIONS

	11/9/2023	Should Have Been	Variance
Item 1	\$ 42,400	\$ 224,900	\$ (182,500)
Item 2	628,500	618,000	10,500
		Total	\$ (172,000)

BUDGET AMENDMENT CORRECTIONS

114

<i>Hotel/Motel Tax Fund - 111</i>				
			10,000	SALARIES AND BENEFITS
Total Hotel/Motel Tax Fund - 111	\$ -	\$ 10,000		
<i>American Rescue Plan Act Fund - 114</i>				
			100,000	TRANSFER OUT TO GENERAL FUND - COURT
			214,149	TRANSFER OUT TO EQUIPMENT RENTAL REPLACEMENT FUND
			42,237	TRANSFER OUT TO EQUIPMENT RENTAL REPLACEMENT FUND
			48,255	TRASNFER OUT TO WATERFRONT ZONE
			275,000	TRANSFER OUT TO GENERAL FUND
Total American Rescue Plan Act Fund - 114	\$ -	\$ 679,641		

114

BUDGET AMENDMENT CORRECTIONS

FUNDS	2023 ORIGINAL BUDGET				BUDGET AMENDMENTS ADOPTED 11/9/2023	
	Beginning Fund Balance	Revenue	Expenditure	Ending Fund Balance	Revenue	Expenditure
	General Fund	6,947,169	24,809,248	27,246,473	4,509,944	1,624,000
Special Revenue						
Streets	942,370	1,910,518	2,032,774	820,114	10,500	219,000
Arterial Pavement Pavement	2,414,956	1,642,086	3,151,000	906,042	32,500	-
Development	3,048,214	2,815,250	4,149,839	1,713,625	327,000	-
Police Drug Seizure	141,562	40,000	11,000	170,562	-	14,500
Hotel-Motel Tax	154,257	120,750	120,000	155,007	-	-
Affordable Housing Tax	57,095	34,200	30,000	61,295	-	-
American Rescue Plan Act	7,384,040	1,750	3,154,759	4,231,031	-	689,641
Redondo Zone	5,230	77,850	80,934	2,146	75,000	41,000
Waterfront Zone	391,642	128,350	121,692	398,300	(34,745)	72,255
PBPW Automation Fee	496,500	126,500	78,429	544,571	38,500	-
Urban Forestry	-	5,000	5,000	-	-	-
Abatement	35,319	5,400	5,000	35,719	-	-
Automated Speed Enforcement (ASE)	220,206	365,500	397,000	188,706	8,500	20,000
Transportation Benefit District	2,190,935	1,044,000	1,450,000	1,784,935	76,000	-
<i>Total Special Revenue Funds</i>	17,482,326	8,317,154	14,787,427	11,012,053	533,255	1,056,396



CITY COUNCIL REGULAR MEETING

Speaker Sign-Up Sheet

December 14, 2023

NAME (PLEASE PRINT)	CITY YOU LIVE IN	TOPIC	PHONE/E-MAIL ADDRESS
✓ Barbara McMichael	Des Moines	environment + Masonic Home	206-878-6912 blkmonger@qulink.com
✓ Victoria Andrews	" "	Year-end round up	vAndrews11@msn.com
✓ Sheri Verburg	" "	MARINA STEPS/Dev	Sheriav66@gmail.com
✓ Lloyd Lytle	" "	SR3 / Tree Canopy / masonic Home	lloydelytle@gmail.com