

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, March 14, 2024 - 6:00 PM**

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

COMMENTS FROM THE PUBLIC

COMMITTEE CHAIR REPORT

- FINANCE COMMITTEE: Chair Matt Mahoney
- PUBLIC SAFETY/EMERGENCY MANAGEMENT COMMITTEE: Chair Mayor Traci Buxton
- TRANSPORTATION COMMITTEE:
- ENVIRONMENT COMMITTEE: Chair Councilmember JC Harris

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- Item 1. HUMAN SERVICES - YMCA KINDERGARTEN READINESS PROGRAM
- Item 2. VETS, SENIOR & HUMAN SERVICES LEVY GRANT PROGRAM

CONSENT AGENDA

- Item 1. APPROVAL OF VOUCHERS
Motion is to approve the payment vouchers through February 29, 2024 and payroll transfers through March 05, 2024 in the attached list and further described as follows:

EFT Vendor Payments	#9683-9758	\$ 648,678.39
Wires	#2499-2523	\$2,283,168.72
Accounts Payable Checks	#165638-165693	\$1,280,157.91
Payroll checks	#19784-19784	\$ (121.27)

Voided		
Payroll Checks	#19796-19796	\$ 121.27
Payroll Checks	#19797-19801	\$ 2,948.68
Payroll Advice	#8540-8709	\$ 479,832.09
Payroll Checks	#19802-19805	\$ 1,250.91
Payroll Advice	#8710-8882	\$ 506,538.57

Total Checks and Wires for A/P & Payroll: \$5,202,575,.27

[Approval of Vouchers](#)

- Item 2. APPROVAL OF MINUTES
Motion is to approve the February 01, 2024 City Council Study Session and the February 08, 2024 City Council Regular Meeting Minutes.

[Approval of Minutes](#)

- Item 3. VETS SENIORS AND HUMAN SERVICES LEVY (VSHSL) CONTRACT EXTENSION AMENDMENT

Motion is to accept the King County Veterans Seniors and Human Services Levy (VSHSL) contract extension in the amount of \$113,817 for the African Diaspora Senior Hub, and authorize the City Manager to sign the grant agreement substantially in the form as submitted.

[Vets Seniors and Human Services Levy \(VSHSL\) Contract Extension Amendment](#)

- Item 4. KING COUNTY PARKS, CAPITAL, AND OPEN SPACE GRANT AWARD – MIDWAY OPEN SPACE PROJECT

Motion is to accept the King County Parks, Capital and Open Space Grant Award through the King County Parks Levy for grant funding in the amount of \$456,000 for the Midway Park Open Space Project, and authorize the City Manager to sign the grant agreement substantially in the form as submitted.

[King County Parks, Capital, and Open Space Grant Award – Midway Open Space Project](#)

- Item 5. 2024 OVERLAY PROGRAM – PUBLIC WORKS CONSTRUCTION CONTRACT AWARD AND CONSULTANT SERVICES AGREEMENT FOR CONSTRUCTION ADMINISTRATION AND INSPECTION

Motion 1 is to approve the Public Works Contract with Icon Materials (Contractor) for the 2024 Overlay Program in the amount of \$1,211,177.15, authorize a project construction contingency in the amount of \$120,000, and further authorize the Acting City Manager to sign said Contract substantially in the form as submitted.

Motion 2 is to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-01 with Parametrix, Inc. to provide Construction Administration and Inspection Services for the 2024 Overlay Program in the amount of \$150,000, and further authorize the Acting City Manager to sign said Task Assignment substantially in

the form as submitted.

[2024 Overlay Program – Construction Contract Award and Consultant Services Agreement](#)

PUBLIC HEARING/CONTINUED PUBLIC HEARING

- Item 1. PUBLIC HEARING TO CONSIDER DRAFT ORDINANCE 24-018 RELATED TO THE SADDLEBROOK SITE SPECIFIC ZONING MAP AMENDMENT
Staff Presentation by Planning and Development Services Manager Laura Techico
[Public Hearing to consider Draft Ordinance 24-018 related to the Saddlebrook Site Specific Zoning Map Amendment](#)

NEW BUSINESS

- Item 1. LEVY LID LIFT INTRODUCTION
Staff Presentation by Finance Director Jeff Friend
[Property Tax Levy Lid Lift](#)
- Item 2. BIENNIAL BUDGETING
Staff Presentation by Finance Director Jeff Friend
[Biennial Budgeting](#)
- Item 3. City Manager Recruitment RFP Award
Staff Presentation by Assistant City Manager Adrienne Johnson-Newton
[RFP Executive Search Recruitment Firm Selection](#)
- Item 4. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

NEXT MEETING DATE

March 28, 2024 City Council Regular Meeting


ADJOURNMENT

CITY OF DES MOINES
Voucher Certification Approval
March 14, 2024
Auditing Officer Certification

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

As of **March 14, 2024** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through February 29, 2024 and payroll transfers through March 5, 2024 included in the attached list and further described as follows:

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



 Jeff Friend, Finance Director

		# From	# To	Amounts
Claims Vouchers:				
EFT's		9683	9758	648,678.39
Wires		2499	2523	2,283,168.72
Accounts Payable Checks		165638	165693	1,280,157.91
Total Vouchers paid				4,212,005.02
Payroll Vouchers				
Payroll Checks Voided	2/8/2024	19784	19784	(121.27)
Payroll Checks		19796	19796	121.27
Payroll Checks	2/20/2024	19797	19801	2,948.68
Payroll Advice		8540	8709	479,832.09
Payroll Checks	3/5/2024	19802	19805	1,250.91
Payroll Advice		8710	8882	506,538.57
Total Paychecks & Direct Deposits				990,570.25
Total checks and wires for A/P & Payroll				5,202,575.27

MINUTES

**DES MOINES CITY COUNCIL
STUDY SESSION
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, February 1, 2024 - 6:00 PM**

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The flag salute was lead by Councilmember Yoshiko Grace Matsui.

ROLL CALL

Council Present:

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

Staff Present:

Interim City Manager Tim George; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Assistant Police Chief Patti Richards; Community Development Director Denise Lathrop; Building Official Dan Hopp; Planning & Development Services Manager Laura Techico; Senior Planner Jason Woycke; Land Use Planner II Peyton Murphy; City Clerk Taria Keane; and Deputy City Clerk Sara Lee

CORRESPONDENCE

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

COMMENTS FROM THE PUBLIC

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

- Martha Hamilton, Middle Housing
- Bill Linscott, Sound Proof Ordinance Priority
- Paulette Aggen, Multi-Family Rezoning
- Barbara McMichael, Community Development "Laundry List"

Study Session Minutes
February 1, 2024

DISCUSSION ITEMS

COMMUNITY DEVELOPMENT DEPARTMENT 2024 WORK PROGRAM

- Staff Presentation by Community Development Director Denise Lathrop, Building Official Dan Hopp, Planning and Development Services Manager Laura Techico, and Senior Planner Jason Woycke.
- Council and City Staff from Community Development Department discussed the Community Development 2024 Work Program.
- Councilmember Jeremy Nutting Supports discussing Downtown Development on Economic Development Workplan

HEARTS AND MINDS FUND POLICY DISCUSSION

Council discussed the Hearts and Minds Fund

Direction/Action

Motion made by Councilmember Yoshiko Grace Matsui to direct staff to prepare a draft Hearts and Minds Fund Policy consistent with the Council's general consensus, for consideration and approval at a future meeting; seconded by Councilmember Gene Achziger.

Amended Motion made by Councilmember Jeremy Nutting to amend the original motion to disband the fund of Hearts and Minds and the remainder of the funds to be brought to council to be distributed to local organizations within the community; seconded by Matt Mahoney.

Amended Motion 2 made by Councilmember JC Harris to amend the amended motion and retain the fund and limit each contribution to one hundred dollars and Council to distribute the remaining balance of the funds at the end of each calendar year to mutually agreed upon charities.

Motion died for a lack of second.

Amended Motion passed 4-3.

For: Mayor Traci Buxton, Councilmember Gene Achziger; Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

Against: Deputy Mayor Harry Steinmetz, Councilmember Yoshiko Grace Matsui, Councilmember JC Harris.

EXECUTIVE SESSION

Study Session Minutes
February 1, 2024

~~POTENTIAL LITIGATION UNDER RCW 42.30.110(1)(i) — 30 Minutes~~

NEXT MEETING DATE

February 08, 2024 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Yoshiko Grace Matsui to adjourn;
seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

The meeting adjourned at 7:34 p.m.

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, February 8, 2024 - 6:00 PM**

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The flag salute was lead by Councilmember Jeremy Nutting.

ROLL CALL

Council Present:

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

Council Absent:

Deputy Mayor Harry Steinmetz

Direction/Action

Motion made by Councilmember Jeremy Nutting to excuse Deputy Mayor Harry Steinmetz; seconded by Councilmember Gene Achziger. Motion passed 6-0.

Staff Present:

Interim City Manager Tim George; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Police Chief Tim Gately; Finance Director Jeff Friend; Civil Engineer II Tyler Beekley; Civil Engineer I Khai Le; Executive Administrative Analyst Rochelle Caton; City Clerk Taria Keane; and Deputy City Clerk Sara Lee

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

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

COMMENTS FROM THE PUBLIC

- Barbara McMichael, Port of Seattle SAMP

Regular Meeting Minutes
February 8, 2024

- Victoria Andrews, Citizens Advisory Committee
- Lloyd Lytle Jr, Masonic Home
- George Pettibone, Masonic Home
- Mark Proula, Code Compliance

COMMITTEE CHAIR REPORT

- Councilmember Matt Mahoney gave Council an update on the Finance Committee Meeting.
- Councilmember Matt Mahoney gave Council an update on the Transportation Committee Meeting.
- Councilmember Matt Mahoney gave Council an update on PSRC Transportation Policy Board Meeting.
- Councilmember JC Harris gave Council an update on the Environment Committee Meeting
- Mayor Traci Buxton gave Council an update on the Public Safety/Emergency Management Committee Meeting.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- Interim City Manager Tim George gave Council an update on the Hearts and Minds Fund.
- Interim City Manager Tim George informed the Council that the City was awarded The Best in State Engineering Excellence Silver Award for the North Bulkhead Project.
- SKHHP Executive Manager Claire V. Goodwin gave Council a PowerPoint Presentation on the South King Housing and Homelessness Partners (SKHHP) Housing Capital Fund Recommendation.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through January 25, 2024 and payroll transfers through January 19, 2024 in the attached list and further described as follows:

EFT Vendor Payments	#9561-9622	\$788,417.38
Wires	#2463-2478	\$536,409.13
Accounts Payable Checks	#165577-165622	\$400,159.97
Payroll Checks	#19778-19784	\$ 1,002.27
Direct Deposit	#8209-8370	\$475,489.78

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Total Checks and Wires for A/P & Payroll: \$2,201,478.53

Item 2: APPROVAL OF MINUTES

Motion is to approve the minutes from the December 14, 2023 regular City Council Meeting.

Item 3: CITIZENS ADVISORY COMMITTEE APPOINTMENT (ANDREWS)

Motion is to confirm the Mayoral appointment of Victoria Andrews to a term on the Citizens Advisory Committee effective immediately and expiring on December 31, 2024.

Item 4: SOUTH KING COUNTY HOUSING AND HOMELESSNESS PARTNERS (SKHHP) HOUSING CAPITAL FUND ALLOCATION APPROVAL

Motion is to enact Draft Resolution No. 24-009, authorizing the allocation of funds to finance affordable housing in South King County in accordance with the 2023 South King Housing and Homelessness Partners (SKHHP) Housing Capital Fund Recommendation.

Item 5: PATROL VEHICLE PURCHASE

Motion is to approve the use of Police Department operating funds to purchase a 2023 Ford Explorer from South King Fire & Rescue and authorize the City Manager to execute the documents needed for the purchase.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda; seconded by Councilmember Matt Mahoney. Motion passed 6-0.

NEW BUSINESS

Item 1: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

- There were no new items for future consideration.

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

COUNCILMEMBER JEREMY NUTTING

- No Report

COUNCILMEMBER GENE ACHZIGER

- No Report

Regular Meeting Minutes
February 8, 2024

COUNCILMEMBER JC HARRIS

- Port of Seattle Breakfast
- House Bill SB270
- Association of Washington Cities Action Days
- House Bill 5955

COUNCILMEMBER MATT MAHONEY

- Super Bowl

COUNCILMEMBER YOSHIKO GRACE MATSUI

- Association of Washington Cities Action Days
- Newly Elected Officials Breakfast
- Public Safety/Emergency Management Committee Meeting
- Environment Committee Meeting

PRESIDING OFFICER'S REPORT

- House Bill 5955
- Point in Time Count
- Des Moines Farmers Market
- Sound Cities Association
- Growth Management Policy Board Meeting
- House Bill 1510
- Public Safety Support

EXECUTIVE SESSION

NEXT MEETING DATE

February 22, 2024 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Jeremy Nutting to adjourn; seconded by Councilmember Matt Mahoney.
Motion passed 6-0.

The meeting adjourned at 6:55 p.m.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Vets Seniors and Human Services
Levy (VSHSL) Contract Extension Amendment

FOR AGENDA OF: March 14, 2024

DEPT. OF ORIGIN: Community Services

ATTACHMENTS:

- 1. 2023-2024 Contract Amendment

DATE SUBMITTED: March 6, 2024

CLEARANCES:

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

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

Purpose and Recommendation

The purpose of this agenda item is to request City Council approval of a contract extension and amendment of the 5 year King County Veterans Seniors and Human Services Levy (VSHSL) Grant for the African Diaspora Cultural Hub in the amount of \$113,817 in additional funding for 2024. The African Diaspora Cultural Hub is an on-going partnership between our Des Moines Senior Activity Center and the Central Area Senior Center. The total award for Des Moines over the 5 year period, 2019-2023, was \$514,395. The extension for 2024 dollars will set the entire award at \$628,212.

Suggested Motion

Motion:

“I move to accept the King County Veterans Seniors and Human Services Levy (VSHSL) contract extension in the amount of \$113,817 for the African Diaspora Senior Hub, and authorize the City Manager to sign the grant agreement substantially in the form as submitted.”

Background

The Des Moines Activity Center (DMAC) has been a fundamental space for gathering and activities in the City of Des Moines. With the space to host programs, activities, meals, and more - DMAC strives to expand our reach and be able to best serve seniors, veterans and the community as a whole.

Discussion

In 2019, the City’s DMAC, along with the Central Area Senior Center (CASC) received VSHSL funding for increased social engagement through the creation of a Cultural Hub. This hub was titled the African Diaspora Hub, with the aim to offer opportunity for seniors in the Des Moines area as well as Central and South Seattle to be socially engaged and connected. The focus was culturally appropriate and diverse programming to highlight and speak to the African Diaspora. African Diaspora refers to African Americans and immigrant African communities. There are a high concentration of these communities in South King County.

The partnership: DMAC & CASC’s partnership continues to focus on promoting cultural programming and activities between our centers. The manner in which this has been accomplished shifted at times, due to the COVID 19 pandemic, as well as fluctuating priorities to ensure the highest level of engagement.

Providing meals has proven to be an essential function both during quarantine, but also in continued efforts to engage with isolated seniors. The overarching goal remains keeping them connected and supported.

Through this VSHSL funding we have been fortunate in meeting the needs of our community. We’re incredibly proud of all that has been accomplished with this grant funding. Alongside our partner CASC, we have highlighted Des Moines area restaurants, run an educational food program emphasizing a variety of culture’s foods, brought on a Cultural Coordinator to provide cultural outreach services, utilized a Social Worker, partnered with POCAAN for health screenings, and secured a part-time van driver for our ever growing trips and outings. We have also been able to provide grocery bags year-after-year each holiday season, afford supplemental fitness classes and educational seminars and outings to our SeaMar members, and bring cultural and educational events for all.

We are excited to have been offered an extension through 2024 to continue this important work. King County has been understanding in allowing the necessary shift in services, as well as supporting new plans and ideas.

Alternatives

Reject grant funding extension. (Not recommended).

Financial Impact

All funding for the African Diaspora Hub will be provided through the King County Veteran’s, Seniors, and Human Services Levy (VSHSL) and will be managed through the Adult Services Division (ASD) of the King County Department of Community and Human Services (DCHS).

Recommendation

Staff recommends approval of this grant funding extension as presented.



Department of Community and Human Services
Adult Services Division

CONTRACT AMENDMENT

DCHS / Adult Services Division Contract No. 6204654
 Project/Program Name Des Moines Normandy Park
Senior Activity Center -
Support Senior Centers - SE1
-VSHSL (2024 Ext)
 Contractor Des Moines-Normandy Park Amendment No. 2
Senior Activity Center
 Address 2045 S 216th, Des Moines,
WA 98198, United States

PURPOSE OF AMENDMENT

The purpose of this amendment is to:

Change the terms and conditions of the Contract following the renewal of the VSHSL in August 2023, and the procurement or re-procurement of community services implementing the strategies outlined in the renewed VSHSL Implementation Plan.

- 1) Extend contract end date from December 31, 2023 to the earlier of: December 31, 2024, or 60 calendar days following King County providing written notice.
- 2) Remove \$22,740 in 2023 funding, to account for the Contractor's inability to fully expend 2023 funds within 2023.
- 3) Add \$113,817 in 2024 funding.
- 4) Add specific 2024 milestones and reporting requirements.
- 5) Amend the payment model.

A. FUNDING SOURCE/TABLE CHANGES

FUNDING SOURCES NAME	FUNDING SOURCES TYPE	FUNDING LEVELS	EFFECTIVE DATES
Veterans, Seniors and Human Services Levy	County	-\$22,740.00	01/01/2023 - 12/31/2023
Veterans, Seniors and Human Services Levy	County	\$113,817	01/01/2024 - 12/31/2024

B. CONTRACT CHANGES

- 1) The termination date for the Contract is amended to be the earlier of (a) 12/31/2024, or (b) upon termination of all exhibits appended to this Contract. If this Contract expires pursuant to subsection (b), then all services, reporting, expenditure, and payment obligations of the parties shall be prorated through the expiration date and final payment shall be calculated as set forth in the Exhibit.

C. EXHIBIT CHANGES

- 1) Exhibit I, Exhibit Period end date is amended to be the earlier of (a) 12/31/2024, or (b) sixty (60) calendar days following King County providing written notice that the re-procurement process for the renewed VSHSL strategy SE1: Support Senior Centers has completed. If this Exhibit expires pursuant to subsection (b), then all services, reporting, expenditure, and payment obligations of the parties shall be prorated through the expiration date and final payment shall be calculated as set forth in the Exhibit.
- 2) Remove \$22,740 in 2023 funding and add \$113,817 in 2024 funding in Exhibit I. Amend the second sentence in Section I., WORK STATEMENT to read:

The total amount of reimbursement pursuant to this Exhibit shall not exceed \$341,603 for the Exhibit Period noted above as shown in the funding table below.
- 3) Exhibit I, Section I., WORK STATEMENT, remove and replace the funding table as follows:

ASD Result Area Alignment	Funding Period	Fund Source	Funding Allocation	
Social Engagement	01/01/2021 – 12/31/2021	2021 VSHSL Fund - Seniors	<u>\$3,235</u>	
		2021 VSHSL Fund - Veterans	<u>\$22,258</u>	
	01/01/2022 – 12/31/2022	2022 VSHSL Fund - Seniors	<u>\$85,428</u>	
		2022 VSHSL Fund - Veterans	<u>\$25,788</u>	
	01/01/2023 – 12/31/2023	2023 VSHSL Fund - Seniors	<u>\$64,407</u>	
		2023 VSHSL Fund - Veterans	<u>\$26,670</u>	
	01/01/2024 – 12/31/2024	2024 VSHSL Fund - Seniors	<u>\$87,147</u>	
		2024 VSHSL Fund - Veterans	<u>\$26,670</u>	
	Not to Exceed			<u>\$341,603</u>

- 4) Exhibit I, Section II.D, Contract Milestones, a new subsection 4 is added as follows:
 4. 2024 Milestones
 - a. By March 31, 2024, develop a 2024 workplan with King County.
- 5) Exhibit I, Section IV.B., Reporting Requirements, subsection 4 is amended as follows:

The Contractor shall submit an annual narrative progress report to King County on January 15 following each program year. The report shall cover the activities of the previous year (January – December). For 2024, the Contractor shall provide its final annual progress report (a) if the Contract ends on December 31, 2024, by January 15, 2025, or (b) if the Contract ends on any date prior to December 31, 2024, within thirty (30) calendar days of such end date. The format and questions for the annual narrative progress report shall be provided by King County.

- 6) Exhibit I, Section V., COMPENSATION AND METHOD OF PAYMENT, add new subsections B and C as follows:

B. 2024 Billing Invoice Package

Every month: The Contractor shall submit a Billing Invoice Package (BIP) monthly that consists of a signed invoice statement and other reporting requirements as stated in Section IV., PARTNERSHIP AND REPORTING REQUIREMENTS of this Exhibit in a format approved by King County.

Every quarter and upon the termination or expiration of this Contract: As outlined in the 2024 Payment Table below, the Contractor shall submit actual expenditures for allowable expenses from the previous quarter pursuant to services described in this Exhibit (Actual Expenditures) as part of the BIP. These actual expenditures shall be transmitted in the form of a detailed general ledger report from Contractor's financial system, including a budget to actuals reconciliation related to activities outlined in this Exhibit (General Ledger).

The BIP is due within ten (10) business days following the end of each payment period. The total amount of payments to the Contractor for each year of this Exhibit shall not exceed the yearly funding allocation as noted in the funding table in Section I., WORK STATEMENT, unless otherwise approved by King County in writing.

The Contractor shall advise King County quarterly of any material changes in revenues from sources other than the County that are used to provide the services funded under this Exhibit. The Contractor agrees to re-negotiate, as needed, if the County determines that such changes are substantial.

C. Quarterly Budget to Actuals Reconciliation and Payment Process

1. The County shall review, on a quarterly basis, Actual Expenditures compared to the actual payments made to the Contractor and scheduled payments (see 2024 Payment Table below) for such quarter (Quarterly Aggregate Payment).
2. If the County determines that Actual Expenditures equal or exceed the Quarterly Aggregate Payment, then the County shall pay the full amount listed in the 2024 Payment Table that are then currently due and owing (Current Payment).
3. If the County determines that Actual Expenditures are (a) less than the Quarterly Aggregate Payment and (b) that difference is less than or equal to the next scheduled payment to be made by the County (the Next Payment), then the Next Payment shall be reduced by such difference.
4. If Actual Expenditures are (a) less than the Quarterly Aggregate Payment and (b) that difference is more than the Next Payment, then the County shall be relieved from its

obligation to make the Next Payment, and may: (c) lower the amount of future payments by the remaining difference (such as reducing, pausing or skipping payment) and/or (d) require that the Contractor submit a plan stating how excess payments will be applied to future program purposes as described in this Agreement (the plan must be approved in writing by the County). The County, in its sole discretion, will determine whether the Contractor's actual reported expenditures are allowable. The County's decisions regarding how excess payments by the County will be treated under this Section are final. The County reserves the right to recapture unspent funds.

5. If there is no Next Payment as a result of the expiration or termination of this Contract, then the Contractor shall return any difference between Actual Expenditures and the final Quarterly Aggregate Payment within ten (10) calendar days of King County's review and analysis of the final BIP. Payment instructions will be provided in writing by the County within three (3) business days of such final BIP analysis.
6. As mutually agreed to in writing by the parties, the aggregate amount of any and all reduced or withheld Next Payments described in Subsections 3 and 4 above may be carried forward into future Payment Periods to reimburse Contractor for Actual Expenditures in excess of the Quarterly Aggregate Payment. Unless otherwise agreed to by the parties, such reimbursement will be made with the Next Payment.
- 7) Exhibit I, Section V., COMPENSATION AND METHOD OF PAYMENT, add the following payment table:

2024 Payment Table			
Date Due	Payment Period	Payment / Fund Source	Deliverable
February 14, 2024	Preceding month	\$2,222 VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable
		\$7,262 VSHSL Fund - Seniors	
		<u>\$9,484</u> Total	
March 14, 2024	Preceding month	\$2,222 VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable
		\$7,262 VSHSL Fund - Seniors	
		<u>\$9,484</u> Total	
April 12, 2024	Preceding month	\$2,222 VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable 3. Individual-level and/or aggregate level data
		\$7,262 VSHSL Fund - Seniors	
		<u>\$9,484</u> Total	

				4. General Ledger & Updated Budget reflecting Quarterly Expenditures, due April 19, 2024.
May 14, 2024	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
June 14, 2024	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
July 15, 2024	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable 3. Individual-level and/or aggregate level data 4. General Ledger & Updated Budget reflecting Quarterly Expenditures, due July 22, 2024
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
August 14, 2024	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
September 16, 2024	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
October 15, 2024	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice

		\$7,262	VSHSL Fund - Seniors	2. Summary of progress towards 2024 workplan and/or milestones as applicable 3. Individual-level and/or aggregate level data 4. General Ledger & Updated Budget reflecting Quarterly Expenditures, due October 22, 2024
		\$9,484	Total	
November 15, 2024	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
December 13, 2024	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
January 15, 2025	Preceding month	\$2,228	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of progress towards 2024 workplan and/or milestones as applicable 3. Individual-level and/or aggregate level data 4. General Ledger & Updated Budget reflecting Quarterly Expenditures, due January 23, 2025 5. Annual narrative progress report
		\$7,265	VSHSL Fund - Seniors	
		\$9,493	Total	

All other terms and conditions of this Contract and the attached Exhibit(s) remain unchanged and in full force and effect. All capitalized terms not otherwise defined in this Amendment have the meaning ascribed to them in the Contract or Exhibit.

IN WITNESS HEREOF, the parties hereto have caused this amendment to be executed and instituted on the date first above written.

KING COUNTY

Des Moines-Normandy Park Senior Activity Center

King County Executive

Signature

Date

NAME (Please type or print)

Date

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: King County Parks, Capital, and Open Space Grant Award – Midway Open Space Project

FOR AGENDA OF: March 14, 2024

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

ATTACHMENTS:

- 1. King County Parks, Capital, and Open Space Grant Agreement

DATE SUBMITTED: March 6, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this Agenda Item is to seek City Council acceptance of a King County Parks Levy - Parks, Capital, and Open Space Grant Award (Attachment 1) for the Midway Park Open Space Project in the amount of \$456,000. The following motion will appear on the Consent Agenda:

Suggested Motion

Motion: I move to accept the King County Parks, Capital and Open Space Grant Award through the King County Parks Levy for grant funding in the amount of \$456,000 for the Midway Park Open Space Project, and authorize the City Manager to sign the grant agreement substantially in the form as submitted.”

Background

Midway Park is a staple for recreation in the City of Des Moines, and specifically the Pacific Ridge neighborhood. The Pacific Ridge neighborhood has the largest deficit of parks and open space in the City. With community gardens, open space, and a mini pitch for soccer and basketball – the park is heavily used. Open space acquisition, sports programming and events through the Rave Foundation and our own Parks, Recreation, and Senior Services Department, as well as active community involvement have kept Midway Park busy and a place to be proud of.

From 2019-2022, the City received King County Conservation Futures Tax grant funding, totaling over \$3,000,000, to continue the expansion of Midway Park. With this funding three adjacent parcels were acquired that will provide additional open passive recreational space.

The Midway Park Open Space design project was identified in the 2022-2027 Parks, Recreation and Senior Services Master Plan, as well as the Capital Improvements Plan (CIP). Midway Park is a focal priority - with park renovation, open play opportunities and further partnerships being front and center.

Discussion

The King County Parks, Capital, and Open Space grant was a competitive grant process – and this project was one of just 53 projects funded. The Parks Levy grant program as a whole received 163 applications.

The King County Council approved the grant awards on September 5, 2023 and City staff attended a press event highlighting the awards. Contracts were developed with grantees in the fourth quarter of 2023, and final contracts were sent in February 2024.

The King County Parks, Capital, and Open Space grant funds will be used to begin the process of designing natural open space elements for park-goers enjoyment. With these funds, the City will improve Midway Park through landscape design work, expanded community garden plots, and walkable pathways. This project will provide increased opportunities for physical activity, family gathering space, and community engagement.

Alternatives

The City Council could elect to reject funding. As a result, the City would have to seek funding for the project from alternative sources.

Financial Impact

Funding for Midway Park's open space acquisition and subsequent design work will be provided through grant funding. 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

Municipal Facilities Committee will be updated on the status and progress of this project.



**PARKS CAPITAL AND OPEN SPACE PROGRAM
FEASIBILITY/PLANNING PROJECT GRANT AGREEMENT**

Department/Division: Natural Resources and Parks / Parks and Recreation

Grant Recipient: City of Des Moines

Project: Midway Park Open Space Design

Award Amount: \$456,000.00 Project#: 1144509 Contract#: 6416653

Term Period: 2/20/2024 | 4:47 PM PST To 11/30/2025

THIS AGREEMENT is a grant agreement entered into between City of Des Moines (“Grant Recipient”) and King County (the “County”) (referred to individually as a “Party” and collectively as the “Parties”) for a feasibility study or plan development (“Feasibility Study”) for a public capital recreation project (“Capital Recreation Project”) using a Parks Capital and Open Space Program grant.

RECITALS

- A. [Ordinance 18890](#), which took effect May 13, 2019, called for a special election to authorize the King County parks, recreation trails, and open space levy. On August 6, 2019, King County voters approved the levy, which included funding for capital projects for active and passive recreation, local trails, or capital projects in parks and recreation facilities in order to construct new and improve existing recreation facilities to address the pressures of rapid growth in King County.
- B. [Motion 15378, Section A.1., and Attachment A](#), further delineated the use of levy funds for the Parks Capital and Open Space Grants Program and the guidelines governing that use.
- C. [Ordinance 19166, Attachment A](#) established the grant award criteria and the process for the distribution of Parks Capital and Open Space Grants as well as the proposed composition of an advisory committee to review and make recommendations on the grant awards.
- D. King County, a home rule charter county and political subdivision of the State of Washington, is authorized to administer the Parks Capital and Open Space Grant Program and enter into agreements for the use of the grant funds with King County towns, cities, or metropolitan parks districts for capital projects for active

and passive recreation, local trails, or capital projects in parks and recreation facilities.

- E. Grant Recipient is a(n) City or Town in King County.
- F. The Parks Capital and Open Space Grant Program Advisory Committee (“Advisory Committee”) has recommended an allocation of levy grant funds to specific projects, pursuant to [Ordinance 19666](#).
- G. King County has selected Grant Recipient to receive a Parks Capital and Open Space Grant award in the amount of \$456,000.00 (“Grant Award Funds”) in order to conduct a feasibility study for a public capital recreation project.

NOW THEREFORE, in consideration of the promises, covenants, and other provisions set forth in this Agreement, the Parties agree as follows:

GRANT AWARD TERMS AND CONDITIONS

1. **DEFINITIONS**

1.1 **Project**. The term “Project” means the Feasibility Study described in **Exhibit A** for a Capital Recreation Project. Grant Award Funds available pursuant to this Agreement may only be used for the Project. To complete the Project, Grant Recipient shall use the Grant Award Funds to conduct the study, as set forth in **Exhibit B**, consistent with the requirements set forth in this Agreement and in the following attached exhibits, which are incorporated herein by reference:

Scope of Work	Attached hereto as Exhibit A
Project Budget	Attached hereto as Exhibit B
Insurance Requirements	Attached hereto as Exhibit C
Certificate of Insurance and Endorsements	Attached hereto as Exhibit D
Cultural Resource Preservation Requirements	Attached hereto as Exhibit E

1.2 **Scope of Work**. Grant Recipient shall provide a scope of work (“Scope of Work”), attached hereto as **Exhibit A**, which describes the Project in detail and includes a description of the feasibility study milestones required for completion of the Project and intended use of the Grant Award Funds. Grant Recipient shall apply the funds received from the County for the

Project under this Agreement in accordance with the Scope of Work, attached hereto as **Exhibit A**.

1.3 Project Budget. Grant Recipient shall work with King County to develop a Project Budget (“Project Budget”), attached hereto as **Exhibit B**. King County shall provide the Grant Award Funds to the Grant Recipient to pay for costs and expenditures related to the Project, as set forth in **Exhibits A and B**. Grant Award Funds provided to Grant Recipient may only be used to pay for costs and expenditures related to the Project, as set forth in **Exhibits A and B**.

1.4 Contractor. “Contractor” shall include any contractor or consultant hired by Grant Recipient, including any of the contractor’s or consultant’s subcontractors or subconsultants.

2. EFFECTIVE DATE

The Agreement shall be effective upon signature by both Parties (“Effective Date”).

3. TERM

The term (“Term”) of this Agreement shall begin on the Effective Date and end on 11/30/2025. This Agreement shall remain in effect until such time as it is amended in writing or terminated as provided herein.

4. AMENDMENTS

This Agreement together with the attached exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole Agreement between the Parties. This Agreement may be amended only by an instrument, in writing, duly executed by the Parties. Either party may request changes to this Agreement, however, changes that deviate substantially from the proposal submitted to and approved by the Advisory Committee and the King County Council will need to be approved by those entities.

5. NOTICES

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 first set forth below via electronic mail.

KING COUNTY	City of Des Moines
Parks Grant Manager	Nicole Nordholm
Community Investments Unit	Assistant Director, Parks Recreation & Senior Services
King County Parks	City of Des Moines
201 S Jackson Street Suite #5702	1000 S 220th st
Seattle, WA 98104	Des Moines, WA 98198
206-848-0699	206-870-6546
parksgrants@kingcounty.gov	nnordholm@desmoineswa.gov

*NOTE: Personal contact information for your assigned grant manager is available in the grant management system

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.

6. DISBURSEMENT OF GRANT FUNDS

6.1 Notwithstanding the Effective Date of this Agreement, the County shall pay for eligible and authorized costs supported by adequate documentation, as determined by the County, for the work specified in the Scope of Work (**Exhibit A**) expended from 09/13/2023 through 11/30/2025.

6.2 The County may authorize, at County's sole discretion, release of a portion of the Grant Award Funds to Grant Recipient, upon execution of this Agreement, and receipt of Grant Recipient's County-approved completed Scope of Work and Project Budget (see Section 1 and **Exhibits A and B**).

6.3 The County shall initiate authorization for payment and disbursement of Grant Award Funds after approval of sufficiently detailed Project-related invoices submitted by Grant Recipient. The County shall make payment to Grant Recipient not more than thirty (30) days after a complete and accurate invoice and any other required documentation is received and approved.

6.4 Grant Recipient shall submit the final invoice, supporting documentation and any outstanding deliverables, as specified in the Scope of Work (**Exhibit A**) and Project Budget (**Exhibit B**), no later than thirty (30) days after the Contract End Date. If the Grant Recipient's final invoice, supporting documentation, and reports are not submitted by the day specified in this subsection, or if such final documents are not approved by the County then the County shall have no obligation to pay Grant Recipient unless and until Grant Recipient submits, and the County approves, a properly completed invoice. Grant Recipient must submit a corrected invoice within 30 days after receiving notice of an improper or incomplete invoice.

7. GRANT REPORTING

All Grant Award Funds received pursuant to this Agreement and accrued interest therefrom must be accounted for separately from all other Grant Recipient accounts and moneys. Until the Project is completed, and all proceeds provided pursuant to this Agreement have been expended, the Grant Recipient shall provide reports to the King County Project Manager on a schedule determined by the County.

8. COMPLETION OF THE PROJECT

Grant Recipient shall complete the Project described in Section 1.1 and **Exhibits**

A and B of this Agreement. If Grant Recipient cannot complete the Project, as specified by the Scope of Work and deliverables set forth in **Exhibit A**, the County shall be released from any obligation to fund the Project, and the County in its sole discretion may reallocate such funds for other projects in other jurisdictions in accordance with [Ordinance 19166](#) and [Motion 15378](#).

Pursuant to Section 18, Termination, this Agreement will be terminated if the Grant Recipient is unable or unwilling to expend the Grant Award Funds for the Project as provided in this Agreement. The Grant Recipient may not redirect Grant Award Funds for a purpose other than completion of the Project as approved by the Advisory Committee and King County Council.

9. COMMUNICATION AND KING COUNTY MILESTONE NOTIFICATION

Grant Recipient shall recognize County as a “grant sponsor” for the Project in the following manner:

- 9.1 Events: Grant Recipient shall invite and recognize “King County Parks” at all events promoting the Project, and at the final Project dedication.
- 9.2 Community Relations: Grant Recipient shall recognize “King County Parks” as a “grant sponsor” in all social media, websites, brochures, banners, posters, press releases, and other promotional material related to the Project.
- 9.3 King County Parks Notification: Grant Recipient shall notify the King County Parks Grant Manager thirty (30) days prior to any major milestone, such as a groundbreaking or opening dates.
- 9.4 King County Council Notification: If Grant Recipient is a city or town notification to the King County Council thirty (30) days prior to any major milestone, such as a groundbreaking or opening dates is required.
- 9.5 Signage: Grant Recipient shall recognize “King County Parks” on any signage as a funder/contributor of project/facility. Grant Recipient is required to use appropriate King County logo on any signage and communications.

10. DISPOSITION OF REMAINING GRANT AWARD FUNDS

If Grant Recipient does not expend all proceeds obligated to be provided through this Agreement, such proceeds, if held by Grant Recipient, shall be refunded to the County. For purposes of this section, “proceeds” shall include all Grant Award Funds obligated to be provided by the County plus interest accrued by Grant Recipient on the grant funds. Any proceeds in excess of those required to be provided by the County for the actual costs of the Project shall remain with the County for use in its sole discretion.

11. PUBLIC ACCESS

The Grant Award is provided to Grant Recipient for the Project for the purpose of

land protection and recreation for the citizens of King County. Therefore, Grant Recipient and any successor in interest agree that the Feasibility Study is for a Capital Recreation Project for active or passive recreation, or local trails for use by the public, as required by Ordinances [18890](#) and [19166](#). The final Capital Recreation Project shall be open and accessible to the public at reasonable hours and times. The public shall be notified of the availability of use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information. Fees for use of the Capital Recreation Project shall be no greater than those generally charged by public operators of similar facilities in King County.

Notwithstanding temporary closure for required maintenance or repairs, the minimum period of time the Capital Recreation Project must be available for public use is thirty (30) years. **Grant Recipient's duties under this Section 11 will survive the expiration or earlier termination of this Agreement.**

12. MINIMUM SCOPE AND LIMITS OF INSURANCE.

Grant Recipient shall maintain, and/or require its Contractor(s) to maintain the minimum scope and limits of insurance as required in **Exhibit C – Insurance Requirements** and as evidenced in **Exhibit D – Certificate of Insurance and Endorsements**.

13. INTERNAL CONTROL AND ACCOUNTING SYSTEM

Grant Recipient shall establish and maintain a system of accounting and internal controls which complies with applicable, generally accepted accounting principles, and governmental accounting and financial reporting standards in accordance with [Revised Code of Washington \(RCW\) Chapter 40.14](#).

14. MAINTENANCE OF RECORDS

14.1 Grant Recipient shall maintain accounts and records, including personnel, property, financial, Project records, including Agreement deliverables, and other such records as may be deemed necessary by the County to ensure proper accounting for all Grant Award Funds and compliance with this Agreement.

14.2 These records shall be maintained for a period of six (6) years after the expiration or earlier termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with [RCW Chapter 40.14](#).

14.3 Grant Recipient shall inform the County in writing of the location, if different from the Grant Recipient address listed in Section 5 of this Agreement of the aforesaid books, records, documents, and other evidence and shall notify the County in writing of any changes in location within ten (10) working days of any such relocation.

15. RIGHT TO INSPECT

King County reserves the right to review and approve the performance of Grant

Recipient with regard to this Agreement, and, at its sole discretion, to inspect or audit the Grant Recipient's records regarding this Agreement and the Project upon seventy-two (72) hours' notice during normal business hours.

16. COMPLIANCE WITH ALL LAWS AND REGULATIONS

Grant Recipient shall comply with all applicable laws, ordinances and regulations in using funds provided by the County, including, without limitation, those relating to providing a safe working environment to employees and, specifically, the requirements of the Washington Industrial Safety and Health Act (WISHA); and, to the extent applicable, those related to "public works," payment of prevailing wages, and competitive bidding of contracts. The Grant Recipient specifically agrees to comply and pay all costs associated with achieving such compliance without notice from King County; and further agrees that King County, does not waive this Section by giving notice of demand for compliance in any instance. The Grant Recipient shall indemnify and defend the County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws related to this Agreement.

17. CORRECTIVE ACTION

17.1 If the County determines that a breach of contract has occurred or does not approve of the Grant Recipient's performance, it will give the Grant Recipient written notification of unacceptable performance. Grant 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 Grant Recipient.

17.2 King County may withhold any payment owed Grant Recipient until the County is satisfied that corrective action has been taken or completed.

18. TERMINATION

18.1 King County may terminate this Agreement in whole or in part, with or without cause, at any time during the Term of this Agreement, by providing Grant Recipient ten (10) days advance written notice of the termination.

18.2 If the termination results from acts or omissions of Grant Recipient, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, Grant Recipient shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to Grant Recipient by the County.

18.3 Any King County obligations under this Agreement beyond the current appropriation biennium are conditioned upon the County Council's appropriation of sufficient funds to support such obligations. If the Council does not approve such appropriation, then this Agreement will terminate automatically at the close of the current appropriation biennium.

18.4 The Agreement will be terminated if the Grant Recipient is unable or unwilling to expend the Grant Award Funds as specified in Section 1 and

Exhibits A and B, or upon reimbursement by the Grant Recipient to the County of all unexpended proceeds provided by the County pursuant to this Agreement and payment of all amounts due pursuant to Section 6.

19. FUTURE SUPPORT; UTILITIES AND SERVICE

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the Project or the Capital Recreation Project except as expressly set forth in this Agreement. Grant Recipient understands, acknowledges, and agrees that the County shall not be liable to pay for or to provide any utilities or services in connection with the future Capital Recreation Project unless specifically contracted for in another agreement.

20. HOLD HARMLESS AND INDEMNIFICATION

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

Grant Recipient further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Agreement by the Grant Recipient, its officers, employees, agents, representatives, or Contractors. This duty to repay the County shall not be diminished or extinguished by the expiration or prior termination of the Agreement.

Grant Recipient agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to any use of or occurrence on the Project that is the subject of this Agreement, or Grant Recipient's exercise of rights and privileges granted by this Agreement, except to the extent of the County's sole negligence. Grant Recipient's obligations under this Section shall include:

- A. The duty to promptly accept tender of defense and provide defense to the County at the Grant Recipient's own expense;
- B. Indemnification of claims made by Grant Recipient's employees or agents; and
- C. Waiver of Grant Recipient's immunity under the industrial insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County 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 the Grant Recipient.

In the event it is determined that [RCW 4.24.115](#) applies to this Agreement, the Grant Recipient agrees to protect, defend, indemnify and save the County, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever for bodily injury to persons or damage to property (hereinafter “claims”), arising out of or in any way resulting from the Grant Recipient’s officers, employees, Contractors, and/or agents of all tiers, acts or omissions, performance of failure to perform the rights and privileges granted under this Agreement, to the maximum extent permitted by law or as defined by [RCW 4.24.115](#), as now enacted or hereafter amended.

A hold harmless provision to protect King County similar to this provision shall be included in all agreements or Contractor agreements entered into by Grant Recipient in conjunction with this Agreement. **Grant Recipient’s duties under this Section 20 will survive the expiration or earlier termination of this Agreement.**

21. NONDISCRIMINATION

[King County Code \(“KCC”\) chapters 12.16 through 12.19](#) apply to this Agreement and are incorporated by this reference as if fully set forth herein. In all hiring or employment made possible or resulting from this Agreement, there shall be no discrimination against any employee or applicant for employment because of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

22. POLITICAL ACTIVITY PROHIBITED

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.

23. PROJECT MAINTENANCE; EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP

A. As between the County and Grant Recipient, Grant Recipient shall be responsible to operate and maintain the completed Project at its own sole expense and risk. Grant Recipient understands, acknowledges, and agrees that the County is not responsible to operate or to maintain the Project in any way.

B. Grant Recipient shall be responsible for all property purchased pursuant to this Agreement, including the proper care and maintenance of any equipment.

- C. Grant Recipient shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment and materials purchased with Grant Award Funds.

Grant Recipient's duties under this Section 23 shall survive the expiration of this Agreement.

24. CULTURAL RESOURCES

Grant Recipient agrees to coordinate cultural resource review of the Project with the King County Historic Preservation Program ("HPP") in order to determine potential effects to cultural resources and any necessary mitigation. Grant Recipient further agrees to perform the steps outlined by the HPP for any necessary cultural resource preservation as specified in **Exhibit E**.

25. ASSIGNMENT

Grant Recipient shall not assign any portion of rights and obligations under this Agreement or transfer or assign any claim arising pursuant to this Agreement without the written consent of the County. Grant Recipient must seek such consent in writing not less than thirty (30) days prior to the date of any proposed assignment.

26. WAIVER OF BREACH OR DEFAULT

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.

27. TAXES

Grant Recipient agrees to pay on a current basis all taxes or assessments levied on its activities and property, including, without limitation, any leasehold excise tax due under RCW Chapter 82.29A; PROVIDED, however, that nothing contained herein will modify the right of the Grant Recipient to contest any such tax, and Grant Recipient shall not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.

28. WASHINGTON LAW CONTROLLING; WHERE ACTIONS BROUGHT

This Agreement is made in and will be in accordance with the laws of the State of Washington, which will be controlling in any dispute that arises hereunder. Actions pertaining to this Agreement will be brought in King County Superior Court, King County, Washington.

29. PUBLIC DOCUMENT

This Agreement will be considered a public document and will be available for inspection and copying by the public.

30. LEGAL RELATIONS

Nothing contained herein will make, or be deemed to make, County and Grant

Recipient a partner of one another, and this Agreement will not be construed as creating a partnership or joint venture. Nothing in this Agreement will create, or be deemed to create, any right, duty or obligation in any person or entity not a party to it.

31. PERMITS AND LICENSES

Grant Recipient shall develop and run the Project in accordance with all applicable laws and regulatory requirements including environmental considerations, permitting determinations, and other legal requirements. All activities and improvements shall be performed by Grant Recipient at its sole expense and liability. Grant Recipient shall, at its sole cost and expense, apply for, obtain and comply with all necessary permits, licenses and approvals required for the Project.

32. INTERPRETATION OF COUNTY RULES AND REGULATIONS

If there is any question regarding the interpretation of any County rule or regulation, the County decision will govern and will be binding upon the Grant Recipient.

33. ENTIRE AGREEMENT

This Agreement, including its attachments, constitutes the entire Agreement between the County and Grant Recipient and supersedes all other agreements and understandings between them, whether written, oral or otherwise.


34. COUNTERPARTS; ELECTRONIC SIGNATURES

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties acknowledge and agree that this document may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, each individual signing this Agreement warrants that they have the authority to enter into this Agreement on behalf of the Party for which that individual signs. The Parties hereto have executed this Agreement on the dates set forth below.

City of Des Moines

King County

By  _____
DEE9F4D81E8C417...
Title City Manager
Date 2/20/2024 | 2:55 PM PST

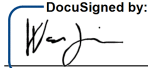
By  _____
A1498C6DA09E46F...
Title Division Director, Parks
Date 2/20/2024 | 4:47 PM PST

EXHIBIT A - SCOPE OF WORK

Project Summary

The City of Des Moines will improve Midway Park through landscape design work, expanded community garden plots, and walkable pathways. This project will provide increased opportunities for physical activity, family gathering space, and community engagement.

Deliverables

Progress Reports
Final Report
Completed Design/Plan

Timeline

Conduct internal meetings to gather resources related to design elements of landscape architecture and civil engineering.	July 2024
Conduct community engagement through summer events in parks, surveying, social media.	September 2024
Assess and draft updated timeline for completing design planning.	March 2025
Complete Final Design Project Plan.	November 2025

The Grantee shall not make any significant changes to an approved project without prior written consent of the County. Significant changes include, but are not limited to, a change to the timeline that falls outside the contract period or a shift of more than twenty percent of funds within the approved grant budget over the term of this Exhibit. If changes are necessary and approved by the County, such changes will be formalized in a written amendment signed by all parties.

EXHIBIT B - PROJECT BUDGET

Project Costs	\$456,000
Personnel Costs	\$0
Indirect Costs	\$0
Total	\$456,000

Grant Budget Changes

With written approval from the County, the Grantee may reallocate grant funds across budget line items within twenty percent of the total grant budget without requiring an official contract amendment. Indirect costs shall not exceed twenty percent of direct costs.

Budget Line Items Descriptions

Project Costs include but are not limited to landscape architecture, civil engineering, planning, project costs, design, consultant fees, and permits.

Personnel Costs include but are not limited to staff pay and benefits.

Indirect Costs include expenses of doing business that are not readily identified with a particular grant, contract, project, function, or activity, but are necessary for the general operation of the organization or the performance of the organization's activities.

EXHIBIT C – INSURANCE REQUIREMENTS

1. Insurance Requirements

1.1. Grant Recipient shall purchase and maintain for the entire term of this Agreement or as otherwise stated in this Exhibit, at its sole cost and expense, the minimum insurance set forth below. By requiring such minimum insurance, the County does not and shall not be deemed or construed to have assessed the risks that may be applicable to Grant Recipient, or any Contractor under this Agreement, or in any way limit the County's potential recovery to insurance limits required hereunder. To the contrary, this Agreement's insurance requirements may not in any way be construed as limiting any potential liability to the County or the County's potential recovery from Grant Recipient. Grant Recipient and any Contractor shall assess their own risks and if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage.

1.2. Each insurance policy shall be written on an "occurrence" basis, except insurance for Pollution Liability, which may be written on a "claims made" basis.

If coverage is approved and purchased on a "claims made" basis, the coverage provided under that insurance shall be maintained through: (i) consecutive policy renewals for not less than three (3) years from the date of completion of the Project which is subject of this Agreement or, if such renewals are unavailable, (ii) the purchase of a tail/extended reporting period for not less than three (3) years from the date of completion of the Project which is the subject of this Agreement.

2. Evidence and Cancellation of Insurance

2.1. Prior to contract execution and upon request by the County, Grant Recipient shall furnish the County certificates of insurance and endorsements certifying the issuance of all insurance required by this Agreement which is to be maintained for the entire term of the Agreement or as otherwise stated in this Exhibit. All evidence of insurance shall be signed by a properly authorized officer, agent, general agent, or qualified representative to the insurer(s), shall certify the name of the insured(s), the type and amount of insurance, the location and operations to which the insurance applies, the inception and expiration dates, shall specify the form numbers of any endorsements issued to satisfy this Agreement's insurance requirements, and shall state that the County shall receive notice at least thirty (30) days prior to the effective date of any cancellation, lapse, or material change in the policy(s). Certificate Holder: King County Parks, 201 S. Jackson Street, Suite 5702, Seattle, WA 98104. Electronic evidence of insurance documents may be emailed to: ParksGrants@kingcounty.gov.

2.2. The County reserves the right to require complete, certified copies of all required insurance policies, including all endorsements and riders, which may be

redacted of any confidential or proprietary information. Grant Recipient shall deliver such policies to the County within five (5) business days of County's request.

3. Minimum Scope and Limits of Insurance

3.1. Grant Recipient shall maintain the following types of insurance and minimum insurance limits:

3.1.1. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01. Such insurance shall include coverage for, but not limited to, premises liability, ongoing operations, products and completed operations, and contractual liability. Limits may be satisfied by a single primary policy or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including, but not limited to, additional insured status for the County.

3.1.2. Automobile Liability: If a vehicle(s) will be used, Grant Recipient and/or its Contractor(s) will maintain Automobile Liability insurance with statutory minimum limits per accident for bodily injury and property damage.

3.1.3. Workers Compensation: If Grant Recipient or its Contractor(s) have employees, then Workers Compensation coverage shall be maintained as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Project by applicable Federal or "Other States" State Law.

3.1.4. Employers Liability or "Stop Gap" coverage: If Grant Recipient or its Contractor(s) have employees, then Employers Liability or "Stop Gap" coverage shall be maintained with a minimum limit of \$1,000,000 each occurrence and shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability), or, in monopolistic states including but not limited to Washington, the protection provided by the "Stop Gap" endorsement to the commercial general liability policy.

3.1.5. Pollution Liability: If geotechnical work will take place, Grant Recipient or its Contractor(s) shall provide Pollution Liability coverage with minimum limits of \$1,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the

destruction of tangible property, loss of use, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed.

3.1.6. Fidelity and Crime Insurance. If a Fiscal Sponsor is a party to this Agreement, Fiscal Sponsor(s) shall procure and maintain Fidelity and Crime insurance with a minimum limit equal to the grant amount. Coverage shall include 'Join Loss Payable' ISO form CR 20 15 10/10 or substantive equivalent and 'Provide Required Notice of Cancellation to Another Entity' ISO form CR 20 17 10/10.

4. Other Insurance Provisions and Requirements

4.1. All insurance policies purchased and maintained by Grant Recipient and any Contractor required in this Agreement shall contain, or be endorsed to contain the following provisions:

4.1.1. With respect to all liability policies except Professional Liability (Errors and Omissions), Personal Auto Liability, and Workers Compensation:

4.1.1.1. King County, its officials, employees and agents shall be covered as additional insured for full coverage and policy limits as respects liability arising out of activities performed by or on behalf of the Grant Recipient, its agents, representatives, employees, or Contractor(s) in connection with this Agreement. Additional Insured status shall include products-completed operations CG 20 100 11/85 or its substantive equivalent. The County requires the endorsement(s) to complete the Agreement.

4.1.2. With respect to all liability policies (except Workers Compensation):

4.1.2.1. Coverage shall be primary insurance as respects the County, its officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officials, employees, or agents shall not contribute with any of Grant Recipient's or Contractor(s)'s insurance or benefit the Grant Recipient, or any Contractor, or their respective insurers in any way.

4.1.2.2. Insurance shall expressly state that it applies separately to each insured and additional insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of insurer's liability.

5. Deductibles/Self-Insured Retentions

5.1. Any deductible and/or self-insured retention of the policies shall in all instances be the sole responsibility of Grant Recipient or its Contractor, even if no claim has been made or asserted against them.

6. Acceptability of Insurers

6.1. Unless otherwise approved by the County, insurance is to be placed with insurers with an A.M. Best rating of no less than A:VIII.

7. Self-Insurance

7.1. If the Grant Recipient is a governmental entity or municipal corporation, Grant Recipient may maintain a fully funded self-insurance program or participate in an insurance pool for the protection and handling of its liabilities including injuries to persons and damage to property. Further, if Grant Recipient maintains a self-insurance program or participates in an insurance pool, the additional insured requirement shall not apply to the coverage provided by the self-insured program or insurance pool.

8. Contractors

8.1. Grant Recipient shall include all Contractors as insureds under its policies or, alternatively, Grant Recipient must require each of its Contractors to procure and maintain appropriate and reasonable insurance coverage and insurance limits to cover each of the Contractor's liabilities given the scope of work and services being provided herein. Contractor(s) must include the County, its officials, agents and employees as additional insured for full coverage and policy limits on its Commercial General Liability insurance and, if applicable, its Automobile Liability insurance. Upon request by the County, and within five (5) business days, Grant Recipient must provide evidence of each Contractor(s) insurance coverage, including endorsements.

City of Des Moines – Midway Park Open Space Design – 6416653
Task - 1.24

EXHIBIT D – CERTIFICATE OF INSURANCE AND ENDORSEMENTS



P.O. Box 88030
Tukwila, WA 98138
Phone: 206-575-6046
Fax: 206-575-7426
www.wciapool.org

12/22/2023

Ref#: 15045

King County Parks
Attn:
201 S. Jackson Street, Suite 5702
Seattle, WA 98104

Re: City of Des Moines
Levy Grant - Midway Design

Evidence of Coverage

The City of Des Moines is a member of the Washington Cities Insurance Authority (WCIA), which is a self-insured pool of over 160 public entities in the State of Washington.

WCIA has at least \$4 million per occurrence limit of liability coverage in its self-insured layer that may be applicable in the event an incident occurs that is deemed to be attributed to the negligence of the member. Liability coverage includes general liability, automobile liability, stop-gap coverage, errors or omissions liability, employee benefits liability and employment practices liability coverage.

WCIA provides contractual liability coverage to the City of Des Moines. The contractual liability coverage provides that WCIA shall pay on behalf of the City of Des Moines all sums which the member shall be obligated to pay by reason of liability assumed under contract by the member.

WCIA was created by an interlocal agreement among public entities and liability is self-funded by the membership. As there is no insurance policy involved and WCIA is not an insurance company, your organization cannot be named as an additional insured.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Roscoe'.

Rob Roscoe
Deputy Director

cc: Bonnie Wilkins
Nicole Nordholm

EXHIBIT E - CULTURAL RESOURCE PRESERVATION REQUIREMENTS

Based on the initial cultural resources review, the following recommendation(s) is/are conditions and/or requirements for this Project:

Cultural Resource Preservation Requirements are not applicable for this Project. If the Scope of Work is amended at any time during the Agreement Term, additional consultation with the King County Historic Preservation Program may be necessary.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2024 Overlay Program – Construction
Contract Award and Consultant
Services Agreement

FOR AGENDA OF: March 14, 2024

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: March 6, 2024

ATTACHMENTS:

- 1. Public Works Construction Contract
- 2. Parametrix Inc. 2024-2025 On-Call
General Civil Engineering Services, Task
Assignment 2024-01

CLEARANCES:

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

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 1) with Icon Materials, and seek approval of the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-01 with Parametrix, Inc. (Attachment 2) to provide Construction Administration and Inspection Services for the 2024 Overlay Program. The following motion(s) will appear on the Consent Agenda:

Suggested Motions

Motion 1: “I move to approve the Public Works Contract with Icon Materials (Contractor) for the 2024 Overlay Program in the amount of \$1,211,177.15, authorize a project construction contingency in the amount of \$120,000, and further authorize the Acting City Manager to sign said Contract substantially in the form as submitted.”

Motion 2: “I move to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-01 with Parametrix, Inc. to provide Construction Administration and Inspection Services for the 2024 Overlay Program in the amount of \$150,000, and further authorize the Acting City Manager to sign said Task Assignment substantially in the form as submitted.”

Background

The 2024 Overlay Program consists of rehabilitating and resurfacing of approximately 6,500 linear feet of asphalt roadway at the following locations:

- 16th Avenue South, from South 260th Street to South 253rd Street.
- Marine View Drive South/ South 272nd Street, from 16th Avenue South to South 277th Place.
- South 281st Street/ Redondo Beach Drive South, from South 280th Place to South 282nd Street.
- 4th Place South, from South 216th Place to South 214th Street.

The 2024 Overlay Program is a component of the Pavement Preservation Program, currently identified as the top-priority in the Transportation Improvement Plan. The above locations were prioritized for pavement rehabilitation based on their existing pavement conditions and roadway classification.

On May 31, 2023, the City Manager approved a task assignment with Parametrix, Inc. for design and permitting of the 2024 Overlay Program under the 2022-2023 On-Call General Civil Engineering Services Contract. Following the completion of the design phase, a solicitation for Bids was published on February 14th, 2024 and a public Bid Opening was held on February 28, 2024.

Discussion

Construction Contract (Motion #1)

The 2024 Overlay Program was advertised for bids in accordance with state law, WSDOT LAG Manual, and requirements for competitive bidding of public works contracts. Bids from six contractors were received. Bids were publicly opened and read out loud on February 28th, 2024 by the City Clerk and are summarized below.

BID RESULTS

<u>Engineer’s Estimate (including tax)</u>	<u>\$1,700,000.00</u>
<u>Contractor Name</u>	<u>Bid Proposal</u>
Icon Materials	\$1,211,177.15 (Responsive Low Bid)
Miles Resources	\$1,323,437.50
Tucci & Sons	\$1,329,907.00
Lakeside Industries	\$1,424,840.50
Puget Paving	\$1,601,000.00
Lakeridge Paving	\$1,672,000.00

Icon Materials is the Responsive Low Bidder at \$1,211,177.15. The bid proposals and contractor qualifications have been reviewed and staff finds that the low bid is responsive and recommends award of the contract to Icon Materials.

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

Engineering consultants are needed in order to supplement and expand the capability of City staff for Construction Administration and Inspection of the Overlay Program. These services are proposed to be provided by Parametrix, Inc. (Attachment 2). Staff believes that Parametrix Inc. has satisfactorily met engineering expectations for the project as originally envisioned in the solicitation for services, has demonstrated their qualifications for these services on other projects within the City of Des Moines, and will be able to maintain valuable overall project history and consistency with the previous phases of work. All construction support shall comply with the Washington State Department of Transportation (WSDOT) Local Agency Guidelines (LAG) for construction contract administration.

Oversight of the contractor will also include, but is not limited to, conducting a pre-construction meeting, review and approval of proposed material submittals; responding to contractor requests for information to clarify construction requirements; preparing change orders and work instructions; engineer solutions to unforeseen problems; reviewing materials testing to meet specifications. City staff will assist in preparing daily diaries documenting issues and progress in meeting construction schedule commitments; performing daily inspection to ensure quality workmanship.

Alternatives

(Motion #1) – Reject All Bids

The City Council could direct staff to reject all Bid Proposals and re-submit for construction bids at a later time. However, there is no reason to believe project bids would be lower given the busy bidding climate and expected future cost inflation.

(Motion #2) – Not Approve On-Call Task Assignment with Parametrix

The City Council could elect not to approve the Task Assignment with Parametrix for Construction Administration and Inspection Services. The City does not have adequate resources to perform complete Construction Administration and Inspection in compliance with general project requirements or the WSDOT LAG Manual. Council could direct staff to solicit for proposals, but this will cause project delay and potentially need to re-bid the project. Additionally, solicitation for proposals will result in potentially (3) additional separate project contracts; construction management, Engineer of Record, and materials testing.

Financial Impact

The City's Arterial Street Pavement Preservation Program includes revenues to accommodate full project funding for the Public Works Contract and Consultant Agreement for Construction Administration and Inspection Services.

Recommendation

Staff recommends the adoption of the motion(s).

Council Committee Review

Not Applicable

PUBLIC WORKS CONTRACT
between City of Des Moines and
Icon Materials

THIS CONTRACT is made and entered into this [Enter Day] day of [Enter Month], [Year], by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Icon Materials organized under the laws of the State of Washington, located and doing business at 1508 Valentine Ave SE, Pacific WA 98047-2103, (206) 575-3200, and Mark Eichelberger (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

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

Work to be performed under this contract is as follows:

This Project encompasses maximizing the City's 2024 overlay program by providing multiple project bid additives. Four schedules are included in this program:

Schedule A consists of 16th Avenue South from South 260th Street to approximately South 253rd Place (approximately 2,000 linear feet of planning and overlay).

Schedule B consists of Marine View Drive South/South 272nd Street from 16th Avenue South to approximately South 277th Place (approximately 3,200 linear feet of planning and overlay).

Schedule C consists of South 281st Street/Redondo Beach Drive South from South 280th Place to South 282nd Street (approximately 1,000 linear feet of planning and overlay).

Schedule D consists of 4th Place South from South 216th Place to South 214th Street (approximately 250 linear feet of pavement repair).

This Project will include planning and overlaying hot mix asphalt pavement, utility adjustments, new channelization, and pavement repair all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard 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 50 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 one million two hundred eleven thousands one hundred seventy-seven dollars and fifteen cents (\$1,211,177.15), plus any applicable Washington State Sales Tax, for the work and services contemplated in this Contract. If the work and services to be performed as specified in Exhibit A "Scope and Schedule of Work" is for street, place, road, highway, etc. as defined in WAC 458-20-171, then the applicable Washington State Retail Sales Tax on this contract shall be governed by WAC 458-20-171 and its related rules for the work contemplated in this Contract. The Contractor shall invoice the City monthly. The City shall pay to the Contractor, as full consideration for the performance of the Contract, an amount equal to the unit and lump sum prices set forth in the bid. The Contractor will submit requests for Progress payments on a monthly basis and the City will make progress payment within 45 days after receipt of the Contractor's request until the work is complete and accepted by the City. The City's payment shall not constitute a waiver of the City's right to final inspection and acceptance of the project.

- A. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted within 30 days upon entering into this Contract, through a bonding company meeting standards established by the City.
- B. Defective or Unauthorized Work. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to

complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor. Notwithstanding the terms of this section, the City's payment to contractor for work performed shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.

- C. Final Payment: Waiver of Claims. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

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

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

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

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

- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.
- F. The Contractor's breach of any portion of this Contract.

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

VI. Liquidated Damages. This section of the Contract shall apply only in the event of a delay in the completion of the work within the timeframe specified in the Contract. This being a Public Works project performed for the benefit of the public, and there being a need for the completion of the project in the time specified in the Contract, City and Contractor agree that damages for delay in the performance or completion of the work are extremely difficult to ascertain. However, City and Contractor agree that due to the expenditure of public funds for the work specified in this Contract, and the need to provide the work for the benefit of the health, safety and welfare of the public, the failure to complete the work within the time specified in the Contract will result in loss and damage to City. City and Contractor agree that a delay will result in, but not be limited to, expense to the City in the form of salaries to City employees, the extended use of City equipment, delays in other portions of the project on which Contractor is working, increased cost to the City for the project, delays in other projects planned by City, and loss of use and inconvenience to the public.

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

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

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

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **\$3,633.53** shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

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

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

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

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

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

Monday through Friday: 7:00 a.m. to 7:00 p.m.
Saturday, Sunday and Holidays: 8:00 a.m. to 5:00 p.m.

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

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

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

XII. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Contract, section XXII(C), within seven (7) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section XIII, Claims, below.

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

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

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

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER

OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

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

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

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

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

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

XV. WARRANTY. Upon acceptance of the contract work, Contractor must provide the City a warranty bond for one year in the amount of the contract value specified in Section III above and in a form acceptable to the City. In the event any defects are found within the first year, the warranty bond shall be extended for an additional year. The

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

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

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

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

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

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

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

No Limitation. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor

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

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

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

C. Other Insurance Provisions

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

D. Acceptability of Insurers

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

E. Verification of Coverage

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

F. Subcontractors

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

E. Notice of Cancellation

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

F. Failure to Maintain Insurance

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

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

XX. Bond - Separate Payment and Performance Bond Required. Pursuant to Chapter 39.08 RCW, the Contractor shall, prior to the execution of the Contract, furnish both a performance bond and a payment bond to the City, both in the full amount of the bid with a surety company as surety. The purpose of the bonds is to ensure that the Contractor shall faithfully perform all the provisions of this Contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such Contractor or subcontractors with provisions and supplies for the carrying on of such work. Such bonds shall provide that any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original Contractor. In addition,

the surety company providing such bond shall agree to be bound to the laws of the state of Washington, and subjected to the jurisdiction of the state of Washington and the King County Superior Court in any proceeding to enforce the bond. This Contract shall not become effective until said bonds are is supplied and approved by the Engineer and filed with the City Clerk.

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

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

XXII. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

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

2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's

fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XVII of this Contract.

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

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

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

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

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

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

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

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

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

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

<p>CONTRACTOR:</p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: _____ Its _____ <i>(Title)</i></p> <p>DATE: _____</p>	<p>CITY OF DES MOINES:</p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: <u>Tim George</u> Its <u>City Manager</u> <i>(Title)</i></p> <p>DATE: _____</p> <p style="text-align: right;">Approved as to Form: _____ City Attorney</p> <p style="text-align: right;">DATE: _____</p>
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<p>NOTICES TO BE SENT TO:</p> <p>CONTRACTOR:</p> <p>Mark Eichelberger Icon Materials 1508 Valentine Ave SE Pacific WA 98047-2103</p> <p>206-575-3200 (telephone) [Insert Fax/email] (facsimile/email)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Khai Le, P.E., City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-870-6537] (telephone) [Insert Fax/email] (facsimile/email)</p>
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FORMAL TASK ASSIGNMENT DOCUMENT

Task Number TA 2024-01

The general provisions and clauses of Agreement 2024-25 On-Call Civil Engineering Services
Shall be in full force and effect for this Task Assignment.

Location of Project: Various Roadways, Des Moines, WA

Project Title: 2024 Overlay Program Construction Services

Maximum Amount Payable Per Task Assignment: \$150,000.00

Completion Date: August 31, 2024

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

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ See Attachment Dated: _____

Consultant Signature: *John K. Ainsworth* Date: 2/28/24

Agency Approving Authority: _____ Date: _____

City of Des Moines
2024 Overlay Program Construction Services

Introduction

This Project encompasses maximizing the City's 2024 Overlay Program by providing multiple project bid additives.

TASK 01 – Construction Support Services

General Assumptions for Construction Support Services

- The proposed project team will include one full-time construction observer during construction activities, and one documentation specialist. Parametrix will provide services for supporting tasks as necessary but not specifically included in this scope of services.
- The level of service is based on project duration as expressed in the Construction Contract in working days (see below).
- The City will review and execute the insurance, bonds, and the Construction Contract.
- It is anticipated that all internal departmental and community outreach, if required, will be completed by the City.
- Parametrix Engineers will respond to questions during construction and review Requests for Approval of Materials (RAMs), review submittals and shop drawings, and answer Requests for Information (RFIs).
- Services will be performed in accordance with the *Local Agency Guidelines (LAG) Manual*, Construction Contract, and City standards.
- Franchise utilities will provide field inspection for all work surrounding the construction or relocation of those utility systems not constructed by the City's Contractor, if necessary.
- City/Field Office: There are no provisions for a field office for this project. All project files shall be kept in digital format and all necessary physical copies will be held at the City office. Parametrix staff shall work from vehicle as much as practicable.
- All deliverables will be in electronic format unless specifically stated otherwise in this scope of services.
- The objective and purpose of this Construction Support Services Agreement is for Parametrix to support the City in successfully completing the construction of the proposed improvements.

Subtask 01.01 – Advertisement and Award

Objectives

Parametrix will provide support during advertisement and award of the project including addenda, bid tabs, and award letter.

Approach

- Parametrix will support the City in advertising the project in City-approved publications and will assist in posting the bidding documents on online plan centers such as Builder’s Exchange.
- Parametrix will be available to answer bidder questions and to prepare addenda, if required.
- Parametrix staff will prepare the bid tabulating bids and prepare the recommendation of award letter.

Deliverables

- Response to bidder questions and addenda as applicable.
- Bid tabulations.
- Recommendation of award letter.

Assumptions

- City staff will coordinate with internal departments for advertisement and award of the project with assistance by Parametrix staff.
- City staff will be available to answer bidder questions outside of the technical aspects of the work including traffic control, permitting, licensing, and other non-technical questions.
- City staff will provide Parametrix with all bids to prepare the bid tabulation.

Subtask 01.02 – Construction Engineering

Parametrix engineering staff will attend the preconstruction conference and provide support during construction. Parametrix will coordinate with City staff to prepare an agenda for, distribute notices of, and conduct a preconstruction conference in the City’s offices. Parametrix will prepare a written record of the meeting and distribute copies of the minutes to all attendees, affected agencies, and staff.

Following the preconstruction conference, other construction engineering services will be provided. Specific activities are undefined but will be completed up to the specified budget amount and may include the following:

- Responses to RFIs.
- Prepare and maintain a Record of Materials (ROM).
- Prepare and issue the weekly statement of working days.
- Materials submittal reviews.
- Design clarifications.
- Shop drawing reviews.
- Support/review/preparation of change orders.
- Support/review/preparation of monthly progress payments to Contractor.
- Support/assistance for preparation of periodic cost to complete analysis.

Assumptions

- The budget estimate includes 4 hours each for the Engineer of Record, lead designer, and construction observer to assist the City in preparation for the preconstruction conference.
- The budget estimate includes 4 hours each for the Engineer of Record, lead designer, contract administrator, and construction observer to attend the preconstruction conference.
- The budget estimate includes an estimate of the time necessary to respond to RFIs and address claims of change by the Contractor based on the scope of the work. However, unforeseen conditions and/or level of experience of the lowest responsible bidder cannot be known and, therefore, services will be provided up to the established budget amount.

Deliverables

- ROM.
- Materials RAM form responses.
- Weekly statement of working days.
- Shop drawing reviews.
- Responses to RFIs.
- Change Orders (budget includes two).

Subtask 01.03 – Construction Documentation Services

ParametriX will implement its system and set of procedures for managing, tracking, and storing documents between the Contractor, ParametriX, and the City produced during the construction and closeout phases of the project that are compliant with the requirements set forth by the funding agency. ParametriX will, in coordination with the City, maintain a digital copy, suitably organized, of construction documentation that will be turned over to the City at the completion and final closeout of the project. ParametriX and the City will agree on what documentation will be provided to the City during construction.

ParametriX will implement its procedures for logging and tracking of correspondence and documents. ParametriX will assist the City in monitoring outstanding decisions, approvals, or responses required from the City.

The documentation specialist’s responsibilities are as follows:

- Preparing preconstruction conference agenda.
- Receiving and logging Contractor submittals, including RAMs and RFIs.
- Transmitting Contractor submittals for review to the appropriate reviewer.
- Obtaining review responses to Contractor submittals regarding design details.
- Returning submittals to the Contractor upon completion of the review process.
- Maintaining electronic project files according to established filing index, modified as necessary for the project.
- Preparing meeting minutes and distributing minutes in a PDF file to attendees within 2 working days.

- Reviewing and logging weekly certified payroll data in accordance with state law and the Washington State Department of Transportation (WSDOT) *Construction Manual*.
- Receiving and logging inspectors’ daily reports, force account sheets, and material tickets.
- Maintaining electronic and paper files including inspectors’ daily reports (IDRs), updated Contract Documents, test reports, material records, correspondence, statement of working days, Contractor payment requests, prevailing wage certifications, contract change order records, force account documents, field note records, submittal records, RFIs, project photographs, and meeting records.

Assumptions

- Parametrix will attend weekly meetings.
- Construction documentation records will be kept electronically.

Deliverables

- Preconstruction agenda as well as draft and final meeting minutes.
- Up to 8 weekly meeting agendas as well as draft and final meeting minutes.
- Construction documentation electronic files.

Subtask 01.04 – Construction Observation

Parametrix will provide a full-time construction observer during construction activities to monitor the progress of the work. The construction observer will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City.

The construction observer will perform the following duties as a matter of daily activities (if applicable):

- Observe technical conduct of the construction, including providing day-to-day contact with construction Contractor, City, and other stakeholders, and monitor for adherence to the Contract Documents. Parametrix personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the WSDOT and American Public Works Association (APWA) *Standard Specifications for Road, Bridge, and Municipal Construction*.
- Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes and notify construction Contractor of noncompliance. Advise the City of any nonconforming work observed during site visits.
- Document all material delivered to the job site in accordance with the Construction Contract.
- Prepare daily inspection reports, recording the construction Contractor’s operations as actually observed by Parametrix including quantities of work placed that day, Contractor’s equipment and crews, and other pertinent information. All daily inspection reports will adhere to WSDOT LAG or as directed by the City.
- Interpret Contract Documents in coordination with the City and the City’s Contractor.
- Resolve questions that may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction Contractor.
- Establish communications with adjacent property owners. Respond to questions from property owners and the general public.

- Coordinate with permit holders on the project to monitor compliance with approved permits, if applicable.
- Prepare field records and documents to help ensure the project is administered in accordance with funding agency requirements.
- Attend and actively participate in regular on-site weekly construction meetings.
- Take digital photographs during construction and record locations.
- Coordinate with the City's traffic operations and maintenance personnel.
- Punch List: Upon substantial completion of work, Parametrix will coordinate with the City and other affected agencies to perform a project inspection and develop a comprehensive list of deficiencies or "punch list" of items to be completed. A punch list and certificate of substantial completion will be prepared by the Parametrix and issued by the City.
- Parametrix will coordinate with the Contractor and Otto Rosenau (material testing firm), which will be contracted as a subconsultant to Parametrix.

Assumptions

- Parametrix will provide observation services, up to the agreed budget amount, for the entire time that the Contractor's personnel are on-site.
- The budget estimate for this task assumes that the Contractor will be on-site for 50 working days from notice to proceed to substantial completion; an additional 5 days has been included for project closeout. Additional working days will require a supplement to this agreement.
- Parametrix monitoring of the construction Contractor's activities is to ascertain whether work is being performed in accordance with the Contract Documents. In case of noncompliance, Parametrix will reject nonconforming work and pursue other remedies in the interests of the City, as detailed in the Contract Documents. Parametrix cannot guarantee the construction Contractor's performance, and it is understood that Parametrix shall assume no responsibility for: proper construction means, methods, techniques; project site safety; safety precautions or programs; or for the failure of any other entity to perform work in accordance with laws, contracts, regulations, or the City's expectations.

Deliverables

- Daily construction reports with project photos submitted daily.
- Punch list.
- Certificate of substantial completion.

Subtask 01.05 – Task Management

Objectives

The objective of this subtask is to provide overall project management of the consultant contract with the City of Des Moines.

This subtask includes general management functions that include the following:

- Project Planning – Document and communicate the scope of work, budget, and schedule as a road map for the project team. Coordinate project team and issues throughout the project.

- Budget and Schedule Tracking – Track the project budget using ParametriX in-house tools to verify that progress is keeping pace with spending.
- Team and subconsultant coordination including informal weekly meetings.
- Monthly Progress Reports – Prepare a monthly progress letter and invoice for services performed by ParametriX.
- Correspondence – Prepare written correspondence as needed to document project management issues and/or concerns.
- Quality Assurance/Quality Control (QA/QC) - Independent review of all deliverables prior to submittal to the City of Des Moines following ParametriX QA/QC manual procedures.

Deliverables

Deliverables for this subtask include the following:

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

Assumptions

Assumptions for this subtask include the following:

- Initial project duration is 6 months for the purposes of estimating the budget for this subtask.

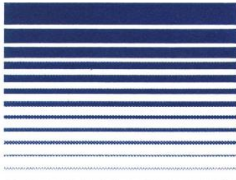
END OF SCOPE OF WORK

City of Des Moines
2024 Overlay Program Construction Services

Task Assignment Budget Estimate

	Austin Fisher PM (EoR)	Matt Kastberg QC	John Betzvog Assistant PM	Alex Johnson Observation	Tammy Seymour Documentation	Kristen Zimmerman Proj Coordinator	Jordanna Lebow Accountant	Otto Rosenau Material Testing	Total
Burdened Rates (based on 171.54% OH and 30% profit)	\$369.39	\$352.41	\$180.17	\$143.23	\$176.31	\$93.48	\$90.46		
01.01 / 01.05 - Ad & Award / Task Management	2		16		32	16	9		75
01.02 - Construction Engineering	4		48	8	64				124
01.03 - Construction Documentation Services		4	20	20	88				132
01.04 - Construction Observation		8		400					408
01.04 - Construction Observation (Material Testing)								\$30,000.00	
	6	12	84	428	184	16	9		739
Subtotal	\$2,216.32	\$4,228.92	\$15,134.29	\$61,303.08	\$32,441.12	\$1,495.64	\$814.16	\$30,000.00	\$147,633.53
Expenses									
Mileage/Expenses (0.625/mi. x 30 miles)	60	120	310	1875					\$2,365.00

Task Assignment Total \$149,998.53



OTTO ROSENAU & ASSOCIATES, INC.

Geotechnical Engineering, Construction Inspection & Materials Testing

6747 M. L. King Jr. Way South, Seattle, Washington 98118-3216 USA
Tel: (206) 725-4600 • Fax: (206) 723-2221
WBE W2F0013684 • WABO Registered Agency • Website: www.ottorosenau.com

February 28, 2024
Proposal No.: 24-0213

Alex Johnson
Parametrix, Inc.
1019 39th Avenue SE, Suite 100
Puyallup, WA 98374

**Re: Construction Inspection and Materials Testing Services
Des Moines Overlay
16th Street South, Des Moines, WA**

Dear Alex Johnson:

Otto Rosenau & Associates, Inc. (ORA) is pleased to provide you and your firm with this proposal to provide special inspection and materials testing services in support of the referenced project. This proposal presents a project description, scope of work, and proposed fee. All work will be performed in accordance with the attached Terms, Definitions, and General Conditions.

PROJECT DESCRIPTION: The project involves repair and paving of an existing roadway.

SCOPE OF WORK: The architect, civil engineer, structural engineer, and applicable building codes dictate which elements of the project require inspection or testing. Based on our understanding of your project, the anticipated scope of work for the testing and inspection services includes, but is not limited to, the following items:

- Soil compaction
- Asphalt compaction

ORA proposes to provide appropriately licensed and qualified engineers or inspectors to perform the inspection and testing tasks. The results of field tests and inspections will be communicated to the owner's and contractor's representative as soon as practical. Items that do not conform to the project specifications will be logged and tracked until corrective action is completed. Handwritten reports will be prepared and left on-site after each inspection. Typewritten reports will be distributed to the appropriate project team members and jurisdiction.

PROPOSED FEE: Otto Rosenau and Associates, Inc. propose to provide the above described services on a unit fee basis where we will charge only for the services we perform. Our unit fees are presented on the attached Fee Schedule.

Based on our review of the project drawings and specifications dated February 12, 2024, and on our past experience on similar projects, we suggest a budget of **\$29,713** be established for the inspection and testing services. The actual total fee for inspection and testing services is dependent on the efficiency, performance, and schedule of the general contractor, subcontractors, and material suppliers.

SCHEDULE: We are prepared to begin work on your project as required by the construction schedule. Appropriate personnel will be dispatched to the project on an on-call basis in response to requests from the authorized field

Otto Rosenau & Associates, Incorporated
Geotechnical Engineering, Construction Inspection & Materials Testing

representative. Though we may be able to respond to last minute or emergency calls for inspection, we request 48 hours' notice for inspections.

CLOSURE: Thank you for this opportunity to work with you on your project. If this proposal is accepted, please indicate so by signing and returning one copy to us via fax (206-723-2221), email (accounting@ottorosenau.com), or mail as an authorization to proceed.

~~This proposal, including the Terms, Definitions, and General Conditions and proposed unit fees, is accepted by:~~

-

Company Name _____ Signature _____

Date _____ Printed Name and Title _____

-

-

~~We look forward to working with you. If you have any questions, please contact us at (206) 725-4600.~~

-

~~Very truly yours,~~

~~**OTTO ROSENAU & ASSOCIATES, INC.**~~

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Jeffrey D. Rabe _____
Project Manager _____

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JDR:elt

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~~Attachments: Estimated Budget
Fee Schedule
Terms, Definitions, and General Conditions~~

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ESTIMATED BUDGET				
Description of Services	Quantity	Unit	Fee	Extension
Engineering Technician - Assumes 32 trips and 12 sample pick-up trips - Soil Compaction - Asphalt Compaction	152	Hr	\$145.00	\$22,040.00
Soil Grain Size Distribution (Sieve Analysis; D422)	2	Ea	\$137.00	\$274.00
Soil Moisture-Density Relationship (Proctor; D1557)	2	Ea	\$273.00	\$546.00
Asphalt Rice Density (D6307/WSDOT T-209)	10	Ea	\$142.00	\$1,420.00
Asphalt Oil Content by Ignition with Gradation	10	Ea	\$273.00	\$2,730.00
Preconstruction Meeting - Assumes 1 trip	3	Hr	\$106.00	\$318.00
Associated Mileage (Portal to Portal) - Assumes 35 trips x 32 miles/round-trip	1,120	Mile	\$0.75	\$840.00
Project Management (Report Review, Coordination; Final Report)	6.75	Hr	\$165.00	\$1,113.75
Administrative (Report Typing and Distribution)	5.75	Hr	\$75.00	\$431.25
Estimated Budget:				\$29,713.00

Notes:

- 1) Additional services are available, and will be provided upon request, at our published rates and fees.

FEE SCHEDULE

Description of Services	Unit	Fee
I. Labor (Personnel) Rates:		
Administrative Staff –Report Typing & Distribution	Hour	\$75.00
Project Manager – Report Review, Final Report, Meetings, Consultation, etc.	Hour	\$165.00
Geotechnical Engineer (P.E.)	Hour	\$250.00
Geologist	Hour	\$165.00
Engineer Technician / Special Inspector: a) Reinforced Concrete (Includes Reinforcing Steel) b) Shotcrete c) Reinforced Masonry d) Proprietary Anchors – Epoxy, Expansion Anchors, etc. e) Framing – Cold Formed Steel, Structural Wood, etc. f) Miscellaneous – Spray-Applied Fireproofing, Seismic Ties, Soil/Asphalt Compaction etc. g) Structural steel and Certified welding inspector h) Nondestructive testing technician (UT/MT/PT) i) Firestop inspector	Hour	\$145.00
Pull Testing Technician (2-Man Crew)	Hour	\$258.00
II. Laboratory (Materials) Testing:		
Soil Grain Size Distribution – Sieve Analysis (D422)	Each	\$137.00
Soil Moisture-Density Relationship – Proctor (D1557)	Each	\$273.00
Asphalt Oil Content by Ignition with Gradation	Each	\$273.00
Asphalt Rice Density (D2041/ WSDOT T-209)	Each	\$142.00
Compressive Strength Test – Concrete Cylinders/ Grout/ Mortar (C39/C109/C1019)	Each	\$30.00
Fireproofing Density Specimens (E605)	Each	\$92.00
Fireproofing Cohesion/Adhesion Tests (E736)	Each	\$40.00
Masonry Prisms/Concrete Masonry Units (C1314)	Each	\$151.00
Shotcrete Test Panel (Includes 4 Cores; C1140)	Each	\$246.00
Sawcutting of Test Specimens	Each	\$7.00
III. Miscellaneous/Reimbursable Expenses:		
Associated Mileage (Portal to Portal)	Mile	\$0.75
Project Associated Reimbursable Items (e.g. Parking Fees, Consumable Safety Gear, Cure Box, Temperature Recording Device, Subcontractor Services, etc.)	Lot	Cost + 20%
Final Inspection/Review/Report	Hour	\$165.00

Note: Additional services are available, and will be provided upon request, at our published rates and fees.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Public Hearing to consider Draft Ordinance 24-018 related to the Saddlebrook Site Specific Zoning Map Amendment

FOR AGENDA OF: March 14, 2024

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: March 7, 2024

ATTACHMENTS:

1. Draft Ordinance No. 24-018
2. Potential Zoning Map Excerpt
3. Preferred Land Use Map

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 _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this Agenda Item is for the City Council to hold a public hearing to consider Draft Ordinance No. 24-018 (Attachment 1) amending Des Moines Municipal Code (DMMC) 18.10.050 (Adoption of official zoning map), to reclassify tax parcel 2822049007 from RS-7200 Single Family Residential Zone to RM-1,800 Residential: Multifamily Zone (Attachment 2) for the Saddlebrook Apartments property. This action will bring the zoning into compliance with the preferred land use for the property in the City’s adopted Comprehensive Plan (Attachment 3).

Suggested Motion

Motion 1: “I move to enact Draft Ordinance No. 24-018 amending DMMC 18.10.050 (Adoption of official zoning map), to reclassify tax parcel 2822049007 from RS-7200 Single Family Residential Zone to RM-1,800 Residential: Multifamily Zone for the Saddlebrook Apartments property.”

Background

Saddlebrook Apartments consists of 223 apartments in 24 three-story buildings located at 2100 South 260th Street. The development was permitted in King County prior to annexation. The site was part of the 1997 Woodmont/Redondo Annexation under Ordinance No. 1166. Per Section 4 of the annexation ordinance, the area was to retain the existing King County zoning, unless and until the zoning is amended by the City. As the existing multifamily development was originally authorized by permit and is located in a single family zone in which such use is not permitted, it is considered a nonconforming use and subject to the regulations in chapter 18.15 DMMC – Nonconforming Buildings and Uses.

Per the applicant’s narrative, “This would be a non-project application, as the Property is currently fully developed and occupied. The rezone request is not to further develop the Property, but merely to bring the zoning in line with the Comprehensive Plan. No additional construction is contemplated.”

Discussion

On August 29, 2023, the City of Des Moines received an application from the law offices of Jameson Pepple Cantu PLLC for a site-specific zoning reclassification from RS-7200 Single Family Residential Zone to RM-1,800 Residential: Multifamily Zone for the Saddlebrook Apartments property. This rezone application is a Type IV land use action, and is considered by the City Council in a quasi-judicial process (additional information provided below under ‘Process and Procedure’).

Per Washington Administrative Code (WAC) 197-11-800(6)(c)(ii), adopted by reference in DMMC 16.05.330, a site specific rezone that is consistent with and does not require an amendment to the comprehensive plan is categorically exempt from a State Environmental Policy Act (SEPA) threshold determination.

The Washington State Department of Commerce 60-day notice to amend comprehensive plan and development regulations is not required for site-specific rezones that do not include an amendment to the comprehensive plan. They are considered a project permit application and not a development regulation amendment. RCW 36.70B.030(7) states that “A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.”

The staff has reviewed the application for compliance with the site-specific rezone criteria contained in DMMC 18.30.080 and finds the application consistent with these criteria:

1. The amendment meets the concurrency requirements set forth in chapter 36.70A RCW;
City Response: The proposal is a non-project application to bring the zoning in line with the Comprehensive Plan. No additional construction requiring additional public facilities or services is proposed.
2. The amendment is consistent with the Comprehensive Plan;
Response: This action will bring the zoning into compliance with the preferred MF land use designation for the property in the City’s adopted Comprehensive Plan.
3. The amendment bears a substantial relation to the public health, safety and welfare;
Response: The rezone of the property bears a substantial relation to the public health, safety and welfare as expressed in the City’s vision for growth in the adopted comprehensive plan. Future development will be reviewed for consistency with the development standards of the RM-1,800 Zone, assuring further consideration of the public welfare as set forth in the City’s regulations.

4. The amendment is warranted in order to achieve consistency with the Comprehensive Plan or because of a need for additional property in the proposed zoning district classification, or because the proposed zoning classification is appropriate for reasonable development of the subject property;

Response: This action will bring the zoning into compliance with the preferred MF land use for the property in the City's adopted Comprehensive Plan.

5. The property in question is adjacent and contiguous (which shall include corner touches and property located across a public right-of-way) to property of the same or higher zoning classification;

Response: The property is bordered by RS-7200 Single Family Residential Zoning to the north, west and south, and W-C Woodmont Commercial Zoning to the east. The proposed RM-1,800 Residential: Multifamily Zoning and existing development provides a transition between lower density single family zoning and more intense commercial and mixed use zoning.

6. The amendment will not be materially detrimental to uses or property in the immediate vicinity of the subject property;

Response: The proposal is a non-project application to bring the zoning and existing development in line with the Comprehensive Plan. No additional construction is proposed.

7. The amendment has merit and value for the community as a whole.

Response: The amendment will bring the zoning and existing development in line with the Comprehensive Plan. This in turn will help further the economic vision for the City by promoting development in a manner that strengthens community sustainability, livability, business vitality, and employment and housing capacity.

Process and Procedure

As stated above, site specific rezones require a "quasi-judicial" public hearing before the City Council. When the City Council acts in a quasi-judicial manner, the Council is obliged to objectively determine facts and draw conclusions from them so as to provide the basis of an official action. Quasi-judicial proceedings are governed by the same strict fairness rules that apply to cases in court.

In a quasi-judicial public hearing, the Appearance of Fairness Doctrine applies to the decision-makers. The Appearance of Fairness Doctrine is a rule of law requiring government decision-makers to conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact. It was developed by the courts as a method of insuring that due process protections, which normally apply in courtroom settings, extend to certain types of administrative decision-making hearings, such as rezones of specific property. The doctrine attempts to make sure that all parties to an argument receive equal treatment.

The doctrine requires that adjudicatory or quasi-judicial public hearings meet two requirements:

- They must be procedurally fair.
- They must appear to be conducted by impartial decision-makers.

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless that member:

- a. Places on the record the substance of such oral or written communications; and

- b. Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is taken or considered on that subject.

Prior to any quasi-judicial hearing, each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such facts to the City Manager who will seek the opinion of the City Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists. The City Manager shall communicate such opinion to the Councilmember and to the Presiding Officer.

Alternatives

The City Council may:

1. Enact the proposed Draft Ordinance.
2. Decline to enact the proposed Draft Ordinance. This would result in the property remaining inconsistent with the City's Comprehensive Plan Preferred Land Use Designation of MF.

Financial Impact

The zoning reclassification will bring the zoning and existing development in line with the Comprehensive Plan and further the economic vision for the City by promoting development in a manner that strengthens community sustainability, livability, business vitality, and employment and housing capacity, and provide consistency with the preferred land use identified in the Des Moines Comprehensive Plan. Private development is a source of structural revenue for the city based on property tax, business license fee, business and occupation tax, utility tax and others.

Recommendation or Conclusion

Staff recommends that the City Council enact Draft Ordinance No. 24-018.

CITY ATTORNEY'S FIRST DRAFT 03/14/2024

DRAFT ORDINANCE NO. 24-018

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, amending the official zoning map of the City of Des Moines in order to effectuate a zoning reclassification for tax parcel 2822049007 from RS-7200 Single Family Residential Zone to RM-1,800 Residential: Multifamily Zone for the Saddlebrook Apartments property.

WHEREAS, the City has received an application for a rezone for tax parcel 2822049007, and

WHEREAS, the application requests to reclassify the zoning for the subject parcels from RS-7200 Single Family Residential Zone to RM-1,800 Residential: Multifamily Zone, and

WHEREAS, the property's current zoning classification of RS-7200 Single Family Residential Zone is inconsistent with the Multifamily preferred land use designation for the property in the City's adopted Comprehensive Plan, and

WHEREAS, the rezone to RM-1,800 Residential: Multifamily Zone will bring the zoning designation of the property into conformance with the comprehensive plan preferred land use designation, and

WHEREAS, this application is categorically exempt from SEPA threshold determination requirements pursuant to WAC 197-11-800(6)(c)(ii), and

WHEREAS, pursuant to DMMC 18.20.210, the City Council consideration of a site-specific rezone is a quasi-judicial process and requires a public hearing to receive public comment regarding the proposal, and

WHEREAS, notice of the public hearing was provided on February 29, 2024 in accordance with the DMMC, and

WHEREAS, a public hearing was held on March 14, 2024 and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the site-specific rezone and associated zoning map amendment contained in this Ordinance meets the criteria of DMMC 18.30.080 and has merit for the community as a whole; now therefore,

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

Sec. 1. Area of Zone Reclassification. The zoning classification of the following legally described property is amended from RS-7200: Single Family Residential Zone to RM-1,800 Residential: Multifamily Zone:

PARCEL A
THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING WESTERLY OF PACIFIC HIGHWAY SOUTH, FORMERLY STATE ROAD NO. 1;

EXCEPT THAT PORTION CONVEYED TO KING COUNTY BY DEEDS RECORDED UNDER RECORDING NUMBER 5954738 AND RECORDING NUMBER 1026129; AND

EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NUMBER 8612230133;

EXCEPT THAT PORTION, HEREINAFTER CALLED TRACT A, DESCRIBED AS FOLLOWS:

TRACT A:

BEGINNING AT THE NORTHEAST CORNER OF SAID SUBDIVISION;
THENCE SOUTH 01°13'48" WEST ALONG THE EAST LINE OF SAID SUBDIVISION, A DISTANCE OF 330.23 FEET TO INTERSECT THE WESTERLY MARGIN OF SAID PACIFIC HIGHWAY SOUTH, FORMERLY STATE ROAD NO. 1;
THENCE SOUTH 20°43'50" WEST ALONG SAID MARGIN A DISTANCE OF 157.95 FEET;
THENCE NORTH 87°43'12" WEST PARALLEL WITH THE NORTH LINE OF SAID SUBDIVISION A DISTANCE OF 823.06 FEET;
THENCE NORTH 01°13'48" EAST PARALLEL WITH THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 480.09 FEET TO THE NORTH LINE OF SAID SUBDIVISION;
THENCE SOUTH 87°43'12" EAST ALONG SAID LINE, A DISTANCE OF 875.80 FEET TO THE POINT OF BEGINNING; AND

EXCEPT THAT PORTION LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF PACIFIC HIGHWAY SOUTH, FORMERLY STATE HIGHWAY NO. 1, WITH THE NORTH LINE OF SOUTH 260TH STREET AS CONVEYED TO KING COUNTY BY DEED RECORDED UNDER RECORDING NUMBER 1026129, SAID STREET HAVING A HALF WIDTH OF 30.00 FEET AS A RESULT OF SAID CONVEYANCE;
THENCE WESTERLY ALONG SAID NORTH LINE OF SOUTH 260TH STREET 300.00 FEET TO THE TRUE POINT OF BEGINNING OF THE LINE DESCRIBED HEREIN;
THENCE NORTHEASTERLY AND PARALLEL WITH SAID WEST LINE OF PACIFIC HIGHWAY SOUTH A DISTANCE OF 856 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE ABOVE DESCRIBED TRACT "A" AND THE TERMINUS OF THE LINE DESCRIBED HEREIN;
(ALSO KNOWN AS LOT A KING COUNTY LOT LINE ADJUSTMENT NO. 8809016).

PARCEL B:
NON-EXCLUSIVE EASEMENTS FOR ACCESS AND UTILITIES AS MORE PARTICULARLY SET FORTH IN THAT CERTAIN BARGAIN AND SALE DEED RECORDED UNDER RECORDING NUMBER 9206291144.

PARCEL C:
AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS ESTABLISHED BY EASEMENT FOR ACCESS AND UTILITIES RECORDED UNDER RECORDING NUMBER 9303191626.

Sec. 2. DMMC 18.10.050, *Adoption of official zoning map*, and section 35 of Ordinance No. 1591 as amended by section 13 of Ordinance No. 1601 as amended by section 9 of Ordinance No. 1618-A as amended by section 2 of Ordinance No. 1655 as amended by section 2 of Ordinance No. 1660 as amended by section 3 of Ordinance No. 1663 as amended by section 2 of Ordinance No. 1704 are each amended to read as follows:

18.10.050 Adoption of official zoning map. The map filed in the City Clerk's office and marked Exhibit "A" to Draft Ordinance 24-018 and

Ordinance No. _____
Page 4 of 6

adopted _____, 2024, constitutes the zoning map for the City. The map referenced herein supersedes all previously adopted maps. If the designations of the map are found to be in conflict with other land use designations, the map is deemed to control.

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 approval by the Des Moines City Council in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Ordinance No. _____
Page 5 of 6

Published: _____

Ordinance No. _____
Page 6 of 6

EXHIBIT "A"
PLACEHOLDER

ATTACHMENT 2

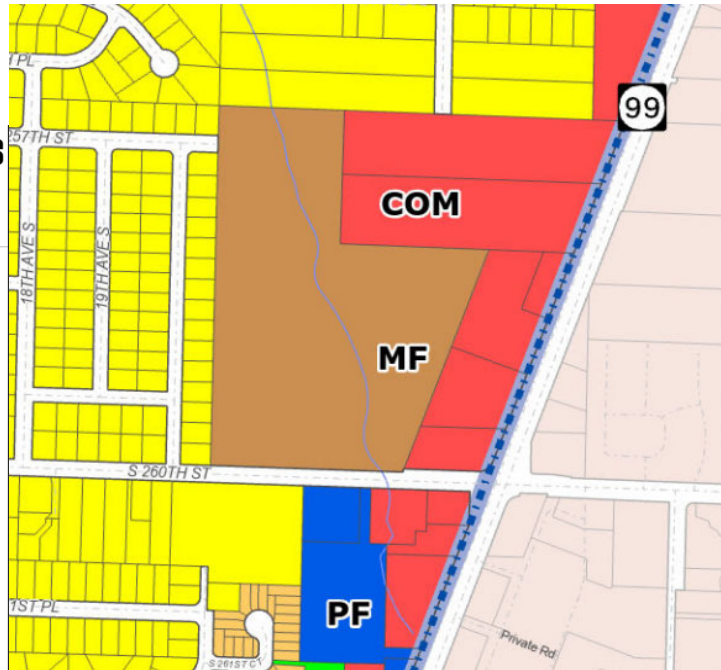
City of Des Moines Comprehensive Plan Preferred Land Use

RESIDENTIAL

- MF - Multifamily
- PR-R - Pacific Ridge Residential
- SF - Single Family
- T - Townhome
- TC-R - Transit Community Residential
- TC-T - Transit Community Townhome

COMMERCIAL

- BP - Business Park
- COM - Commercial
- IC - Institutional Campus
- PARK - Park
- PF - Public Facility
- PR-C - Pacific Ridge Commercial
- PR-M - Pacific Ridge Mixed
- TC-M - Transit Community Mixed



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Property Tax Levy Lid Lift

ATTACHMENTS:
1. none

FOR AGENDA OF: March 14, 2024

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: March 6, 2024

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- Legal /s/MH
- Finance *[Signature]*
- Courts _____
- Police _____

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

Purpose and Recommendation

The purpose of this Agenda Item is for informational purposes for the City Council. A recommendation from the Finance Committee is pending.

Suggested Motion

No motion is required.

Background

Taxing jurisdictions can place a measure on the ballot to increase a property tax levy more than the statutory limit of 1% per year; this is a “levy lid lift”. A simple majority is required to pass a ballot measure. This topic is currently being discussed in the Finance Committee and a recommendation for a levy lid lift ballot is possible.

Discussion

Taxing districts with a population of 10,000 or more may not increase the *total levy amount* collected from current assessed valuation by more than 1% annually or the rate of inflation, whichever is lower. However, if the inflation rate is below 1%, these jurisdictions may adopt resolutions of “substantial need” to increase the levy up to 1 percent.

For example, if inflation is 4%, then the City can only increase the total levy amount by no more than 1%. No resolution of “substantial need” is required.

If inflation is .75%, then the City can only increase the total levy amount by no more than .75% without a resolution of “substantial need”. However, the City Council can approve a resolution of “substantial need” and increase the total levy amount by 1%.

As the Municipal Research and Services Center (MRSC) states, “The 101% limit obviously restricts revenue growth, especially for jurisdictions that are heavily dependent on property taxes and whose costs are increasing more than 1% per year due to inflation, salary and benefits costs, and other factors.” Property taxes are the top revenue source for the City of Des Moines. The City’s General Fund expenditures increased 6% from 2021 to 2022 and another 13% from 2022 to 2023. The City of Des Moines clearly fits the description put forth by MRSC.

There are two ways for a jurisdiction to increase its regular levy above the 1% limit:

- **Banked capacity:** A jurisdiction may take *less* than the maximum increase in any given year and “bank” the remaining capacity to use in the future, adding this capacity to the 1% increase.
- **Levy lid lift:** A taxing jurisdiction may seek voter approval to increase its levy more than 1%, up to the statutory maximum rate, for a specified amount of time.

What is a Levy Lid Lift?

A taxing jurisdiction that is collecting less than its maximum statutory levy rate may ask a simple majority of voters to “lift” the total levy amount collected from current assessed valuation by more than 1% ([RCW 84.55.050](#) – also see [WAC 458-19-045](#), which provides a better understanding of the process than the statute). The new levy rate cannot exceed the maximum statutory rate.

Levy lid lifts may generate revenue for any purpose, but if the amount of the increase for a particular year would require a levy rate above the statutory maximum tax rate, the assessor will levy only the maximum amount allowed by law.

Types of Levy Lid Lifts

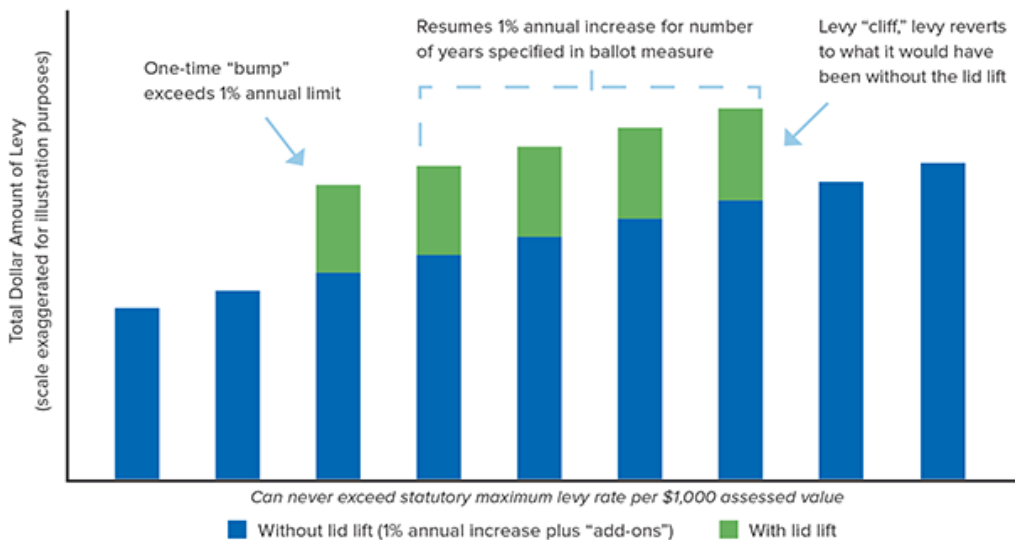
- Single-Year
 - Temporary
 - Permanent
- Multi-year
 - Temporary
 - Permanent

There are two types of levy lid lifts: single-year lifts (sometimes known as “one-year,” “one-bump,” “basic” or “original” lifts) and multi-year lifts. However, these names can be confusing, since “single-year” levy lid lifts typically last for multiple years too.

A good way to think of the difference between "single-year" and "multi-year" lid lifts is: How many years can the total levy increase by more than 1 percent?

With a single-year lid lift, a taxing district can exceed the 1% annual limit for one year only, and then future increases are limited to 1% (or inflation) for the remainder of the levy. With a multi-year lid lift, a taxing district can exceed the 1% annual limit for up to 6 consecutive years.

SINGLE-YEAR TEMPORARY LEVY LID LIFT



With a temporary single-year lid lift, the levy lid bumps up more than 1% in the first year, and then that amount is used to calculate all subsequent 1% levy limitations until the measure expires. A temporary lid lift can be used for any purpose and last for any number of years, but if used to pay debt service it may not exceed nine years.

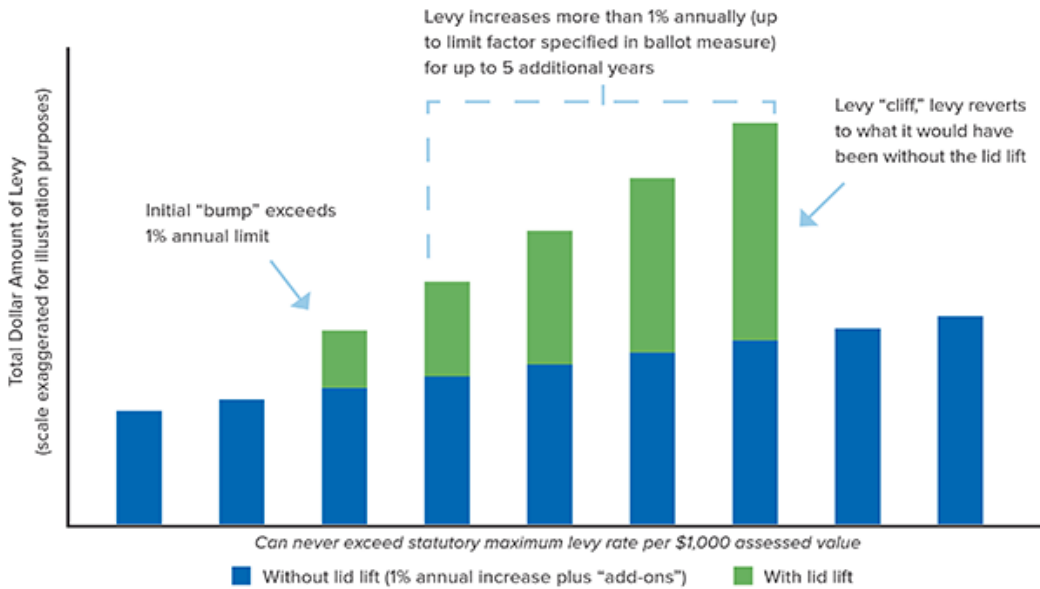
When the lid lift expires, the levy lid reverts to what it *would have been* if the levy lid lift never existed and the jurisdiction had increased its levy by the maximum allowable amount each year in the meantime ([RCW 84.55.050\(5\)](#)).

SINGLE-YEAR PERMANENT LEVY LID LIFT



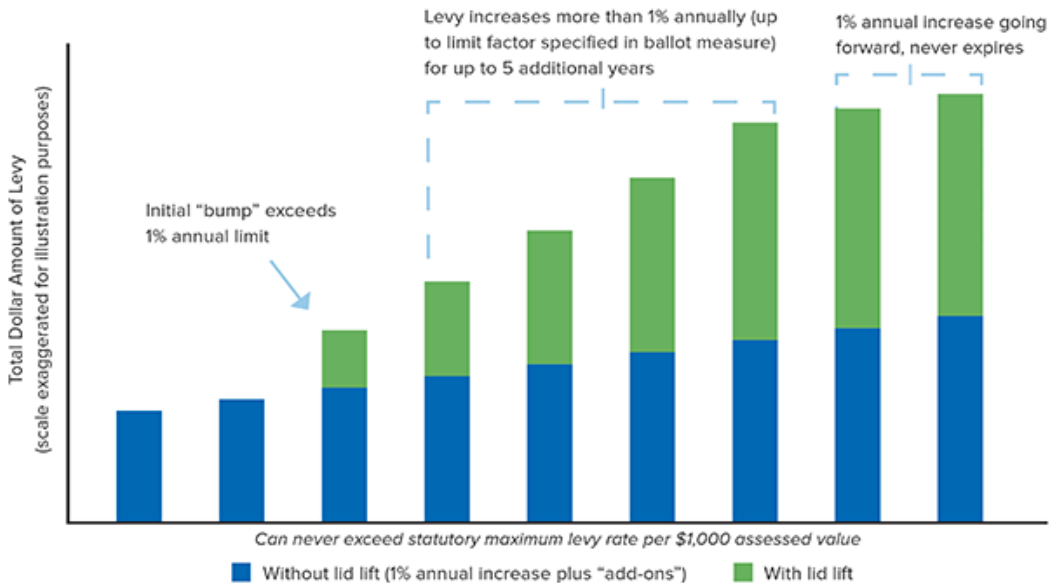
With a permanent single-year lid lift, the levy lid bumps up more than 1% in the first year, and then that amount is used to calculate all future 101% levy limitations. The measure never expires and the levy lid never reverts. However, future annual increases may not exceed 1% without going to the voters for another lid lift.

MULTI-YEAR TEMPORARY LEVY LID LIFT



With a temporary multi-year lid lift, the levy lid bumps up more than 1% each year (subject to the limit factor) for up to six years. When the lid lift expires, the levy lid reverts to what it *would have been* if the levy lid lift never existed and the jurisdiction had increased its levy by the maximum allowable amount each year in the meantime ([RCW 84.55.050\(5\)](#)).

MULTI-YEAR PERMANENT LEVY LID LIFT



Similarly, with a permanent multi-year lid lift the levy lid bumps up more than 1% each year (subject to the limit factor) for up to six years. However, the lid lift does not revert and the maximum levy is then used as the base to calculate all future 1% levy limitations.

Multi-Year Limit Factor/Inflation Index

A multi-year lid lift must identify a maximum “limit factor” which the total levy amount may not exceed in subsequent years (stated as an annual percent increase or a specific inflation index). The limit factor does not have to be the same for each year.

The main factor to consider when choosing an inflator is how much your assessed valuations are increasing. For instance, if a city seeks to raise its levy lid to its maximum statutory rate of \$3.10 per \$1,000 assessed value, and assessed valuations are rising about 6% annually, the city might want to establish an annual limit factor of 6% (sometimes expressed as 106%) in an attempt to maintain the \$3.10 levy rate. (If the city uses a limit factor of less than 6% in that situation, the levy rate will likely fall in subsequent years as the increase in current assessed valuation outpaces the annual levy lid increase.)

Ballot Measure Requirements

All levy lid lifts require a simple majority (50% plus one) for passage. Levy lid lifts do *not* have any validation (minimum voter turnout) requirements. However, there are slightly different ballot requirements for single-year and multi-year lid lifts.

Single-Year Lid Lift Ballot Requirements

A single-year lid lift ballot measure must:

- State the *maximum tax rate* to be imposed in the first year (for instance, \$1.50 per \$1,000 AV).
- If temporary, state the total duration of the levy (number of years).
- If permanent, state that it is permanent or that the dollar amount of the levy will be used for the purpose of computing the limitations for subsequent levies.
- State the exemption for senior citizens and persons with disabilities under [RCW 84.36.381](#), if the jurisdiction wishes to exempt these individuals (*cities and counties only*)

The ballot measure does not have to state:

- The purpose, although doing so is a good idea
- The *increase* in the levy rate (for instance, an increase of \$0.20 per \$1,000 AV), although some jurisdictions do so
- The maximum total levy *amount* (for instance, a total levy amount of \$300,000)

Multi-Year Lid Lift Ballot Requirements

A multi-year lid lift ballot measure must:

- State the total levy duration (number of years)
- If permanent, state that it is permanent or that the dollar amount of the levy will be used for the purpose of computing the limitations for subsequent levies.
- State the maximum tax *rate* to be collected in the first year (for instance, \$1.50 per \$1,000 AV)
- State the *limit factor* to be used for all subsequent years (stated as an annual percent increase or inflation index). The amounts do not need to be the same for each year.
- State the exemption for senior citizens and persons with disabilities under [RCW 84.36.381](#), if the jurisdiction wishes to exempt these individuals (*cities and counties only*)

The ballot measure *cannot* state the maximum levy *rate* for subsequent years after the first year.

Which Option is Better?

The answer, of course, is “it depends”. There are several factors that may impact the decision of single-year vs. multi-year lid lifts. Here are a few to consider:

- How much money the taxing district needs to raise
- What the revenue is needed for, and for how long (for instance, continued operating costs versus a capital project that will only last a few years)
- How quickly the taxing district’s costs, and property values, are increasing
- The desired election date (special, primary, or general)
- How it’s perceived that voters will respond to the different alternatives (for instance, a permanent versus temporary tax)

The multi-year lid lift is slightly more restrictive in its uses, since the purpose must be stated in the ballot title and, for jurisdictions in King County, there may be supplanting restrictions. However, as stated earlier it is a good idea to state the purpose even if it is not required.

Revenue impact of increased rates

In 2023, the City of Des Moines property tax levy rate was \$.90262 per \$1,000 of assessed value. The resulting levy for the City was \$5,586,671. Below is a schedule of what the levy could have been with lifted rates:

			Increase over actual 2023
Rate	Levy		Levy amount
\$ 1.10	\$ 6,808,334	\$	1,221,663
\$ 1.15	\$ 7,117,804	\$	1,531,132
\$ 1.20	\$ 7,427,274	\$	1,840,602
\$ 1.25	\$ 7,736,743	\$	2,150,072
\$ 1.30	\$ 8,046,213	\$	2,459,542
\$ 1.35	\$ 8,355,683	\$	2,769,011
\$ 1.40	\$ 8,665,153	\$	3,078,481

It should be noted that annual assessed values can increase or decrease from year-to-year. Therefore, choosing a rate for a levy lid lift is more “art” than “science”; meaning the impact of the rate increase is more of a moving target than a direct correlation.

Impact to Property Tax Payer

Below is an example of an increase to a property tax bill if the 2023 levy rate was \$1.30 instead of the \$.90262.

Property Value	Property Tax		Increase
	\$.90262 Rate	\$1.30 Rate	
\$ 400,000	\$ 361	\$ 520	\$ 159
\$ 600,000	\$ 542	\$ 780	\$ 238
\$ 800,000	\$ 722	\$ 1,040	\$ 318
\$ 1,000,000	\$ 903	\$ 1,300	\$ 397
\$ 1,200,000	\$ 1,083	\$ 1,560	\$ 477
\$ 1,400,000	\$ 1,264	\$ 1,820	\$ 556
\$ 1,600,000	\$ 1,444	\$ 2,080	\$ 636

The median property value in the City of Des Moines is \$521,000.

Recommendation

The Finance Committee passes along a recommendation of a permanent levy lid lift for the August ballot with a suggested rate of \$1.35 per \$1,000 of assessed value in year 1. The determination between a single-year levy lid lift and a multi-year lid lift would be subject to the direction of the full City Council should the Council support placing a ballot measure on the ballot.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Biennial Budgeting

ATTACHMENTS:

- 1. Draft Ordinance No. 24-016
- 2. Appendix A – RCW 35A.34

Type text here

FOR AGENDA OF: March 14, 2024

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: March 6, 2024

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- Legal /s/MH
- Finance *[Signature]*
- 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 24-016, adopting a biennial budget process.

Suggested Motions

Motion 1: “I move to enact Draft Ordinance No. 24-016 relating to municipal finance, adopting a biennial budgeting cycle beginning with the 2025-2026 budget.”

Or

Motion 2: “I move to pass Draft Ordinance No. 24-016 to a second reading on March 28, 2024 for further City Council consideration.”

Background

Cities, towns, and counties in Washington State operate under either an annual budget (budgeting one year at a time) or biennial budget (budgeting in two-year intervals). Budgeting for a two-year biennium has been permitted for Washington cities since 1985 when the Municipal Biennial Budget Act was adopted. In a biennial budget cycle, a legislative body may approve an appropriation, or budget, for a full two-year term without subsequent action.

If a municipality decides to change from an annual budget cycle to a biennial budget cycle, an ordinance must be passed at least six months before the beginning of the biennium.

A biennium is required by law to start with an odd-numbered year. Cities that budget on a biennial basis must adopt a budget no later than December 31 of the preceding even-numbered year. Additionally, the city must review and modify the budget between September 1 and December 31 of the first (odd-numbered) year of the biennium.

Discussion

Annual budgeting and biennial budgeting each have their advantages and disadvantages. Below is a discussion of the advantages and disadvantages of biennial budgeting:

Commonly cited advantages

- Encourages a long-term planning focus over multiple years instead of just balancing the budget for a single year,
- Reducing the total amount of time spent budgeting over a two-year period and freeing up time for other projects in year two. In year two, all city departments would benefit from the time savings, and
- Budgets could be less politicized as the budgets would only be adopted in non-election years.

Commonly cited disadvantages

- More time and effort to develop the budget in year one,
- A perceived loss of control by the legislative body, since they are approving the budget for two years at a time,
- More difficulty and uncertainty forecasting revenues/expenditures further into the future, and
- Some jurisdictions spending too much time on budget amendments or the mid-biennium review and adjustment, eliminating any time savings in year two.

Biennial budgeting is a common practice in Washington State. Nearby cities that follow a biennial cycle include: Auburn, Bellevue, Bonney Lake, Burien, Federal Way, Fife, Issaquah, Kent, Maple Valley, Normandy Park, Puyallup, Renton, SeaTac, Sumner, Tacoma, Tukwila, and University Place.

Given the financial challenges facing the City, it is the opinion of Finance that the City could benefit greatly from a process that places emphasis on a longer-term perspective. Departments throughout the City could also focus on other projects in year two, which is a more efficient use of City resources.

Recommendation

Staff recommends enacting Draft Ordinance 24-016.

CITY ATTORNEY'S FIRST DRAFT 03/07/2024

DRAFT ORDINANCE NO. 24-016

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance; adopting a biennial budget for the City of Des Moines; adding a new chapter to Title 3 DMMC; and amending DMMC 2.28.060, 3.48.070, 3.48.150, 3.51.010, 3.51.101, 3.52.010, 3.56.010, 3.100.020, 18.240.070, and 18.240.120.

WHEREAS, the City of Des Moines is an Optional Municipal Code City governed under Title 35A RCW, and

WHEREAS, code cities are by default required to budget on an annual basis, governed by RCW chapter 35A.33, and

WHEREAS, the City of Des Moines since its inception has budgeted on an annual basis, and

WHEREAS, enormous quantities of staff time are spent over the course of several months every year producing a complete budget for the following year, and

WHEREAS, pursuant to RCW 35A.34.040, a code city is authorized by ordinance of the City Council to establish a biennial budget, and

WHEREAS, biennial budgeting reduces staff and Council time required to adopt a full budget every year, freeing time to pursue other projects, and

WHEREAS, biennial budgeting encourages cities to think strategically over multiple years rather than focusing on balancing the budget for a single year, and

WHEREAS, all neighboring cities and virtually all nearby cities have adopted biennial budgeting as a successful strategy, and

WHEREAS, the City Council finds that freeing up City resources that would otherwise be spent preparing budgets every year and the ability to plan long term will allow the City to better serves the residents of Des Moines, and

WHEREAS, the change to a biennial budget will require certain textual code amendments to accurately reflect the change, and

WHEREAS, the City Council finds that the adoption of this ordinance 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. New Section. A new section is added to Title 3 DMMC to read as follows:

Biennial Budget.

Pursuant to Chapter 35A.34 RCW, there is hereby established a biennial budget for the City of Des Moines, beginning with the biennium starting January 1, 2025. The 2025-2026 Biennial Budget and all subsequent budgets shall be prepared, considered, and adopted under the provisions of this chapter and Chapter 35A.34 RCW.

Sec. 2. New Section. A new section is added to Title 3 DMMC to read as follows:

Mid-Biennial Review.

Pursuant to Chapter 35A.34 RCW the City Council hereby provides for mid-biennial review and modification of each biennial budget. The modification shall occur no sooner than eight (8) months after the start, but no later than the conclusion of the first year of the biennium, as follows:

(1) No sooner than eight months after the start of the fiscal biennium, the City Manager shall prepare a proposed budget modification and shall provide for publication of notice of hearings consistent with publication of notices for adoption of other ordinances of the City of Des Moines.

(2) The City Manager's proposed budget modification shall be submitted to the City Council and shall be filed with the City

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Clerk as a public record to be made available to the public prior to consideration by the City Council.

(3) A public hearing regarding the modification shall be advertised at least once and shall be held at a regular City Council meeting no later than the first regular Council meeting in December and may be continued from time to time. At such a hearing or thereafter, the Council may consider a proposed ordinance to carry out such modifications, which such ordinance shall be subject to the provisions of Chapter 35A.34 RCW.

(4) A complete copy of the budget modification as adopted shall be transmitted to the state auditor and to the association of Washington cities.

Sec. 3. DMMC 2.28.060 and section 7 of Ordinance No. 610 as amended by section 2(7) (part) of Ordinance No. 1135 as amended by section 2 of Ordinance No. 1349 as amended by section 1 of Ordinance No. 1624 are each amended to read as follows:

Compensation. Compensation for the municipal court judge and magistrate shall be set in the ~~annual~~biennial budget ordinance of the city. Judges pro tem shall be compensated pro rata at the compensation rate of the municipal court judge. Commencing September 1, 2015, and thereafter on the first day of September of each successive year, the salary of the Des Moines municipal court judge shall automatically be adjusted to an amount equal to 95 percent of the salary of district court judges as set by the Washington Citizens' Commission on Salaries for Elected Officials for the succeeding year.

Sec. 4. DMMC 3.48.070 and section 25 of Ordinance No. 1144 as amended by section 1 of Ordinance No. 1189 as section 1 of Ordinance No. 1352 as amended by section 1 of Ordinance No. 1642 are each amended to read as follows:

Municipal capital and construction fund.

(1) There is created a "municipal capital and construction fund."

(2) The purpose of the municipal capital and construction fund is for the receipt and expenditure of moneys used to

finance local improvements, including those listed in RCW 35.43.040 as presently constituted or as may be subsequently amended.

(3) Moneys for the municipal capital and construction fund consist of taxes collected under the provisions of Ordinance No. 652 as amended, funds appropriated ~~annually and from time to time~~ by the City Council, and from such other sources as the City Council may determine for deposit in the municipal capital and construction fund.

(4) The municipal capital and construction fund excludes enterprise funds' and internal service funds' capital and construction activity.

Sec. 5. DMMC 3.48.150 and section 2 of Ordinance No. 1642 are each amended to read as follows:

Debt service fund.

(1) There is created a "debt service fund."

(2) The purpose of the debt service fund is for the receipt and expenditure of moneys used to pay for general governmental activities' debt service. Debt service for enterprise funds is paid by the enterprise funds.

(3) Moneys for the debt service fund consist of funds received from the State, appropriated ~~annually and from time to time~~ by the City Council, and from such other sources as the City Council may determine.

Sec. 6. DMMC 3.51.010 and section 1(part) of Ordinance No. 1638 are each amended to read as follows:

General provisions.

(1) Identity and Accounting. Except as otherwise provided in this chapter, each special revenue fund has a separate accounting and identity from other monetary resources of the City.

(2) Sources of Moneys. Except as otherwise provided in this chapter, each special revenue fund receives moneys restricted or designated for the fund's purpose. A substantial amount of each fund's revenues must come from restricted sources.

(3) Expenditures from Funds. Except as otherwise provided in this chapter, expenditures from special revenue funds must be made in accordance to the fund's restrictions.

(4) Transfers from Funds. Moneys in a special revenue fund may be transferred to another City fund as long as the expenditure by the other fund meets the requirements and restrictions related to the special revenue fund's restricted revenues.

(5) ~~Annual~~ Carryover. Except as otherwise provided in this chapter, moneys that have been deposited in each special revenue fund are maintained and carried forward at the end of each ~~budget year~~ fiscal biennium, including interest from investment earnings of the funds and excluding authorized expenditures.

Sec. 7. DMMC 3.51.101 and section 30 of Ordinance No. 1144 as amended by section 11(6) of Ordinance No. 1642 are each amended to read as follows:

Street fund.

(1) There is created a "street fund."

(2) The purpose of the street fund is for the receipt and expenditure of moneys used to construct or maintain streets.

(3) Moneys for the street fund consist of funds received from the state, appropriated ~~annually and from time to time~~ by the city council, and from such other sources as the city council may determine.

Sec. 8. DMMC 3.52.010 and section 32 of Ordinance No. 1144 as amended by section 4 of Ordinance No. 1642 are each amended to read as follows:

General provisions.

(1) Identity and Accounting. Except as otherwise provided in this chapter, each enterprise fund has a separate accounting and identity from other monetary resources of the City.

(2) Sources of Moneys. Except as otherwise provided in this chapter, each enterprise fund receives moneys predominately from external user fees.

(3) Expenditures from Funds. Except as otherwise provided in this chapter, expenditures from each enterprise fund are authorized by motion of the City Council for purposes and uses consistent with law.

(4) Transfers from Funds. Except as otherwise provided in this chapter, excess moneys in an enterprise fund may be not be transferred to another City fund.

(5) ~~Annual~~ Carryover. Except as otherwise provided in this chapter, moneys that have been deposited in each enterprise fund are maintained and carried forward at the end of each ~~budget—year~~ fiscal biennium, including interest from investment earnings of the funds and excluding authorized expenditures.

Sec. 9. DMMC 3.56.010 and section 39 of Ordinance No. 1144 are each amended to read as follows:

General Provisions.

(1) Identity and Accounting. Except as otherwise provided in this chapter, each internal service fund has a separate accounting and identity from other monetary resources of the city.

(2) Sources of Moneys. Except as otherwise provided in this chapter, each internal service fund receives moneys budgeted ~~annually~~ biennially by all city departments using the item or service described in the purpose of the fund.

(3) Expenditures from Funds. Except as otherwise provided in this chapter, expenditures from internal service funds are made by the city manager and as provided in the annual budget.

(4) Transfers from Funds. Except as otherwise provided in this chapter, excess moneys in an internal service fund may be transferred by motion of the city council to another city fund that the city council, in its discretion, deems appropriate.

(5) ~~Annual~~-Carryover. Except as otherwise provided in this chapter, moneys that have been deposited in each internal service fund are maintained and carried forward at the end of each ~~budget year~~fiscal biennium, including interest from investment earnings of the funds and excluding authorized expenditures.

Sec. 10. DMMC 3.100.020 and section 1(part) of Ordinance No. 1561 as amended by section 1 of Ordinance No. 1607 as amended by section 1 of Ordinance No. 1637 as amended by section 1 of Ordinance No. 1735 as amended by section 1 of Ordinance No. 1741 as amended by section 1 of Ordinance No. 1766 as amended by section 1 of Ordinance No. 1781 are each amended to read as follows:

Phased-in expenditure requirements created.

(1) For the calendar year of 2024, the total amount of one-time revenues to be used to fund the 2024 general fund budget shall not be restricted.

(2) For the ~~calendar year of 2025-2026~~ fiscal biennium and beyond, no one-time revenues shall be used to fund the general fund budget.

Sec. 11. DMMC 18.240.070 and section 586 of Ordinance No. 1591 are each amended to read as follows:

Appointment - Qualifications - Term and compensation.

(1) The Hearing Examiner is nominated by the City Manager or the City Manager's designee and confirmed by the City Council by majority vote.

(2) The deputy Hearing Examiner is nominated by the City Manager or the City Manager's designee upon recommendation of the Hearing Examiner and likewise confirmed by the City Council. Such deputy or examiner pro tem shall have the power to perform the duties of the Hearing Examiner whenever the Hearing Examiner is absent, has a conflict of interest, or otherwise so requests.

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

(4) The Hearing Examiner and deputy Hearing Examiner shall be appointed to their respective offices for a term which shall initially expire one year following the date of original appointment and thereafter expire four years following the date of each reappointment.

(5) The Hearing Examiner shall receive compensation at the rate set in the annual biennial budget ordinance of the City. Deputy Hearing Examiners shall receive compensation pro rata based on the rate set for the Hearing Examiner.

(6) The City Manager or the City Manager's designee is authorized to appoint a temporary Hearing Examiner for the City during such time as the regular position of Hearing Examiner is vacant. Such individual shall carry out the functions of the Hearing Examiner as described in this chapter. The temporary appointment authorized in this section shall not be construed as the initial term of appointment of the Hearing Examiner contemplated under this chapter. Such temporary appointment shall be for a period of no longer than six months.

Sec. 12. DMMC 18.240.120 and section 591 of Ordinance No. 1591 are each amended to read as follows:

Budget - Administrative support. The Hearing Examiner will be provided with such funds and administrative support as are

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adopted ~~annually~~ biennially by the City Council upon recommendation of the City Manager or the City Manager's designee. The Hearing Examiner will meet annually with the City Manager or the City Manager's designee for this purpose.

Sec. 13. Codification. Sections 1 and 2 of this Ordinance shall be codified as a new chapter in Title 3 DMMC entitled *Biennial budget*.

Sec. 14. 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. 15. Effective date. This Ordinance shall take effect and be in full force five (5) days after its final passage by the Des Moines City Council in accordance to law.

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

M A Y O R

APPROVED AS TO FORM:

Acting City Attorney

ATTEST:

Ordinance No. ____
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City Clerk

Published:

**Chapter 35A.34 RCW
BIENNIAL BUDGETS**

Sections

35A.34.010	Legislative intent.
35A.34.020	Application of chapter.
35A.34.030	Definitions.
35A.34.040	Biennial budget authorized—Limitations.
35A.34.050	Budget estimates—Submittal.
35A.34.060	Budget estimates—Classification and segregation.
35A.34.070	Proposed preliminary budget.
35A.34.080	Preliminary budget.
35A.34.090	Budget message—Hearings.
35A.34.100	Budget—Notice of hearing.
35A.34.110	Budget—Hearing.
35A.34.120	Budget—Adoption.
35A.34.130	Budget—Mid-biennial review and modification.
35A.34.140	Emergency expenditures—Nondebatable emergencies.
35A.34.150	Emergency expenditures—Other emergencies—Hearing.
35A.34.160	Emergency expenditures—Warrants—Payment.
35A.34.170	Registered warrants—Payment.
35A.34.180	Adjustment of wages, hours and conditions of employment.
35A.34.190	Forms—Accounting—Supervision by state.
35A.34.200	Funds—Limitations on expenditures—Transfers and adjustments.
35A.34.205	Administration, oversight, or supervision of utility— Reimbursement from utility budget authorized.
35A.34.210	Liabilities incurred in excess of budget.
35A.34.220	Funds received from sales of bonds and warrants— Expenditures program—Federal tax law.
35A.34.230	Revenue estimates—Amount to be raised by ad valorem taxes.
35A.34.240	Funds—Quarterly report of status.
35A.34.250	Contingency fund—Creation.
35A.34.260	Contingency fund—Withdrawals.
35A.34.270	Unexpended appropriations.
35A.34.280	Violations and penalties.

RCW 35A.34.010 Legislative intent. See RCW 35.34.010.

RCW 35A.34.020 Application of chapter. This chapter applies to all code cities which have by ordinance adopted this chapter authorizing the adoption of a fiscal biennium budget. [1985 c 175 § 34.]

RCW 35A.34.030 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Clerk" includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title the officer may be known in any code city.

(2) "Department" includes each office, division, service, system, or institution of the city for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(3) "Legislative body" includes the council, commission, or any other group of officials serving as the legislative body of a code city.

(4) "Chief administrative officer" includes the mayor of cities having a mayor-council plan of government, the commissioners in cities having a commission plan of government, the manager, or any other city official designated by the charter or ordinances of such city under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager, or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(5) "Fiscal biennium" means the period from January 1 of each odd-numbered year through December 31 of the next succeeding even-numbered year.

(6) "Fund" and "funds" where clearly used to indicate the plural of "fund" means the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" where not used to indicate the plural of "fund" means money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined in this chapter, municipal accounting terms used in this chapter have the meaning prescribed by the state auditor pursuant to RCW 43.09.200. [1985 c 175 § 35.]

"Fiscal biennium" defined: RCW 1.16.020.

RCW 35A.34.040 Biennial budget authorized—Limitations. All code cities are authorized to establish by ordinance a two-year fiscal biennium budget. The ordinance shall be enacted at least six months prior to commencement of the fiscal biennium and this chapter applies to all code cities which utilize a fiscal biennium budget. Code cities which establish a fiscal biennium budget are authorized to repeal such ordinance and provide for reversion to a fiscal year budget. The ordinance may only be repealed effective as of the conclusion of a fiscal biennium. However, the city shall comply with chapter 35A.33 RCW in developing and adopting the budget for the first fiscal year following repeal of the ordinance. [1985 c 175 § 36.]

RCW 35A.34.050 Budget estimates—Submittal. On or before the second Monday of the fourth month prior to the beginning of the city's next fiscal biennium, or at such other time as the city may provide by ordinance or charter, the clerk shall notify in writing the head of each department of a city to file with the clerk within fourteen days of the receipt of such notification, detailed estimates of the probable revenue from sources other than ad valorem taxation and of all expenditures required by the department for the ensuing fiscal biennium. The notice shall be accompanied by the proper forms provided by the clerk, prepared in accordance with the requirements and classification established by the state auditor. The clerk shall prepare the estimates for interest and debt redemption requirements and all other estimates, the preparation of which falls properly within the duties of the clerk's office. The chief administrative

officers of the city shall submit to the clerk detailed estimates of all expenditures proposed to be financed from the proceeds of bonds or warrants not yet authorized, together with a statement of the proposed method of financing them. In the absence or disability of the official or person regularly in charge of a department, the duties required by this section shall devolve upon the person next in charge of such department. [1995 c 301 § 55; 1985 c 175 § 37.]

RCW 35A.34.060 Budget estimates—Classification and segregation.

All estimates of receipts and expenditures for the ensuing fiscal biennium shall be fully detailed in the biennial budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington finance officers association, the association of Washington cities, and the association of Washington city managers. [1995 c 301 § 56; 1985 c 175 § 38.]

RCW 35A.34.070 Proposed preliminary budget. On or before the first business day in the third month prior to the beginning of the biennium of a city or at such other time as the city may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the city shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the city for the ensuing fiscal biennium, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal biennium, the estimated receipts for the current fiscal biennium, and the estimated receipts for the ensuing fiscal biennium, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal biennium. However, if the city was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' revenues to reflect actual and estimated receipts as if it had previously utilized a biennial budgetary process.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal biennium, the appropriations for the current fiscal biennium, and the estimated expenditures for the ensuing fiscal biennium. However, if the city was not utilizing a fiscal biennium budget for the previous three years, it shall set forth its fiscal years' expenditures to reflect actual and estimated levels as if it had previously utilized a biennial budgetary process. The expenditure section shall further set forth separately the salary or salary range for each office, position, or job classification together with the title or position designation thereof. However, salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached and made a part of the budget document. [1985 c 175 § 39.]

RCW 35A.34.080 Preliminary budget. The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or additions to the reports of the department heads deemed advisable by such chief administrative officer. At least sixty days before the beginning of the city's next fiscal biennium the chief administrative officer shall file it with the clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's next fiscal biennium. [1985 c 175 § 40.]

RCW 35A.34.090 Budget message—Hearings. (1) In every city, a budget message prepared by or under the direction of the city's chief administrative officer shall be submitted as a part of the preliminary budget to the city's legislative body at least sixty days before the beginning of the city's next fiscal biennium and shall contain the following:

- (a) An explanation of the budget document;
 - (b) An outline of the recommended financial policies and programs of the city for the ensuing fiscal biennium;
 - (c) A statement of the relation of the recommended appropriation to such policies and programs;
 - (d) A statement of the reason for salient changes from the previous biennium in appropriation and revenue items; and
 - (e) An explanation for any recommended major changes in financial policy.
- (2) Prior to the final hearing on the budget, the legislative body or a committee thereof shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs. [1985 c 175 § 41.]

RCW 35A.34.100 Budget—Notice of hearing. Immediately following the filing of the preliminary budget with the clerk, the clerk shall publish a notice once a week for two consecutive weeks stating that the preliminary budget for the ensuing fiscal biennium has been filed with the clerk, that a copy thereof will be made available to any taxpayer who will call at the clerk's office therefor, that the legislative body of the city will meet on or before the first Monday of the month next preceding the beginning of the ensuing fiscal biennium for the purpose of fixing the final budget, designating the date, time, and place of the legislative budget meeting, and that any taxpayer may appear thereat and be heard for or against any part of the budget. The publication of the notice shall be made in the official newspaper of the city if there is one, otherwise in a newspaper of general circulation in the city. If there is no newspaper of general circulation in the city, then notice may be made by posting in three public places fixed by ordinance as the official places for posting the city's official notices. [1985 c 175 § 42.]

RCW 35A.34.110 Budget—Hearing. The legislative body shall meet on the day fixed by RCW 35A.34.100 for the purpose of fixing the final

budget of the city at the time and place designated in the notice thereof. Any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day but not later than the twenty-fifth day prior to commencement of the city's fiscal biennium. [1985 c 175 § 43.]

RCW 35A.34.120 Budget—Adoption. Following conclusion of the hearing, and prior to the beginning of the fiscal biennium, the legislative body shall make such adjustments and changes as it deems necessary or proper and, after determining the allowance in each item, department, classification, and fund, shall by ordinance adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal biennium. Such ordinances may adopt the final budget by reference. However, the ordinance adopting the budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the state auditor and to the association of Washington cities. [1995 c 301 § 57; 1985 c 175 § 44.]

RCW 35A.34.130 Budget—Mid-biennial review and modification. The legislative authority of a city having adopted the provisions of this chapter shall provide by ordinance for a mid-biennial review and modification of the biennial budget. The ordinance shall provide that such review and modification shall occur no sooner than eight months after the start nor later than conclusion of the first year of the fiscal biennium. The chief administrative officer shall prepare the proposed budget modification and shall provide for publication of notice of hearings consistent with publication of notices for adoption of other city ordinances. City ordinances providing for a mid-biennial review and modification shall establish procedures for distribution of the proposed modification to members of the city legislative authority, procedures for making copies available to the public, and shall provide for public hearings on the proposed budget modification. The budget modification shall be by ordinance approved in the same manner as are other ordinances of the city.

A complete copy of the budget modification as adopted shall be transmitted to the state auditor and to the association of Washington cities. [1995 c 301 § 58; 1985 c 175 § 45.]

RCW 35A.34.140 Emergency expenditures—Nondebtable emergencies. Upon the happening of any emergency caused by violence of nature, casualty, riot, insurrection, war, or other unanticipated occurrence requiring the immediate preservation of order or public health, or for the property which has been damaged or destroyed by accident, or for public relief from calamity, or in settlement of approved claims for personal injuries or property damages, or to meet mandatory expenditures required by law enacted since the last budget was adopted, or to cover expenses incident to preparing for or establishing a new form of government authorized or assumed after

adoption of the current budget, including any expenses incident to selection of additional or new officials required thereby, or incident to employee recruitment at any time, the city legislative body, upon the adoption of an ordinance, by the vote of one more than the majority of all members of the legislative body, stating the facts constituting the emergency and the estimated amount required to meet it, may make the expenditures therefor without notice or hearing. [1985 c 175 § 46.]

RCW 35A.34.150 Emergency expenditures—Other emergencies—Hearing. If a public emergency which could not reasonably have been foreseen at the time of filing the preliminary budget requires the expenditure of money not provided for in the budget, and if it is not one of the emergencies specifically enumerated in RCW 35A.34.140, the city legislative body before allowing any expenditure therefor shall adopt an ordinance stating the facts constituting the emergency and the estimated amount required to meet it and declaring that an emergency exists.

The ordinance shall not be voted on until five days have elapsed after its introduction, and for passage shall require the vote of one more than the majority of all members of the legislative body of the city.

Any taxpayer may appear at the meeting at which the emergency ordinance is to be voted on and be heard for or against the adoption thereof. [1985 c 175 § 47.]

RCW 35A.34.160 Emergency expenditures—Warrants—Payment. All expenditures for emergency purposes as provided in this chapter shall be paid by warrants from any available money in the fund properly chargeable with such expenditures. If, at any time, there is insufficient money on hand in a fund with which to pay such warrants as presented, the warrants shall be registered, bear interest, and be called in the same manner as other registered warrants as prescribed in RCW 35A.21.110. [1985 c 175 § 48.]

RCW 35A.34.170 Registered warrants—Payment. In adopting the final budget for any fiscal biennium, the legislative body shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made. However, no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature. In addition, all or any portion of the city's outstanding registered warrants may be funded into bonds in any manner authorized by law. [1985 c 175 § 49.]

RCW 35A.34.180 Adjustment of wages, hours and conditions of employment. Notwithstanding the appropriations for any salary or salary range of any employee or employees adopted in a final budget, the legislative body of any city may, by ordinance, change the wages,

hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes. [1985 c 175 § 50.]

RCW 35A.34.190 Forms—Accounting—Supervision by state. The state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information. [1995 c 301 § 59; 1985 c 175 § 51.]

RCW 35A.34.200 Funds—Limitations on expenditures—Transfers and adjustments. (1) The expenditures as classified and itemized in the final budget shall constitute the city's appropriations for the ensuing fiscal biennium. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the city, the expenditure of city funds or the incurring of current liabilities on behalf of the city shall be limited to the following:

(a) The total amount appropriated for each fund in the budget for the current fiscal biennium, without regard to the individual items contained therein, except that this limitation does not apply to wage adjustments authorized by RCW 35A.34.180;

(b) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal periods pursuant to RCW 35A.34.270;

(c) Funds received from the sale of bonds or warrants which have been duly authorized according to law;

(d) Funds received in excess of estimated revenues during the current fiscal biennium, when authorized by an ordinance amending the original budget; and

(e) Expenditures authorized by budget modification as provided by RCW 35A.34.130 and those required for emergencies, as authorized by RCW 35A.34.140 and 35A.34.150.

(2) Transfers between individual appropriations within any one fund may be made during the current fiscal biennium by order of the city's chief administrative officer subject to such regulations, if any, as may be imposed by the city legislative body. Notwithstanding the provisions of RCW 43.09.210 or of any statute to the contrary, transfers, as authorized in this section, may be made within the same fund regardless of the various offices, departments, or divisions of the city which may be affected.

(3) The city legislative body, upon a finding that it is to the best interests of the city to decrease, revoke, or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke, or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division, or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance. [1985 c 175 § 52.]

RCW 35A.34.205 Administration, oversight, or supervision of utility—Reimbursement from utility budget authorized. Whenever any code city apportions a percentage of the city manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the city, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the city's current expense fund for the value of such services. [1991 c 152 § 4.]

RCW 35A.34.210 Liabilities incurred in excess of budget. Liabilities incurred by any officer or employee of the city in excess of any budget appropriations shall not be a liability of the city. The clerk shall issue no warrant and the city legislative body or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund, except upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter. [1985 c 175 § 53.]

RCW 35A.34.220 Funds received from sales of bonds and warrants—Expenditures program—Federal tax law. Moneys received from the sale of bonds or warrants must be used for no other purpose than that for which they were issued. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued, it must be used for the payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred consistent with any applicable federal tax law requirements. [2011 c 210 § 5; 1985 c 175 § 54.]

Application to previously issued bonds—2011 c 210: See note following RCW 39.46.040.

RCW 35A.34.230 Revenue estimates—Amount to be raised by ad valorem taxes. At a time fixed by the city's ordinance or city charter, not later than the first Monday in October of the second year of each fiscal biennium, the chief administrative officer shall provide the city's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current biennium, together with estimates submitted by the clerk under RCW 35A.34.070. The city's legislative body and the city's administrative officer or the officer's designated representative shall consider the city's total anticipated financial requirements for the ensuing fiscal biennium, and the legislative body shall determine and fix by ordinance the amount to be raised the first year of the biennium by ad valorem taxes. The legislative body shall review such information as is provided by the chief administrative officer and shall adopt an ordinance establishing the amount to be raised by ad valorem taxes during the second year of the biennium. Upon adoption of

the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the county legislative authority as required by RCW 84.52.020. [1985 c 175 § 55.]

RCW 35A.34.240 Funds—Quarterly report of status. At such intervals as may be required by city charter or city ordinance, however, being not less than quarterly, the clerk shall submit to the city's legislative body and chief administrative officer a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal biennium to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources. [1985 c 175 § 56.]

RCW 35A.34.250 Contingency fund—Creation. Every city may create and maintain a contingency fund to provide moneys with which to meet any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the annual budget, or from which to provide moneys for those emergencies described in RCW 35A.34.140 and 35A.34.150. Such fund may be supported by a budget appropriation from any tax or other revenue source not restricted in use by law, or also may be supported by a transfer from other unexpended or decreased funds made available by ordinance as set forth in RCW 35A.34.200. However, the total amount accumulated in such fund at any time shall not exceed the equivalent of thirty-seven and one-half cents per thousand dollars of assessed valuation of property within the city at such time. Any moneys in the emergency fund at the end of the fiscal biennium shall not lapse except upon reappropriation by the council to another fund in the adoption of a subsequent budget. [1985 c 175 § 57.]

RCW 35A.34.260 Contingency fund—Withdrawals. No money shall be withdrawn from the contingency fund except by transfer to the appropriate operating fund authorized by a resolution or ordinance of the legislative body of the city, adopted by a majority vote of the entire legislative body, clearly stating the facts constituting the reason for the withdrawal or the emergency as the case may be, specifying the fund to which the withdrawn money shall be transferred. [1985 c 175 § 58.]

RCW 35A.34.270 Unexpended appropriations. All appropriations in any current operating fund shall lapse at the end of each fiscal biennium. However, this shall not prevent payments in the following biennium upon uncompleted programs or improvements in progress or on orders subsequently filled or claims subsequently billed for the purchase of material, equipment, and supplies or for personal or contractual services not completed or furnished by the end of the fiscal biennium, all of which have been properly budgeted and contracted for prior to the close of such fiscal biennium, but furnished or completed in due course thereafter.

All appropriations in a special fund authorized by ordinance or by state law to be used only for the purpose or purposes therein specified, including any cumulative reserve funds lawfully established in specific or general terms for any municipal purpose or purposes, or a contingency fund as authorized by RCW 35A.34.250, shall not lapse, but shall be carried forward from biennium to biennium until fully expended or the purpose has been accomplished or abandoned, without necessity of reappropriation.

The accounts for budgetary control for each fiscal biennium shall be kept open for twenty days after the close of such fiscal biennium for the purpose of paying and recording claims for indebtedness incurred during such fiscal biennium; any claim presented after the twentieth day following the close of the fiscal biennium shall be paid from appropriations lawfully provided for the ensuing period, including those made available by provisions of this section, and shall be recorded in the accounts for the ensuing fiscal biennium. [1985 c 175 § 59.]

RCW 35A.34.280 Violations and penalties. Upon the conviction of any city official, department head, or other city employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city charter or city ordinance, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, the official or employee shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [1985 c 175 § 60.]

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: RFP Executive Search Recruitment
Firm Selection

FOR AGENDA OF: March 14, 2024

DEPT. OF ORIGIN: Human Resources

DATE SUBMITTED: March 6, 2024

ATTACHMENTS:

- 1. None

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Emergency Management _____
- Finance _____
- Human Resources *AG*
- 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 the City Council to select the executive search recruitment firm from the six (6) vendors whom responded to the City’s Request for Proposal (RFP) to conduct the recruitment for the City Manager vacancy.

Motion

Motion 1: “I move to approve the selection of (Vendor’s Name) as the executive search recruitment firm to conduct the recruitment for the City Manager vacancy and authorize the Interim City Manager to enter into an agreement for their services.”

Background

On November 9, 2023, the Council transitioned former City Manager Michael Matthias to the role of Interim Chief Economic Director and appointed Tim George as the Interim City Manager. The Council indicated they would like to retain an executive search recruitment firm to conduct the recruitment of the new City Manager. The RFP was released on January 19, 2024 to solicit bids from these specialized vendors. The City received six (6) responses. On March 7, 2024, the Council was provided information regarding the vendors' references as well as an overview of the selection process.

Discussion

The Council has now had the opportunity to review the RFP's and evaluate the vendors based on the below criteria and sub categories to assist with identifying which executive search firm is best qualified to meet the needs of the Council to conduct the City Manager recruitment.

Evaluation Criteria

1. Adherence to RFP Instructions
 - a. Overall Quality and Presentation
 - b. Overall Response (Comprehensive Proposal)
 - c. Completeness of Vendor Response
2. Search Preparation/Assistance
 - a. Establishing Hiring Requirements with Hiring Authorities
 - b. Preparation of Recruitment Materials
 - c. Job Listing Placement
3. Recruitment Search Process
 - a. Candidate Evaluation Process
 - b. Candidate Search Methodology
 - c. Geographic Reach
 - d. Technology and Tools
 - e. Communication
 - f. Flexibility and Adaptability
4. Proposed Timeline for Recruitment ("Start to Finish")
 - a. Timeframe to Start Recruitment within (30) Days
 - b. Realistic Timeframes for Listing and Selection of Candidate
5. Relevant Knowledge, Experience and Qualification of Firm and Team
 - a. Industry Sector Specialization
 - b. Demonstrates Related Experience of Successfully Placing Candidates
 - c. Firm's Capacity to Handle Search Efficiently
6. References (Customer Service/Responsiveness, Candidate Pool, Experience placing similar roles)
 - a. Customer Service/Responsiveness
 - b. Candidate Sourcing and Evaluation Process
 - c. Recruitment Search Process
 - d. Reporting and Communication
 - e. Proven Track Record of Successful Placement of Candidates
 - f. Overall Customer Satisfaction
7. Cost
 - a. Competitive Pricing for Services Offered
 - b. Additional Fees Considerations
 - c. Terms for Unsuccessful Placement (Refund or Credit)

Alternatives

Reject the RFP's for executive search recruitment firms that were received and solicit again for new proposals.

Financial Impact

The actual costs will be dependent on the firm that is selected by Council.

Recommendation

Staff recommends approval of the motion.