

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, October 19, 2023 - 6:00 PM**

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

COMMENTS FROM THE PUBLIC

COMMITTEE CHAIR REPORT

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

CONSENT AGENDA

Item 1. APPROVAL OF VOUCHERS [Page 4](#)

Motion is to approve the payment vouchers through October 05, 2023 and payroll transfers through October 05, 2023 in the attached list and further described as follows:

EFT Vendor Payments	#8982-9079	\$ 509,737.17
Wires	#2336-2360	\$2,492,417.59
Accounts Payable Checks	#165303-165323	\$ 69,857.83
Payroll Checks	#19752-19755	\$ 2,200.39
Direct Deposit	#7026-7197	\$ 449,682.43

Total Checks and Wires for A/P & Payroll: \$3,523.895.41

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES [Page 5](#)

Motion is to approve the September 28, 2023 City Council Regular Meeting Minutes.

[Draft 09.28.2023 Minutes](#)

- Item 3. 2023-2025 RECYCLING PROGRAM FUNDING [Page 12](#)
Motion is to authorize the City Manager to sign the 2023-2025 Local Solid Waste Financial Assistance Grant agreement between the City of Des Moines and the Washington State Department of Ecology, substantially in the form as attached.
[2023-2025 Recycling Program Funding](#)
- Item 4. INTERLOCAL AGREEMENT WITH CITY OF NORMANDY PARK FOR MUNICIPAL COURT SERVICES [Page 34](#)
Motion is to approve the Interlocal Agreement between the City of Normandy Park and the City of Des Moines for Municipal Court Services for the years 2024-2028 and authorize the City Manager to sign the Interlocal Agreement substantially in the form at submitted.
[Interlocal Agreement with City of Normandy Park for Municipal Court Services](#)
- Item 5. HEARING EXAMINER APPOINTMENT [Page 46](#)
Motion is to confirm the appointment of Alex Sidles as the City's Hearing Examiner and to authorize the City Manager to sign the professional services agreement with the Law Offices of Alex Sidles, PLLC substantially in the form as attached.
[Hearing Examiner Appointment](#)
- Item 6. 2024-2025 ON-CALL CONSULTANT AGREEMENTS FOR CIVIL ENGINEERING SERVICES [Page 54](#)
Motion is to approve the Consultant Services Contract for On-Call Civil Engineering Services (2024-2025) with Exeltech Consulting Inc., EBA Inc., KPFF Consulting Engineers., KPG PSOMAS, NV5, Parametrix, Pertee, and SCJ Alliance each up to \$1,250,000.00, and authorize the City Manager to sign the Consultant Services Contract substantially in the form as submitted.
[2024-2025 On-Call Consultant Agreements for Civil Engineering Services](#)
- Item 7. BLUEBERRY LANE III MODIFIED SHORT SUBDIVISION - FINAL PLAT [Page 73](#)
Motion is to concur with City staff approval of the final plat entitled "Blueberry Lane III", City File No. LUA2018-0067.
[Blueberry Lane III Modified Short Subdivision - Final Plat](#)
- Item 8. DRAFT RESOLUTION 23-0061 SETTING A DATE FOR PUBLIC HEARING FOR VACATION OF RIGHT-OF-WAY KNOWN AS 10TH AVE SOUTH [Page 83](#)
Motion is to adopt Draft Resolution No. 23-061 setting a public hearing on November 16, 2023, for a street vacation request relating to public right-of-way within the City of Des Moines.
[Draft Resolution 23-061 Setting a Date for Public Hearing for Vacation of Right-of-Way known as 10th Ave South](#)

Item 9. NORTH HILL ELEMENTARY WALKWAY IMPROVEMENTS PROJECT

[Page 89](#)

Motion 1 is to approve the Local Agency A&E Professional Services Consultant Agreement with Parametrix Inc. to provide engineering design and right-of-way acquisition services for the North Hill Elementary Walkway Improvements Project in the amount of \$723,704.24, and further authorize the City Manager to sign said Agreement substantially in the form as submitted.

Motion 2 is to accept the 2023-25 WSDOT Safe Routes to School Program grant for the North Hill Elementary Walkway Improvements project in the amount of \$3,000,000, and authorize the City Manager to sign the Local Programs State Funding Agreement and Project Prospectus substantially in the form as submitted.

Motion 3 is to direct staff to have all of the existing overhead utilities relocated aurally as needed for construction of the North Hill Elementary Walkway Improvements Project, waiving the requirement for undergrounding of utilities in accordance with DMMC 12.25.110.

[North Hill Elementary Walkway Improvement Project](#)

PUBLIC HEARING/CONTINUED PUBLIC HEARING

- Item 1. SECOND READING OF DRAFT ORDINANCE NO. 23-042: PUBLIC HEARING ON PROPOSED LAND USE AND TEXT CODE AMENDMENTS FOR THE BUSINESS PARK MORATORIUM AREA AND ADOPTING FINDINGS OF FACT [Page 163](#)
Staff Presentation by Community Development Director Denise Lathrop
[Second Reading of Draft Ordinance No. 23-042](#)

NEW BUSINESS

- Item 1. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

NEXT MEETING DATE

October 26, 2023 City Council Regular Meeting

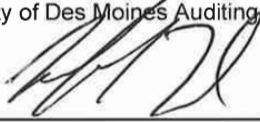
ADJOURNMENT

CITY OF DES MOINES
Voucher Certification Approval
October 19, 2023
Auditing Officer Certification

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

As of **October 19, 2023** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through October 5, 2023 and payroll transfers through October 5, 2023 included in the attached list and further described as follows:

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



Jeff Friend, Finance Director

		# From	# To	Amounts
Claims Vouchers:				
EFT's		8982	9079	509,737.17
Wires		2336	2360	2,492,417.59
Accounts Payable Checks		165303	165323	69,857.83
Total Vouchers paid				3,072,012.59
Payroll Vouchers				
Payroll Checks		19752	19755	2,200.39
Direct Deposit	10/5/2023	7026	7197	449,682.43
Total Paychecks & Direct Deposits				451,882.82
Total checks and wires for A/P & Payroll				3,523,895.41

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, September 28, 2023 - 6:00 PM**

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The flag salute was led by Deputy Mayor Traci Buxton.

ROLL CALL

Council Present:

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

Council Absent:

Councilmember Harry Steinmetz

Direction/Action

Motion made by Councilmember Jeremy Nutting to excuse Councilmember Harry Steinmetz; seconded by Councilmember Vic Pennington.

Motion passed 6-0.

Staff Present:

City Manager Michael Matthias; City Attorney Tim George; Assistant City Attorney Matt Hutchins; Chief Administrative Officer Bonnie Wilkins; Human Resources Director Adrienne Johnson-Newton; Finance Director Jeff Friend; Police Chief Tim Gately; Harbormaster Scott Wilkins; Planning & Development Services Manager Laura Techico; Public Works Director Andrew Merges; Civil Engineer II Tyler Beekley; City Engineer Tommy Owen; Civil Engineer I Mike Kwispond; CIP Manager Scott Romano; Director of Parks, Recreation and Senior Services Nicole Nordholm; and City Clerk Taria Keane

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

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

COMMENTS FROM THE PUBLIC

- Rob Back; Genesis Project
- Bob Andreson; Genesis Project
- Kathleen Sabourin; Genesis Project
- Elizabeth Roberts; Vehicle Speed on 222nd

COMMITTEE CHAIR REPORT

- Economic Development Committee: Chair Councilmember Jeremy Nutting
 - Councilmember Jeremy Nutting gave Council an update on the Economic Development Committee Meeting.
- Municipal Facilities Committee: Chair Councilmember Jeremy Nutting
 - Councilmember Jeremy Nutting gave Council an update on the Municipal Facilities Committee Meeting.
- Highline Forum Meeting
 - Mayor Matt Mahoney gave Council an update on the Highline Forum Meeting.
- Community Emergency Response Team (Cert) Training
 - Councilmember Vic Pennington gave Council an update on the CERT Training.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- City Manager Michael Matthias gave Council a PowerPoint Presentation on the Bond Update.
- City Manager Michael Matthias gave Council a brief update on SCORE Jail.
- Chief of Police Tim Gately gave Council an update on the Parks and Public Spaces and Police presence.
- Chief of Police Tim Gately gave Council an update on the July 2023 Homicide.

GENESIS PROJECT PRESENTATION

- Genesis Project Founder Andy Conner gave Council a PowerPoint Presentation on The Genesis Project - Hope for a New Life.

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Direction/Action

Motion made by Councilmember Jeremy Nutting to donate \$500 out of the Hearts and Mind fund to the Genesis Project; seconded by Vic Pennington.

Motion passed 5-1.

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

Against: Councilmember JC Harris.

LIGHTHOUSE NORTHWEST

- Lighthouse Northwest Executive Director Sarah Tuttle gave a PowerPoint Presentation about Lighthouse Northwest to the Council.

Direction/Action

Motion made by Councilmember Jeremy Nutting to donate \$500 out of the Hearts and Mind fund to Lighthouse Northwest; seconded by Vic Pennington.

Motion passed 5-1.

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

Against: Councilmember JC Harris.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through September 15, 2023 and payroll transfers through September 20, 2023 in the attached list and further described as follows:

EFT Vendor Payments	#8879-8981	\$681,208.82
Wires	#2316-2335	\$496,995.19
Accounts Payable Checks	#165238-165302	\$455,684.48
Accounts Payable Voided Checks	#165183,165302	\$(26,435.00)
Payroll Checks	#19740-19747	\$ 10,838.15
Direct Deposit	#6663-6849	\$509,322.28
Payroll Checks	#19748-19750	\$ 2,247.87
Direct Deposit	#6850-7025	\$453,302.89

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September 28, 2023

Payroll Checks #19751-19751 \$ 339.67

Total Checks and Wires for A/P & Payroll: \$2,583,504.35

Item 2: APPROVAL OF MINUTES

Motion is to approve the September 7th, and September 14th City Council Regular Meeting Minutes.

Item 3: DOMESTIC VIOLENCE AWARENESS MONTH PROCLAMATION

Motion to approve the Proclamation supporting October as Domestic Violence Awareness Month.

Item 4: SEPTEMBER 2023, AS SUICIDE PREVENTION MONTH IN WASHINGTON PROCLAMATION

Motion is to approve the Proclamation recognizing September as Suicide Prevention Month in Washington State.

Item 5: DRAFT RESOLUTION 23-047 SETTING A DATE FOR PUBLIC HEARING FOR STREET VACATION: 18TH AVE SOUTH

Motion is to adopt Draft Resolution No. 23-047 setting a public hearing on October 26, 2023, for a street vacation request relating to public road easements within the City of Des Moines.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Calendar; seconded by Councilmember Vic Pennington. Motion passed 6-0.

Mayor Matt Mahoney read the Domestic Violence Awareness Month Proclamation into the record.

Mayor Matt Mahoney read the September 2023, as Suicide Prevention Month in Washington Proclamation.

NEW BUSINESS

Item 1: SOLID WASTE RATE RESTRUCTURE CONTRACT AMENDMENT
Staff Presentation by Planning and Development Services Manager
Laura Techico

- Jeanette Jurgensen from Bin There Consulting gave Council a PowerPoint Presentation regarding the Solid Waste Rate Restructure Contract Amendment

Regular Meeting Minutes
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Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the contract amendment to the 2024-2033 Recology King County Comprehensive Garbage, Recyclables and Compostable Collection Services Contract and authorize the City Manager to sign the amendment substantially in the form as submitted; seconded by Councilmember JC Harris.
Motion passed 6-0.

Item 2: ADOPTION OF 2024 – 2029 CAPITAL IMPROVEMENTS PLAN
Staff Presentation by Finance Director Jeff Friend

- Finance Director Jeff Friend gave Council a PowerPoint Presentation regarding the 2024-2029 Capital Improvements Plan (CIP) Summary.

Direction/Action

Motion made by Councilmember Jeremy Nutting to adopt the Draft Resolution No. 23-048 approving the City of Des Moines 2024-2029 Capital Improvements Plan; seconded by Councilmember Vic Pennington.

Amended Motion made by Councilmember JC Harris to move the 2024-2029 Capital Improvements Plan to a second reading; seconded by Councilmember Gene Achziger.
Amended Motion failed 2-4.

For: Councilmember Gene Achziger, and Councilmember JC Harris.

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

The Main Motion passed 4-2.

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

Against: Councilmember Gene Achziger, and Councilmember JC Harris.

Item 3: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

- There were no new items for future consideration.

Regular Meeting Minutes
September 28, 2023

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

COUNCILMEMBER GENE ACHZIGER

- COVID-19 Vaccine

COUNCILMEMBER JEREMY NUTTING

- No Report

COUNCILMEMBER JC HARRIS

- SCORE Update
- Port of Seattle

COUNCILMEMBER VIC PENNINGTON

- Acknowledged the passing of Assistant Chief Dave Lawrence

DEPUTY MAYOR TRACI BUXTON

- South King Housing and Homelessness Partners (SKHHP) Meeting
- Sound Cities Association Meeting
- Ezra Taylor 2nd Heavenly Anniversary Celebration of Life

PRESIDING OFFICER'S REPORT

- Ezra Taylor 2nd Heavenly Anniversary Celebration of Life
- Des Moines Farmers Market
- Mount Rainier Girls Soccer Game
- International Coastal Clean-Up
- High School Football Games

EXECUTIVE SESSION

NEXT MEETING DATE

October 19, 2023 City Council Regular Meeting

Regular Meeting Minutes
September 28, 2023

ADJOURNMENT

Direction/Action

Motion made by Councilmember Jeremy Nutting to adjourn; seconded by Councilmember Vic Pennington.
Motion passed 6-0.

The meeting adjourned at 8:16 p.m.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2023-2025 Recycling Program
Funding

FOR AGENDA OF: October 19, 2023

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: October 11, 2023

ATTACHMENTS:

- 1. Washington State Department of Ecology
Solid Waste Management Local Solid
Waste Financial Assistance Agreement
(LSWFA) 2023-2025 Agreement No.
SWMLSWFA-2023-DeMDS-00165

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to provide information to Council, enabling it to take action on the acceptance of a grant partially funding the City’s Recycling Program for the service period of 2023-2025.

Suggested Motion

Motion 1: “I move to authorize the City Manager to sign the 2023-2025 Local Solid Waste Financial Assistance Grant agreement between the City of Des Moines and the Washington State Department of Ecology, substantially in the form as attached.”

Background

Staff is requesting Council to authorize acceptance of one of three grants for the City's recycling program. The grant is the 2023-2025 Washington State Department of Ecology's Solid Waste Management Local Solid Waste Financial Assistance Agreement (LSWFA) (Attachment 1).

The subject grant will partially fund the City's semi-annual Household Waste Collection and Recycling Events for 2023-2025.

Discussion

The City uses grant funds to sponsor recycling and collection events for Des Moines residents and promotes recycling or the use of recycled-content products. For the 2023-2025 Recycling Program, the City will sponsor two residential recycling collection events per year (i.e. the Fall and Spring events).

This agenda item seeks City Council approval of the LSWFA grant contract for 2023-2025 (retroactive to July 1, 2023 through June 30, 2025). The LSWFA grant will allocate a state grant share of \$13,904.00 to the City of Des Moines recycling program for household recycling events for the 2023-2025 timeframe.

If the City Council accepts the LSWFA grant for 2023-2025, the City will continue to reduce the amount of hazardous and non-hazardous materials going into the local waste stream at no additional cost to the City.

Household Collection and Recycling Events – For over 20 years, the City has used grant monies to sponsor semi-annual Household Waste Collection and Recycling Events. The Spring and Fall events have proven to be exceptionally popular among Des Moines residents because they provide a local site to recycle materials that are not accepted by the curbside recycling program. Residents will be able to recycle items including tires, lead acid and alkaline batteries, cardboard, propane tanks, appliances and scrap metal, bulky wood, electronic equipment, mattresses and box springs, and reusable household items. Additional items continue to be explored as the number and type of materials collected curbside have increased under the solid waste contract that began collection on November 1, 2011.

Alternatives

1. The City Council may accept the 2023-2025 LSWFA Grant No. SWMLSWFA-2023-DeMDSD-00165 between the City of Des Moines and the Washington State Department of Ecology.
2. The City Council may decline the 2023-2025 LSWFA Grant No. SWMLSWFA-2023-DeMDSD-00165 between the City of Des Moines and the Washington State Department of Ecology and forego LSWFA grant funds.

Financial Impact

If the City Council accepts the LSWFA grant, there will be no fiscal impact to the City related to Contract Number SWMLSWFA-2023-DeMDS-000165. However, if the City Council does not accept the LSWFA grant, then the City will need to use General Fund monies to maintain the City's recycling program. The required matching funds for this grant are provided by the two other grants used to fund the recycling program: King County Health Department Local Hazardous Waste Management Program (LHWMP) Grant and the King County Solid Waste Division Waste Reduction and Recycling (WRR) Grant.

Recommendation

Staff recommends that the City Council accept the 2023-2025 Washington State Department of Ecology LSWFA Grant.



Agreement No. SWMLSWFA-2023-DeMDS-00165

SOLID WASTE MANAGEMENT LOCAL SOLID WASTE FINANCIAL ASSISTANCE AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF DES MOINES

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and CITY OF DES MOINES, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	P&I City of Des Moines
Total Cost:	\$106,473.49
Total Eligible Cost:	\$55,616.00
Ecology Share:	\$41,712.00
Recipient Share:	\$13,904.00
The Effective Date of this Agreement is:	07/01/2023
The Expiration Date of this Agreement is no later than:	06/30/2025
Project Type:	Planning & Implementation

Project Short Description:

RECIPIENT will use \$55,616.00 to support up to 4 residential recycling collection events. This will help responsibly manage an estimated 6,000 pounds of household hazardous waste, 23,000 pounds of organics, and 91,000 pounds of recyclables.

Project Long Description:

See the Scope of Work section for more detailed information related to individual Tasks.

Overall Goal:

Provide regional solutions and intergovernmental cooperation; prevent or minimize environmental contamination through planning and project implementation; and comply with state and local solid and hazardous waste management plans and laws.

State of Washington Department of Ecology
Agreement No: SWMLSWFA-2023-DeMDSD-00165
Project Title: P&I City of Des Moines
Recipient Name: CITY OF DES MOINES

DRAFT

State of Washington Department of Ecology
Agreement No: SWMLSWFA-2023-DeMDSD-00165
Project Title: P&I City of Des Moines
Recipient Name: CITY OF DES MOINES

RECIPIENT INFORMATION

Organization Name: CITY OF DES MOINES

Federal Tax ID: 91-6016496
UEI Number: NY7AZ9H2VK25

Mailing Address: 21630 11th Ave S, Ste D
Des Moines, WA 98198-6398

Organization Fax: (206) 870-6544

Contacts

Project Manager	Laura Techico Principal Planner 21630 11th Avenue South Suite D Des Moines, Washington 98198 Email: ltechico@desmoineswa.gov Phone: (206) 870-6595
Billing Contact	Paul Devine General Manager 4715 SW WALKER ST Seattle, Washington 98116 Email: pauldevine@msn.com Phone: (206) 938-8262
Authorized Signatory	Michael Matthias City Manager 21630 11th AVE S Des Moines, Washington 98198 Email: mmatthias@desmoineswa.gov Phone: (206) 824-5700

State of Washington Department of Ecology
Agreement No: SWMLSWFA-2023-DeMDSD-00165
Project Title: P&I City of Des Moines
Recipient Name: CITY OF DES MOINES

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Solid Waste Management
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Solid Waste Management
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Diana Wadley PO Box 330316 Shoreline, Washington 98133-9716 Email: dwad461@ecy.wa.gov Phone: (425) 429-4639
Financial Manager	Diana Wadley PO Box 330316 Shoreline, Washington 98133-9716 Email: dwad461@ecy.wa.gov Phone: (425) 429-4639

SCOPE OF WORK

Task Number: 1 **Task Cost:** \$55,616.00

Task Title: Recycling Operations

Task Description:

RECIPIENT will host up to four residential recycling collection events. Organics, household hazardous waste (HHW), and other large or hard-to-recycle items will be collected along with 'usual' recyclables at a convenient location. Educational materials, which describe how to compost, reduce waste, and recycle more using City-sponsored or private sector recycling programs, will also be distributed. Residents attending the event may participate in a composting demonstration to receive a subsidized compost bin.

Work to be performed:

- Organize, stage, and staff the event, including scheduling and paying vendors.
- Advertisement of the event.
- Distribution of the outreach materials at the event.
- Responsible recycling, reusing, or disposing (such as for some hazardous waste) of the collected materials.
- Compost demonstration (RECIPIENT will credit the sales revenue back to the grant).
- Calculating and reporting outcomes of each event to ECOLOGY.

Who will perform it:

- A contractor, in conjunction with any vendors hired or utilized by said contractor for final management of materials.
- RECIPIENT employee intends to be minimally involved, performing basic oversight.

This task includes development and distribution of promotional materials in a variety of formats to encourage participation. In accordance with provisions 3 and 19 of the General Terms and Conditions of this agreement, RECIPIENT is encouraged to work with their ECOLOGY grant manager when developing promotional materials, and must provide a draft copy for review and approval ten (10) business days prior to production and distribution of materials.

This task will not reimburse costs covered by existing product stewardship organizations (E-Cycle Washington, LightRecycle Washington, PaintCare, Call2Recycle) or for costs covered by new product stewardship organizations that are fully implemented during this agreement period. To be eligible for costs related to materials covered by such programs or materials of a very similar nature (i.e. printers), ensure invoices are itemized in a detailed manner to distinguish eligible from ineligible costs, and clearly indicate the product stewardship program or website similar to such products on event advertisements.

RECIPIENT will credit the grant for any revenue received from the collection of fees or commodity sales of items this task is directly supporting.

The scope of this task includes performing recycling activities. See Special Terms and Conditions in this agreement.

Task Goal Statement:

The goal of this task is to decrease resource use and pollution by recycling or responsibly managing discards by holding collection events in a convenient location.

State of Washington Department of Ecology
Agreement No: SWMLSWFA-2023-DeMDS-00165
Project Title: P&I City of Des Moines
Recipient Name: CITY OF DES MOINES

Task Expected Outcome:

RECIPIENT anticipates the task budget will cover a portion of the total costs for the residential recycling events. RECIPIENT must track the total costs and total outcomes of the events. RECIPIENT must report only the outcomes achieved with LSWFA support. This is done by calculating what percent of the task's total cost was supported by the Ecology Share plus Recipient Share under this Agreement (the task budget). RECIPIENT should then multiply that percent by the total outcomes and report the resulting outcomes.

With the task budget, RECIPIENT estimates,

- 6,000 pounds of HHW collected and managed
- 23,000 pounds of organics collected
- 91,000 pounds of material collected for recycling.
- Depending on vendor availability, there is potential to collect items for reuse, so an optimistic 1,000 pounds is estimated to be collected.

Recipient Task Coordinator: Paul Devine

Recycling Operations

Deliverables

Number	Description	Due Date
1.1	Task Expected Outcomes are the deliverables and achieved incrementally throughout the biennium.	

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
City of Des Moines	25.00 %	\$ 13,904.00	\$ 41,712.00	\$ 55,616.00
Total		\$ 13,904.00	\$ 41,712.00	\$ 55,616.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

If the scope of this Agreement includes recycling activity managed or performed by the RECIPIENT at a recycling center (such as a transfer station or drop box location) or other locations, ECOLOGY will not reimburse disposal costs for materials collected or advertised as collected for recycling/reuse or marketed for recycling/reuse under this Agreement, unless approved in writing by ECOLOGY. RECIPIENT must immediately notify ECOLOGY when the RECIPIENT becomes aware that disposal of materials occurred or may occur due to the market conditions for recycled/reused materials. ECOLOGY may deny new costs or require repayment of costs already reimbursed or remove the task from the Agreement or terminate the Agreement.

ECOLOGY’s Solid Waste Management (SWM) program will implement a reporting assessment for all RECIPIENTS of grants administered through the SWM program. The assessment determines the RECIPIENT reporting level required throughout the biennium. If RECIPIENT administrative performance or changes in project circumstances trigger a reassessment, RECIPIENT will be notified of any changes to administrative requirements.

RECIPIENT shall update the Spending Plan and Outcomes Data Collection form at least quarterly. The Spending Plan and Outcomes Data Collection form must be completed concurrent with the submittal of each Payment Request/Progress Report. RECIPIENT shall report outcomes in a manner consistent with instructions in the Local Solid Waste Financial Assistance guidelines.

RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial (including payment requests), performance, and other reports required by this Agreement. ECOLOGY shall have the right to deny reimbursement of payment requests received after this date.

GENERAL FEDERAL CONDITIONS

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

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for

debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.

2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

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

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

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

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

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

State of Washington Department of Ecology
Agreement No: SWMLSWFA-2023-DeMDS-00165
Project Title: P&I City of Des Moines
Recipient Name: CITY OF DES MOINES

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

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

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

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](#) <https://sam.gov/SAM/> exclusion list.

GENERAL TERMS AND CONDITIONS

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

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

07/01/2023 Version

1. ADMINISTRATIVE REQUIREMENTS

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

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

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

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

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

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

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
 - * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.
 - For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).

Template Version 12/10/2020

b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

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

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

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

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

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

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

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

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

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such

decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

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

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

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

12. ENVIRONMENTAL DATA STANDARDS

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

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

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

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

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

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

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

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

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

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

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

18. ORDER OF PRECEDENCE

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

19. PRESENTATION AND PROMOTIONAL MATERIALS

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

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

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

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

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

20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to

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Project Title: P&I City of Des Moines
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ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.

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

21. PROPERTY RIGHTS

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

22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

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

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

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

23. RECOVERY OF FUNDS

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

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

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

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

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

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

27. SUSTAINABLE PRACTICES

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

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

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

28. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

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

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If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Interlocal Agreement with City of Normandy Park for Municipal Court Services

FOR AGENDA OF: October 19, 2023

DEPT. OF ORIGIN: Court

ATTACHMENTS:

DATE SUBMITTED: October 10, 2023

1. Interlocal Agreement between the City of Normandy Park and the City of Des Moines for Municipal Court Services and Facilities

CLEARANCES:

- City Clerk _____
- Community Development _____
- Court *M. Patrick*
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *MLR*
- Human Resources _____
- Legal */s/ TG*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this Agenda Item is to request the Council’s authorization to renew the Interlocal Agreement with the City of Normandy Park for Municipal Court Services.

Suggested Motion

Motion 1: “I move to approve the Interlocal Agreement between the City of Normandy Park and the City of Des Moines for Municipal Court Services for the years 2024 through 2028 and authorize the City Manager to sign the Interlocal Agreement substantially in the form as submitted.”

Background

Since 2005, Des Moines Municipal Court has been providing Court Services for the City of Normandy Park. In 2015, the court added probation services to the Interlocal with Normandy Park. Since 2017, Des Moines Municipal Court has also provided DUI Court services and drug testing services to Normandy Park Municipal Court clients. Additionally, under a separate Interlocal agreement the City of Des Moines provides prosecutor and victim advocate services.

Discussion

By approving the agreement, Des Moines Municipal Court can continue to provide uninterrupted court services to defendants throughout South King County. Thus maintaining public safety, accountability and access to justice. Moreover, the staff impact to providing court services to Normandy Park is minimal as the cases are scheduled, heard and adjudicated alongside Des Moines cases. Normandy Park cases make up less than 5% of all cases before Des Moines Municipal Court

Alternatives

City Council could choose to not approve the Interlocal agreement. (Not recommended)

Financial Impact

Beginning in 2024 the cost for yearly court services to Normandy Park will be \$60,000 (a 12.9% increase over 2023). Each year thereafter the cost of services will increase 3-6% depending upon the CPI for June of the preceding year. Staff has determined that these costs fairly compensate the City for actual costs incurred in providing these services to Normandy Park.

Recommendation

Staff recommends that the Council approve with the Interlocal agreement with the City of Normandy Park for Court Services.

Council Committee Review

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF NORMANDY PARK AND
THE CITY OF DES MOINES FOR MUNICIPAL COURT SERVICES AND
FACILITIES**

WHEREAS, the City of Normandy Park (hereafter “Normandy Park”) is a municipal corporation organized under the laws of the State of Washington; and

WHEREAS, the City of Des Moines (hereafter “Des Moines”) is a municipal corporation organized under the laws of the State of Washington; and

WHEREAS, each of the parties to this Agreement is authorized under Washington law to operate a municipal court (Chapter 3.50 RCW); and

WHEREAS, Chapter 39.34 RCW (“The Interlocal Cooperation Act”) permits municipal corporations to contract with one another to perform any act that each is independently authorized to perform; and

WHEREAS, RCW 39.34.180 and 3.50.805 authorize municipal corporations to enter into interlocal agreements for municipal court services; and

WHEREAS, Des Moines currently operates a municipal court; and

WHEREAS, Des Moines is willing to provide these municipal court services to Normandy Park; and

NOW, THEREFORE, in consideration for the mutual covenants and promises set forth in this Agreement, and in the exercise of authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW, Normandy Park and Des Moines do hereby agree to the following:

1. Purpose. The purpose of this Agreement is to provide municipal court services to Normandy Park
2. Administration. The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

The City of Des Moines representative shall be Michael Matthias, City Manager.

Des Moines Municipal Court’s representative shall be Melissa Patrick, Director of Court Administration.

The City of Normandy Park’s representative shall be Amy Arrington, City Manager.

No joint acquisition of real or personal property is contemplated hereunder. Normandy Park agrees that court operations under this Agreement will be as provided for by Des Moines Municipal Code Chapter 2.28.

3. Duties of Des Moines. Des Moines shall perform the following duties:
 - (a) Provide all municipal court services for Normandy Park. For the purpose of this Agreement, “municipal court services” shall include all local court services currently provided by Des Moines Municipal Court including, filing, processing, adjudication, and penalty enforcement of all Normandy Park cases filed, or to be filed, by Normandy Park in Des Moines Municipal Court. This includes, but is not limited to, issuance of search and arrest warrants, issuance of subpoenas for non-criminal traffic citations to an officer or radar expert on behalf of a defendant when a timely and written request is submitted in conformance with IRLJ 3.1 (a) and local court rules, setting of motions and evidentiary hearings, pre-trials, bench trials, jury trials, sentencing, reviews, post-trial motions and provide court security. Des Moines shall provide all necessary court services personnel, equipment and facilities to perform the foregoing described Municipal Court Services in a timely manner as required by law and court rule.
 - (b) Provide facilities, materials, and support staff of the municipal judge(s) and pro tem judge(s).
 - (c) Compensate the municipal judge(s) and pro tem judge(s), as per the terms of this Agreement.
 - (d) Accept all misdemeanor criminal and infraction filings and timely process and adjudicate the same.
 - (e) Remit all revenues due and owed to the State of Washington in connection with Normandy Park cases.
 - (f) Provide collection services to collect court-mandated costs and assessments.
 - (g) Provide virtual court services for Normandy Park cases, when the defendants are being held in the King County jail or any other detention facility that offers virtual court services.
 - (h) Provide prisoner transportation to and from any jail facility for all court proceedings or jail commitment purposes.
 - (i) Monitored and active probation will be provided by the Des Moines Municipal Court Support Services.
 - (j) Provide therapeutic court services including DUI Court and ongoing training for therapeutic court liaison from Normandy Park.

- (k) Provide drug-testing services for therapeutic court and Support Services (probation) defendants.
 - (l) Provide a Bench Warrant quash calendar for all Normandy Park criminal cases.
 - (k) Provide and pay for all language interpretation services.
 - (l) Des Moines Court shall pay for all jury fees for Normandy Park Municipal Court cases.
4. Duties of Normandy Park. Normandy Park shall perform the following duties:
- (a) Prosecution. Normandy Park contracts with City of Des Moines through a separate agreement for prosecution services. If that agreement is ever terminated, Normandy Park shall be responsible for providing prosecution services for all misdemeanors, gross misdemeanors, and infractions that are filed on its behalf. Normandy Park prosecution shall provide discovery and subpoena witnesses for its cases.
 - (b) Public Defender. Normandy Park shall provide public defense services as needed for its cases and cover all public defense costs for indigent defendants who are charged with misdemeanors and gross misdemeanors in its respective jurisdiction.
 - (c) Public Defender for Virtual Proceedings. Normandy Park shall provide public defense services for all cases heard virtually as needed for its cases and cover all public defense costs for indigent defendants who are charged with misdemeanors and gross misdemeanors in its respective jurisdiction.
 - (d) Domestic Violence Advocate. Normandy Park shall be responsible for providing domestic violence advocate services. Normandy Park currently contracts with the City of Des Moines through a separate agreement for DV Advocate services.
 - (e) Law Enforcement. Normandy Park shall be responsible for providing a law enforcement liaison to Des Moines Municipal Court DUI Court team.
 - (f) Pro Tems. The Normandy Park City Manager will appoint the Des Moines Municipal Judge as the Normandy Park Municipal Judge. The Normandy Park Judge may appoint pro tem when needed.
 - (g) Filing of Tickets. Criminal citations and infractions issued by Normandy Park shall be filed with the Des Moines Court within two business days after the violation or ticket issuance. If a person is booked in to a Jail facility,

Normandy Park Police must fax the police report to the Des Moines Municipal Court no later than 6:00 AM the next day.

- (h) Warrants. Whenever Normandy Park executes a warrant, Normandy Park shall contact the Des Moines Municipal Court and make a return on the warrant as soon as possible.
 - (i) Jail Costs. Normandy Park is responsible for incarceration arrangements for its defendants and the cost for such incarceration.
 - (j) Jail Alternatives. Normandy Park is responsible for the cost of jail alternative programs including drug testing in lieu of jail and/or electronic monitoring, work release, electronic monitoring, continuous alcohol monitoring, and/or GPS monitoring.
 - (k) Appeals. In the event that Normandy Park appeals a case, Normandy Park will be charged the fee to file a notice of appeal and the costs for preparing and/or copying any tapes.
 - (l) Normandy Park may direct Des Moines to hold court at an alternate location of their choosing in the event of jurisdictional concerns. Normandy Park will work with Des Moines to facilitate court logistics. As many administrative duties as possible will continue to be performed at the Des Moines Municipal Court. Des Moines shall increase the filing fees or add a supplemental monthly fee for Normandy Park to cover the costs of the satellite court. Des Moines will notify Normandy Park of the effective date of any fee changes. Either party may request mediation as to the amount of a fee change. Normandy Park shall remit the new fees from their effective date even if mediation is requested. In addition, if Normandy Park has required Des Moines to operate a satellite court, either Normandy Park or Des Moines shall have the option to terminate this Agreement on 6 months' notice.
5. Normandy Park Municipal Court Created. Establishment. Each contracting city is creating a municipal court. This court is being established for statutory purposes only. Normandy Park hereby designates the Des Moines Municipal Court to operate as the municipal court for Normandy Park. A case filed in Des Moines Municipal Court will continue to be identified as a case filed by Normandy Park. Normandy Park may revoke the provisions of this subsection. Normandy Park will notify Des Moines of the effective date of such revocation, which may be immediately.
- (a) Municipal Judge. The City Manager of Normandy Park shall appoint the current Municipal Judge of Des Moines to preside over its respective municipal court. The appointed Municipal Judge shall be qualified in accordance with state law, including holding a law degree and being admitted to practice law under the laws of the State of Washington. If the position becomes vacant during an appointed term, Des Moines agrees that Normandy

Park shall be involved in the selection process regarding its choice of a Judge prior to the appointment.

(b) Director of Court Administration. The City Manager of Normandy Park shall appoint a Director of Court Administration to supervise the municipal court. Normandy Park agrees to appoint the current Des Moines Director of Court Administration to this position. The appointed Director of Court Administration shall be qualified in accordance with City of Des Moines current job description. If hiring a new Director of Court Administration, Des Moines agrees that Normandy Park shall be involved in the selection process regarding its choice of a Director of Court Administration prior to the appointment.

(c) Salary. Normandy Park shall provide that the Judge and Court Administrator be compensated as established by the City of Des Moines.

6. Cost of Contract and Payments. Normandy Park shall pay Des Moines for providing municipal court services a flat rate of \$60,000 per year. On January 1, 2025 and on January 1 of each year thereafter that this Agreement is in effect, the fees set forth in Section 6 shall be subject to an annual inflator in an amount equal to the Seattle-Tacoma-Bellevue CPI-W for June of the preceding year; with a cap of 6% and a floor of 3% provided. In the event the Seattle-Tacoma-Bellevue CPI-W for June of the preceding year is a negative number, the fees set for in Section 6 shall be increased by 3%. For each criminal, traffic, non-traffic and parking citations a filing fee may be imposed by the court on the defendant.

(a) On a monthly basis, Des Moines shall bill Normandy Park \$5000.00 for amounts due under this Agreement and increase annually based on CPI-W. Normandy Park shall pay the amount due within 45 days of receipt. However, if Normandy Park has a good faith dispute with the amount of the invoice, Normandy Park shall pay the non-disputed amount within the period set forth in this section.

7. Compensation for Court Costs. Pursuant to RCW 3.62.070 and RCW 39.24.180, Normandy Park shall receive 100% of Local Court Revenues from Normandy Park Court cases, excluding probation and pre-trial supervision revenues received at the municipal court.

(a) In entering into this Agreement for Municipal Court Services, Normandy Park and Des Moines have considered, pursuant to RCW 39.34.180, the anticipated costs of services, anticipated and potential revenues to fund the services, including fines and fees, filing fee recoupment, criminal justice funding, and state sales tax funding.

8. Local Court Revenues Defined. The Local Court Revenues include all fines, forfeited bail, penalties, court cost recoupment and parking ticket payments

derived from Normandy Park cases filed after payment of any assessments required by state law thereon. Local Court revenues include all revenues defined above received by the Court as of opening of business January 1, 2005. Local Court Revenues exclude:

- (a) Restitution or reimbursement to Normandy Park, crime victim, or other as awarded by a judge.
9. Payment of State Assessments. Des Moines will pay on behalf of Normandy Park all amounts due and owed to the State of Washington relating to Normandy Park cases filed at Des Moines Municipal Court out of the gross court revenues received by the Municipal Court on Normandy Park filed cases. Des Moines assumes responsibility for making such payment to the State as agent for Normandy Park on a timely and accurate basis. As full compensation for providing this service to Normandy Park, Des Moines shall be entitled to retain any interest earned on these funds prior to payment to the State.
10. Monthly Reporting and Monthly Payment to City. Des Moines shall provide to Normandy Park a monthly remittance report and a check or wire transfer for Local Court Revenues no later than ten business days after the end of the calendar month. In addition, Des Moines will provide to Normandy Park a report listing Normandy Park cases filed with Des Moines Municipal Court.
11. Indemnification.
- (a) Normandy Park Ordinances, Rules and Regulations. In executing this Agreement, Des Moines does not assume liability or responsibility for or in any way release Normandy Park from any liability or responsibility, which arises in whole or in part from the existence or effect of Normandy Park ordinances, rules, or regulations, policies or procedures. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any Normandy Park ordinance, rule, or regulation is at issue; Normandy Park shall defend the same at its sole expense and if judgment is entered or damages are awarded against Normandy Park, Des Moines, or both, Normandy Park shall satisfy the same, including all chargeable costs and attorneys' fees.
 - (b) Normandy Park Indemnification of Des Moines. Normandy Park shall indemnify, defend, and hold harmless Des Moines, its officers, agents and employees, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including costs and attorneys fees in defense thereof, for injuries, sickness or death of persons (including employees of Normandy Park), or damage to property, or the violation of any person's civil rights, which is caused by or arises out of Normandy Park's acts, errors or omissions with respect to the subject matter of this agreement; provided, however,

- (i) Normandy Park's obligation to indemnify, defend and hold harmless shall not extend to injuries, sickness, death, damage or civil rights violations caused by or resulting from the sole actions or negligence of Des Moines, its officers, agents or employees; and
 - (ii) Normandy Park's obligation to indemnify, defend, and hold harmless for injuries, sickness, death, damage or civil rights violations caused by or resulting from the concurrent actions or negligence of Normandy Park and Des Moines shall apply only to the extent that Normandy Park's actions or negligence caused or contributed thereto.
 - (c) Des Moines Indemnification of Normandy Park. Des Moines shall indemnify, defend, and hold harmless Normandy Park, its officers, agents and employees, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including costs and attorneys' fees in defense thereof, for injuries, sickness or death or persons (including employees of Des Moines), or damage to property, or the violation of any person's civil rights, which is caused by or arises out of Des Moines' acts, errors or omissions with respect to the subject matter of this agreement; provided, however
 - (i) Des Moines' obligation to indemnify, defend and hold harmless shall not extend to injuries, sickness, death, damage or civil rights violations caused by or resulting from the sole actions or negligence of Normandy Park, its officers, agent or employees; and
 - (ii) Des Moines' obligation to indemnify, defend and hold harmless for injuries, sickness, death, damage or civil rights violations caused by or resulting from the concurrent actions or negligence of Des Moines and Normandy Park shall apply only to the extent that Des Moines' actions or negligence caused or contributed thereto.
 - (d) Indemnification for Events Occurring Prior to Termination of Court Services. The obligation to indemnify, defend and hold harmless for those injuries provided for in Sections 11(b) and 11(c) extends to those events occurring prior to the termination of court services under this Agreement. No obligation exists to indemnify for injuries caused by or resulting from events occurring after the last day of court services under this Agreement. The obligation of a party to indemnify, defend, and hold harmless under Sections 11(b) and 11(c) shall survive termination of this Agreement for any event that occurred prior to such termination.
12. Actions Contesting Agreement. Each party shall appear and defend any action or legal proceeding brought to determine or contest: (i) the validity of this Agreement and/or (ii) the legal authority of Normandy Park and/or Des Moines to

16. Assignability. The rights, duties, and obligations of either party to this Agreement may not be assigned to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.
17. Entire Agreement. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement. No amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.
18. Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration, which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.
19. Captions. The section and paragraph captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
20. Duration and Termination. The terms of this Agreement shall be for a period of five (5) years. The Agreement shall take effect on January 1, 2024 or as soon thereafter as all of the following events have occurred:
 - (a) Approval of the Agreement by the official action of the governing bodies of each of the parties hereto.
 - (b) Execution of the Agreement by the duly authorized representative of each of the parties hereto.
 - (c) Filing a copy of this Agreement with King County Department of Records and Elections.

(d) Either party may elect to terminate this Agreement by written notice of termination to the other party delivered by regular mail to the contact person identified herein. Said termination shall become effective one-hundred eighty (180) days from the date of receipt of said written notice.

DATED this _____ day of _____, 20_____.

CITY OF DES MOINES

CITY OF NORMANDY PARK

By _____
Michael Matthias, City Manager
By direction of the City Council

Amy Arrington, City Manager
By direction of the City Council

Taken _____

Taken _____

//

Attest:

Attest:

City Clerk

City Clerk

Approved as to Form:

Approved as to Form:

Tim George, City Attorney

City Attorney

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Hearing Examiner Appointment

FOR AGENDA OF: October 19, 2023

ATTACHMENTS:

- 1. Professional Services Agreement with Law Offices of Alex Sidles, PLLC

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: October 11, 2023

CLEARANCES:

- City Clerk _____
- Community Development *Det*
- Courts _____
- Emergency Management _____
- Finance *ML 21*
- Human Resources _____
- Legal */s/ TG*
- 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 Council to confirm the appointment of Alex Sidles as the City’s Hearing Examiner and to approve the professional services agreement with the Law Offices of Alex Sidles, PLLC to provide Hearing Examiner services to the City. The following motion will appear on the consent calendar:

Suggested Motion

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

Background

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

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

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

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

Discussion

For over 15 years, the City has contracted with Sound Law Center to provide Hearing Examiner services pursuant to the Municipal Code. The existing contract expires in November of 2023. The City was recently notified that as a result of retirements, Sound Law Center will no longer be providing Hearing Examiner services and that they would not be renewing the existing contract.

Through the contract with Sound Law Center, Alex Sidles has currently been providing Hearing Examiner services for the City. Moving forward, he can continue to provide these services through Law Offices of Alex Sidles, PLLC. Approving this appointment would provide consistency in Hearing Examiner services and continue to provide quality services for the City.

Alex Sidles is a licensed attorney in Washington State who has expertise in land use law as well as the training and experience necessary to conduct required hearings. He has previously heard matters as the Hearing Examiner for the City of Des Moines and has acted professionally and with the high standards that would be expected of this position. The Law Office of Alex Sidles, PLLC has additional attorneys who can provide Hearing Examiner services as needed with a combined 30+ years of experience in these matters.

Alternatives

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

Financial Impact

Generally the costs of these services are paid by the applicant who is seeking approval. As a result, the cost to the City is minimal. Pursuant to the Agreement, the rates are \$195 per hour for the Hearing Examiner and \$125 for support attorneys. There are also flat rates for common matters.

Recommendation

City staff recommends confirming the appointment and approving the agreement.

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF DES MOINES
AND LAW OFFICES OF ALEX SIDLES, PLLC**

THIS AGREEMENT is made the 20th day of October 2023, between the City of Des Moines, (hereinafter the “City”) and the Law Office of Alex Sidles, PLLC (hereinafter “Consultant” or “Hearing Examiner”).

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

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

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

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

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

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

VI. **Termination.**

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

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

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

The City's inspection or acceptance of any of Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification. It is further specifically and expressly understood that the indemnification provided herein

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

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

Notices should be sent to:

Law Offices of Alex Sidles, PLLC 2400 NW 80 th St., no. 146 Seattle, WA 98117-4449 206-518-8611 alex@sidleslaw.com	Denise Lathrop Community Development Director 21630 11 th Ave S. Des Moines, WA 98198 (206) 870-6563 dlathrop@desmoineswa.gov
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- XII. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreement or options, and the same shall be and remain in full force and effect.
- XIII. **Resolutions of Disputes.** Should any dispute, misunderstanding, or conflict arise as to the terms of this contract, the matter shall be referred to the City Manager, whose decision shall be final. Any appeal from the decision of the City Manager shall be to the King County Superior Court. This agreement shall be governed by and construed in accord with the laws of the State of Washington.

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

Dated this ____ day of October 2023:

LAW OFFICES OF ALEX SIDLES, PLLC

CITY OF DES MOINES

By _____
Alex Sidles, Attorney

By _____
Michael Matthias, City Manager

Approved to form, City Attorney

DRAFT

**EXHIBIT A
SERVICES AGREEMENT**

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

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

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

Hearing Examiner	\$195.00
Supporting Attorneys	\$125.00

Hourly rates shall include all costs, we don't invoice separately for mileage, phone calls, copies and other costs incurred by the Law Offices of Alex Sidles when providing services.

The Hearing Officers provided to the City shall have more than four years of experience as a lawyer, and have heard and decided at least one dozen land use cases. The Hearing Officers available to the City will be Alex Sidles as primary Hearing Officer, with Andrew Reeves and Peregrin Sorter available on a pro-tem basis.

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

1. Single family residence variances, reasonable use exceptions, historical use permits, tree activity permits, special use permits, and conditional use permits (CUPs) = \$1,400

2. Commercial/multifamily/industrial variances, reasonable use exceptions, historical use permits, tree activity permits, special use permits, and CUPs = \$2,800
3. Multi-permit applications, plats, shoreline permits, binding site plans, planned unit developments = \$3,500

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

DRAFT

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:
2024-2025 On-Call Consultant Agreements for
Civil Engineering Services

FOR AGENDA OF: October 19, 2023

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

1. Consultant Services Contract
2. Request for Qualifications

DATE SUBMITTED: October 11, 2023

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this Agenda Item is to seek City Council authorization of Consultant Agreements for On-Call Civil Engineering Services from January 1, 2024 through December 31, 2025. The selected Consultants will provide engineering support on the City’s approved Capital Improvement Program projects, will work on the Professional Services portions of the City’s approved operating budgets as needed, will provide assistance on the review of development applications when necessary, and will be available to assist the City during emergency situations. This process has been used successfully by the City since 2008. The following motion will appear on the Consent Calendar:

Suggested Motion

Motion 1: “I move to approve the Consultant Services Contract for On-Call Civil Engineering Services (2024-2025) with Exeltech Consulting Inc., KBA Inc., KPFF Consulting Engineers., KPG PSOMAS, NV5, Parametrix, Pertect, and SCJ Alliance each up to \$1,250,000.00, and authorize the City Manager to sign the Consultant Services Contract substantially in the form as submitted.”

Background

Engineering consultants are needed in order to supplement and expand the capability of City staff on the design and construction of Capital Improvement Projects, to provide occasional assistance with development related reviews, and for other technical engineering work.

Among other things, RCW 39.80 requires that agencies advertise, conduct interviews if necessary, and ultimately select the most qualified consultant(s) to provide professional services. This selection process may not be based on the cost for those services.

In September of 2023, staff published an advertisement for a Request for Qualifications (RFQ) from civil engineering firms interested in providing on-call engineering services to the City through the year 2025. A copy of the RFQ is provided as Attachment 2 for reference. Statements of Qualifications (SOQ) were received from 12 firms. A staff selection committee reviewed each of the SOQ's and ranked them based on their response to the criteria identified in the RFQ. The firms were also ranked on their ability to provide quality services in a wide variety of specific civil engineering disciplines.

Eight firms are needed in order to provide adequate redundancy of service in each specific discipline of civil engineering. This redundancy is necessary for several reasons. First, if staff is unable to successfully negotiate a specific Task Order Assignment with one consultant, staff can easily move to another consultant that is equally qualified to perform the task. Second, if a consultant is too busy to conduct a Task Order Assignment in a timely manner, staff needs to have at least one other consultant available to perform the work. Third, if staff receives work from a consultant on a development project where the assistance of a third party consultant review is needed, and the developer's consultant is on our on-call roster, there would be a conflict of interest. Staff needs to have another consultant available to conduct the review in this case.

The recommended consultant firms are Exeltech Consulting Inc., KBA Inc., KPFF Consulting Engineers., KPG PSOMAS, NV5, Parametrix, Perteet, and SCJ Alliance.

Discussion

The City has historically used consultants for providing professional services including design and construction management services, inspection services, and for preparing technical analyses on complex engineering related issues. Having consultants on-call streamlines the work effort required by City staff, and expedites the design and construction of projects.

Prior to 2008, staff selected consultants on a project by project basis. This process is very time consuming and in most cases, inefficient. In other words, for each and every project, an advertisement is placed, all submitted proposals are reviewed, interviews are conducted if necessary, and a consultant is selected for a specific project. In addition, staff typically advertised for professional services only after the Capital Improvement Program project budgets had been approved for a specific year. Going through an RFP for an individual project can add 3 to 4 months to a project schedule. This can be problematic if construction windows are limited due to emergency related response needs, the time of year, weather, and environmental permit related restrictions. Having consultants on-call over a multi-year timeframe is ideal to support programs that are funded from a multi-year budget cycle process as well.

In late 2007, the Council authorized the first On-call Consultant Agreements for the years 2008 and 2009. This process was used again very successfully between 2010 & 2021, and current years 2022-2023. Having the Agreements in place greatly increased the productivity and efficiency of the staff. That

increased productivity will certainly continue in 2024 and 2025 with the continuation of this on-call process.

All of the consultant selection process has been completed at this time. As various needs arise, staff will prepare a Task Order Assignment that identifies a specific work task or project to be performed. The selected consultant will meet with staff to develop and negotiate a specific scope of work, schedule, and budget for the Task Order Assignment. Once finalized, the Task Order Assignment will be approved by the City Manager or the City Council depending on the specific budget and City Manager contract authority.

Approving these Agreements does not obligate the City to assign any specific number of tasks, volume of work, or a specific contract value to any of these consultants. At any time during a funding year, all projects and subsequent Task Order Assignments may be subject to change including funding levels and project priorities. The City has reserved the right to add and or delete Task Order Assignments to meet other priorities.

The maximum potential value for these Agreements is set at \$1,250,000 for consultants that can provide a wide variety of civil and architectural engineering services.

For all City projects supported by federal funding, the on-call contracts and Task Order Assignments will not be utilized. Separate contracts complying with the WSDOT Local Agency Guidelines Manual (LAG) will be utilized or other processes defined by the specific granting agency.

Alternatives

The Council could choose to have specific agreements prepared for each project at the time a project is started. Under this scenario, a specific agreement would have to be prepared, advertised, reviewed, and approved for each and every project, along with the scope of work, the schedule, and the budget. Also, the City would not have consultants available to provide assistance during emergency situations.

Financial Impact

Approving these agreements will streamline the consultant selection process for the City, saving staff time and resources, including advertising costs. Approving these Consultant Agreements will create no negative financial impact to the City.

Approving these Agreements does not require the payment of any funds to any of the identified consultants. Consultants will only be paid for services provided on individual and specific Task Order Assignments. Each Task Order Assignment will have its own specific scope, schedule, and budget. All Task Order Assignments will be for work within established and approved City programs and budgets, or to assist the City in response to emergency situations.

The City Manager will approve Task Order Assignments that are within the City Manager's authorized limit. Task Order Assignments above that limit will be brought before the City Council for authorization.

Recommendation

Staff recommends adoption of the motion.

Council Committee Review

N/A.



CONSULTANT SERVICES CONTRACT between the City of Des Moines and [Insert Consultant's Company Name]

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and [Insert Consultant's Co. Name] organized under the laws of the State of [Insert State Co. Formed Under], located and doing business at [Insert Consultant's Address and Phone Number] (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

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

- "Scope of Work for 2024-2025 On-Call General Civil Engineering Services" attached hereto as Exhibit "A" is incorporated herein by reference, and
- Specific task orders issued by the City to Consultant under the terms described in Exhibit "A".

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

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

III. COMPENSATION.

- A. The City shall pay the Consultant, for each task order, based on time and materials, an amount not to exceed the maximum amount payable specified in the task order for the services described in the task order. This is the maximum amount to be paid under this Contract for the work described in the task order, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The maximum amount to be paid under this Contract shall not exceed one million two hundred fifty thousand dollars (\$1,250,000) for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit "A" for its services contracted for under each individual task assignment issued under this Contract herein shall remain locked at the negotiated rate(s) for the duration of the formal task order assignment.

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

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

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

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

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

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

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

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

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
1. The date of the Consultant's claim;
 2. The nature and circumstances that caused the claim;
 3. The provisions in this Contract that support the claim;
 4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
 5. An analysis of the progress schedule showing the schedule change or disruption if the Consultant is asserting a schedule change or disruption.
- B. Records. The Consultant shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Consultant's records needed for evaluating the protest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Minimum Scope of Insurance. Consultant shall obtain insurance of the types 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 and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

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

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

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

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

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

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

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

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

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

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

XVI. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted

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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 X of this Contract.

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

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

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

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

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

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

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(Various)

NOTICES TO BE SENT TO:

CONSULTANT:

[Insert Contact Name]
[Insert Company Name]
[Insert Address]
[Address - Continued]
[Insert Telephone Number] (telephone)
[Insert Fax Number] (facsimile)

NOTICES TO BE SENT TO:

CITY OF DES MOINES:

Andrew Merges, PE
Public Works Director
City of Des Moines
21630 11th Avenue S., Suite A
Des Moines, WA 98198
206-870-6568 (telephone)
(facsimile)

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(Various)

Exhibit “A”
Scope of Work
2024-2025 On-Call General Civil Engineering Services

GENERAL

The City of Des Moines (City) has selected **Consultant Name Here** (Consultant) to provide on-call General Civil Engineering Services for various City projects and tasks. **Consultant Name Here** agrees to perform on-call General Civil Engineering Services, and will be available on an as-needed called upon basis from January 1st, 2024 through December 31st, 2025. **Consultant Name Here** will serve as a partner to the City in order to expand the capability of City staff.

The time for completion of all work under this Agreement shall be no later than December 31st, 2025, provided that any work authorized before that date may continue until the completion date set for such work authorization, but in no event shall continue beyond December 31st, 2026. No new work shall be authorized after December 31st, 2024 unless this Agreement is amended by the City to extend these termination dates.

The Consultant is expected to respond on short notice to requests from the City that are deemed to be an emergency and require urgent work orders to be resolved immediately. The Consultant should be capable of performing urgent task order assignments while working on several other task assignments simultaneously.

Any services provided under this Agreement shall be performed pursuant to individual and specific task assignments issued to the Consultant by the City. Each task assignment will have a specific scope of work, budget, and schedule. Work on scoping and/or preparation of the individual task assignment agreements are not reimbursable. Individual task assignment budgets will be based on a cost plus fixed fee method, as determined by the City. Overhead calculations shall be based on the current WSDOT audit at the time of task assignment execution. The amount for each task assignment will be the maximum amount payable for that assignment unless modified in writing by the City.

The City shall not contract for or issue task assignments for any services under this Agreement in connection with any project funded in whole or in part by Federal Highway Administration funds and Consultant shall not seek or accept any task assignment for services under this Agreement in connection with any project funded in whole or in part by Federal Highway Administration funds.

PROJECT DESCRIPTION

Task assignments may include but are not limited to the following types of work/services:

- Civil Engineering: roadway and pavement design, drainage and surface water studies and design, and utilities – planning, preliminary and final design, and estimates (PS&E).
- Structural Engineering: bridge, retaining walls, seismic upgrades, building, marine and waterfront facilities – planning, preliminary and final design, and estimates (PS&E).
- Traffic Engineering and Transportation Planning: safety studies, corridor analysis, comprehensive plans, traffic impact fee programs, and traffic signal design, street lighting design, channelization plans - planning, preliminary and final design, and estimates (PS&E).
- Geotechnical Engineering.
- Environmental analysis, evaluation, documentation, and permitting.
- Surveying.
- Landscape Architecture and Urban Design.
- Architecture.
- Historical Preservation.
- Plan review, studies and reports, development review.
- Grant preparation, value engineering (VE), and obtaining project permits.
- Construction Management and Inspections.
- Other related work as requested by the City.

TASK ASSIGNMENT PROCESS

Procurement, selection, and contracting of architectural and engineering services task orders pursuant to this agreement shall be in accord with chapter 39.80 RCW

Task assignments made by the City shall be initiated in writing by issuing a Formal Task Assignment Document, provided. The City's choice of consultant shall be the most qualified firm based on the scope, complexity, and professional nature of the services to be rendered, as well as qualifications and performance data on file with the City. In response to a Task Order Assignment Document, the Consultant shall prepare a detailed Scope of Work, professional service budget, project schedule, and identify key staff assignments. The scope of work will be thorough and sufficiently detailed to match the complexity of the project. The Consultant's project manager will also develop a Quality Assurance review schedule which shall be included in the scope of work.

The City's Project Manager will review and comment on the scope, schedule, and budget. If the City and Consultant negotiate an agreement for the requested services at a price which the agency determines is fair and reasonable to the agency, the City shall issue a Notice to Proceed. If the City and Consultant are unable to negotiate a satisfactory contract with at a price the agency determines to be fair and reasonable, negotiations shall be formally terminated and the City shall select another firm.

An Assignment shall become effective when a Task Assignment Document is signed by the Consultant and the City and the City issues it back to the Consultant with a Notice to Proceed. The exception is that emergency actions requiring an immediate response (less than 24 hour) can be approved by oral authorization. Such oral authorization shall be

followed up with a Task Assignment Document within four working days, and any billing rates agreed to orally (for individual, subcontractors, or organizations whose rates were not previously established in this Agreement) shall be provisional and subject to final negotiation and acceptance by the City.

In case of projects covering two or more direct phases, when the cost for the second phase depends on decisions reached during the first phase, the work order agreement should cover only the first phase.

Once a Task Assignment Document is issued by the City, whether formal or informal, the consultants designated project manager will meet with the City personnel to discuss project specifics, including a site visit to fully understand the desired project outcome. The Consultant will then assemble a project team, including sub-consultants if necessary, possessing the specific skills necessary to perform the required work. Roles and responsibilities will be well defined within the project team to provide clear communication and establish accountability. When forming a project team the consultant will:

- Be as accurate as possible when identifying key staff that will be assigned project work.
- Achieve concurrence in staffing assignments from the appropriate discipline team leaders and principle in charge.
- Identify appropriate sub-consultants and similarly obtain Principal in Charge concurrence.

CONTRACT VALUE

The City estimates that the potential value of the contract will not exceed \$1,250,000. The City is not obligated to assign any specific number of tasks, volume of work, or a specific contract value to the Consultant under this Agreement. At any time during the funding year, all projects and subsequent Task Assignments may be subject to change including funding levels and project priorities. The City reserves the right to add and or delete Task Assignments to meet other priorities.



FORMAL TASK ASSIGNMENT DOCUMENT

Task Number _____

The general provisions and clauses of Agreement _____
Shall be in full force and effect for this Task Assignment.

Location of Project: _____

Project Title: _____

Maximum Amount Payable Per Task Assignment: _____

Completion Date: _____

Description of Work: _____

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ See Attachment Dated: _____

Consultant Signature: _____ Date: _____

Agency Approving Authority: _____ Date: _____

**CITY OF DES MOINES
ENGINEERING SERVICES DEPARTMENT
REQUEST FOR QUALIFICATIONS
ON-CALL GENERAL CIVIL ENGINEERING SERVICES
2024 – 2025
Submittal Due Date: September 20th, 2023**

GENERAL SCOPE:

The City of Des Moines is requesting statements of qualifications for firms interested in providing on-call General Civil Engineering Services for various City projects and tasks. The selected consultant(s) shall be responsible for preparing and/or reviewing civil engineering plans and specifications and where necessary, associated NEPA and or SEPA, studies, reports, and permits. The selected consultant(s) will be responsible for review of engineering aspects of selected developer plans. The selected consultant(s) will also provide predesign studies and final design assistance in support of City capital projects, operations, and maintenance including but not limited to, projects selected from the City of Des Moines adopted Transportation & Capital Improvement Plans. The City may also require architectural, landscape and/or urban design services in support of capital projects possibly including, but not limited to, arterial corridor planning, preservation of historic structures and/or improvements in the city center. The selected consultant(s) shall be available on an as-needed basis from January 1, 2024 to December 31, 2025. One or more consultant contracts will be considered under this solicitation, each with a maximum of up to \$1,250,000, incurred under multiple task order assignments. The Consultant(s) will be expected to respond on short notice to requests for technical services to resolve urgent task orders.

PROFESSIONAL SERVICES REQUIRED:

It is the intent of the City of Des Moines that the selected firm(s) will have experience in accomplishing similar work for municipal clients. The ideal firm(s) would be able to provide civil engineering services including the specialty areas of bridge and structural engineering, geotechnical engineering, pavement and roadway design, traffic engineering, transportation planning including preparation of comprehensive transportation plans, corridor studies and traffic impact fee programs, surface water management plans, utility plans, value engineering, construction engineering, and construction management. Other services requested of the selected consultant(s) may include architectural, historic preservation, survey, wetlands & environmental studies, permit acquisition, right-of-way services, materials testing, grant preparation, public outreach and other related work.

It is anticipated that the City of Des Moines may select firms in the following (but not limited to) categories:

- General Civil Engineering – All services as illustrated above
- Structural Engineering – General and bridge services
- Geotechnical Engineering – General services
- Environmental Engineering – General and permitting services
- Construction Management – General services including administration, engineering, inspection, and materials testing
- Right-of-Way Acquisition – Real Estate Services

Work performed under this scope will consist of individually negotiated task order assignments processed under a consultant agreement. Work will be based upon a project scope that may involve any one or a combination of disciplines and expertise and therefore may require the participation of one or several individual specialists. Work on scoping and/or preparation of the individual task order assignments is not reimbursable.

In the case of projects covering two or more distinct phases, when the cost for the second phase depends on decisions reached during the first phase, the task order assignment should cover only the first phase. The consultant agreement(s) for preliminary engineering will state that the consultant may be considered for subsequent phases upon satisfactory performance on prior work and upon negotiation of an agreement for the subsequent phase(s). The City of Des Moines is not obligated to use the same consultant firm for all phases. Separate consultant task order assignments may be considered for each phase (e.g., one for preliminary engineering and another for construction management).

RFQ SUBMITTAL REQUIREMENTS AND EVALUATION CRITERIA:

Responses to this Request for Qualifications shall be limited to fifteen (15) single-sided pages, not including a cover letter. A minimum of three references pertaining to the requested services must be listed, with current phone numbers and contact persons as a part of the RFQ. In addition, the consultant may submit a brochure describing the general capabilities of their firm along with the RFQ.

The RFQ's will be evaluated by a selection committee. If the selection committee cannot make definitive consultant selections, the City may choose to conduct oral interviews of top ranking firms. The committee will ultimately select Civil Engineering firms to be included on an on-call roster for 2024-2025.

The selection committee will use, but will not be limited to, the following criteria for consultant selection:

- Consultant's specialized experience and technical competence in performing the type of work requested in the general scope of work under one of the categories listed. The proposal document should list work experience specific to the consultant's staff members who would work for the City under this contract. (45 points)
- Demonstrated ability to perform work in a timely manner. (20 points)
- Demonstrated ability to be responsive, meet schedules, and manage budgets. (30 points)
- Demonstrated ability to successfully work with municipalities and regulatory agencies. (25 points)
- Experience and ability to work on federally funded projects consistent with local, state, and federal requirements. (30 points)
- Demonstrated ability and approach to meet Disadvantaged Business Enterprises (DBE) goals for any phase or type of work assigned by the City. (DBE Participation Plan - Mandatory Minimum Criteria)

Total maximum points: 150

The City of Des Moines in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat.252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all respondents that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Responses to this RFQ must be delivered via email as PDF attachments (10MB or less) to the City of Des Moines, 21650 11th Avenue South, Des Moines, WA 98198, Attention: Andrew Merges, P.E. Public Works Director by 4:00 PM on September 20th, 2023. Questions regarding this Request for Qualifications should be directed in writing, via e-mail only, to Andrew Merges, at amerges@desmoineswa.gov by 12:00 PM October 1, 2021. City written responses, if applicable, will be available to interested parties on or before the COB September 13th, 2023.

Published in the Seattle Times: September 1st and September 11th, 2023.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:
Blueberry Lane III Modified Short Subdivision -
Final Plat

- ATTACHMENTS:
- 1. Site Plan
 - 2. Final Plat
 - 3. Preliminary Plat Approval

FOR AGENDA OF: October 19, 2023
DEPT. OF ORIGIN: Community Development
DATE SUBMITTED: October 12, 2023

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

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

Purpose and Recommendation

The purpose of this agenda item is to obtain City Council concurrence of the administrative decision to approve the final plat for the modified short subdivision entitled “Blueberry Lane III.” Staff recommends that the Council approve the proposed final plat by passing the following motion which will appear on the consent calendar:

Suggested Motion

Motion 1: “I move to concur with City staff approval of the final plat entitled “Blueberry Lane III”, City File No. LUA2018-0067.”

Background

In January 2019, the Applicant (CES NW, Inc.) submitted the requisite application materials for a preliminary plat utilizing the provisions of a modified short subdivision codified in chapter 17.15 Des Moines Municipal Code (DMMC). The application specifically requested to divide approximately 1.56 acres in the RS-7200, Residential Single Family Zone into five lots consistent with chapter 17.05 DMMC. The site consists of one T-shaped tax parcel abutting Des Moines Memorial Drive South (Attachment 1). The City Council concurred with the City staff preliminary approval of the modified short subdivision on July 16, 2020.

Construction of the required infrastructure is now substantially complete, and the site is served by roads, drainage, utility systems and other improvements required for the future residential use of the site.

Discussion

City Council review of applications for final modified short plat approval, a Type V land use review, is required pursuant to DMMC 18.20.080(1). Should Council approve the proposed final plat, it will allow the final plat entitled 'Blueberry Lane III' to be recorded with the King County Recorder's Office and will enable the applicant to file for building permits on the lots within the subdivision.

The Applicant filed their Final Plat application on December 28, 2022. Staff concluded that the final plat (Attachment 2) sufficiently demonstrated that the subdivision meets the approval criteria established by DMMC 17.05.220. An evaluation of the final plat is provided below:

(1) PRELIMINARY PLAT CONSISTENCY

Based on a review of the preliminary plat design and multiple site visits, staff has concluded that the final plat is consistent with the preliminary plat design approved by the City Council. A park in lieu fee has been paid pursuant to DMMC 17.35.180. Additionally, the applicant has complied with the conditions of approval dated June 23, 2020 (Attachment 3) except for the following item:

- a. Tract A is designated as a public stormwater and/or open space tract. Tract A shall be dedicated to the City of Des Moines by a deed, which will be recorded concurrently with final plat.

(2) SUBDIVISION DESIGN AND LAYOUT

DMMC 17.05.220(2) and 17.05.150 require that the final plat to be consistent with the design and layout requirements of chapter 17.35 DMMC and the provisions established by chapter 58.17 RCW. The preliminary plat approval (Attachment 3) found that the proposed preliminary modified short subdivision was consistent with chapter 17.35 DMMC and chapter 58.17 RCW. Therefore, the final plat is consistent with this requirement since it is consistent with the approved preliminary plat.

(3) PUBLIC INFRASTRUCTURE

DMMC 17.10.240(1)(c) requires that all infrastructure improvements be installed or the posting of financial securities to cover the cost of installation of the outstanding improvements. All required infrastructure improvements have either been installed by the applicant or will be bonded prior to recording final plat. The new roadways have been constructed along with related curb, gutter, and

sidewalk. A performance bond will be retained until remaining punchlist items have been completed.

(4) PERFORMANCE AND MAINTENANCE BONDING

RCW 58.17.130 requires that local regulations provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat the applicant can post securities for the outstanding improvements ensuring completion after recordation of the final plat. The City provides for this in DMMC 17.40.140, but requires that the work be completed within one year of a recordation of the final plat documents. The City Manager may grant a one year extension if the work is not completed within a year of recordation of the final plat.

The applicant currently has a performance bond for site restoration work pertaining to the approved road and drainage plans. A plat maintenance bond will be retained for a one year maintenance period beginning at the acceptance of the improvements.

Alternatives

The City Council has two other alternatives in addition to the recommended action:

1. The City Council may approve the final plat with additional conditions; however, any changes must be supported by additions to the findings of fact. The changes, if any, must be supported by the public record.
2. The City Council may deny the final plat; however, new findings of fact would have to be prepared to support this decision. The reason for denying the final plat approval would have to be supported by the public record.

Financial Impact

No immediate and direct financial impacts are anticipated. Approval of the short subdivision and subsequent development does have a long term positive impact on overall assessed valuation of property and corresponding taxes collected as well as collection of traffic impact fees, but these revenues are largely offset by mitigation of project impacts or expenditures for future City services related to residential use of the property.

Recommendation

Staff has reviewed the proposed final plat (Attachment 2) and determined that the short subdivision is consistent with the cited local and state statutes. Therefore, staff recommends approval of the Final Plat entitled "Blueberry Lane III."

Concurrence

The Public Works and Legal Departments concur. South King Fire and Rescue has also reviewed the materials and recommends approval of the final plat entitled "Blueberry Lane III."

LUA2018-0067: Blueberry Lane III Short Plat





SHORT PLAT
CITY OF DES MOINES
SHORT PLAT NO. LUA2018-0067
KING COUNTY, WASHINGTON

RECORDING NO.

VOL./PAGE

SCALE: 1" = 100'

PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5,
TOWNSHIP 22 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN.

UTILITY EASEMENT PROVISION

AN EASEMENT IS HEREBY GRANTED TO THE CITY OF DES MOINES, PUGET SOUND ENERGY, CENTURY LINK, COMCAST CABLE, HIGHLINE WATER DISTRICT AND OTHER NECESSARY UTILITIES, AUTHORIZED TO OPERATE BY THE CITY OF DES MOINES WITHIN ITS CORPORATE LIMITS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, ACROSS, OVER, UNDER AND UPON THE EXTERIOR 5 OR 10 FEET OF LOTS 3, 4 AND TRACT 'C' HEREON (AS DEPICTED ON SHEET 3), PARALLEL WITH AND ADJOINING THE RIGHT OF WAYS HEREON, IN WHICH TO INSTALL, LAY, CONSTRUCT, OPERATE, MAINTAIN, REPAIR, ALTER, REPAIR, ALTER OR IN CURRING UNDERGROUND OR OVERHEAD WATER, GAS, ELECTRIC, TELEPHONE, CABLE TELEVISION, SUBDIVISION, AND OTHER PROPERTY, WITH UTILITIES, TOGETHER WITH THE RIGHT TO ENTER UPON THE LOTS AT ALL TIMES FOR THE PURPOSE HEREIN STATED. NO LINES OR WIRES FOR THE TRANSMISSION OF ELECTRIC CURRENT OR TELEPHONE USE, CABLE TELEVISION, FIRE OR POLICE SIGNALS, OR FOR OTHER PURPOSES, SHALL BE PLACED UPON ANY LOT UNLESS THE SAME SHALL BE UNDERGROUND OR IN CONDUIT ATTACHED TO BUILDING.

MIDWAY SEWER DISTRICT EASEMENT PROVISION

AN EASEMENT IS HEREBY GRANTED TO MIDWAY SEWER DISTRICT, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, FOR SEWER LINES ACROSS, OVER, UNDER AND UPON THE AREAS SPECIFIED AS 'PSE' (PUBLIC SEWER EASEMENT) & 'PVTSE' (PRIVATE SEWER EASEMENT) ON SHEET 3. MIDWAY SEWER DISTRICT SHALL HAVE THE RIGHT WITHOUT PRIOR INSTITUTION OF ANY SUIT OR PROCEEDING AT LAW, AT TIMES AS MAY BE NECESSARY, TO ENTER UPON SAID PRIVATE PROPERTY FOR THE PURPOSE OF CONSTRUCTING, REPAIRING, ALTERING OR IN CURRING ANY LEGAL OBLIGATION OR LIABILITY, THEREFORE, PROVIDED THAT SUCH CONSTRUCTING, REPAIRING, ALTERING OR RECONSTRUCTING OF SAID SEWER MAIN SHALL BE ACCOMPLISHED IN SUCH A MANNER THAT PRIVATE IMPROVEMENTS EXISTING WITHIN SAID EASEMENTS SHALL NOT BE DISTURBED OR DESTROYED, OR IN THE EVENT THEY ARE DISTURBED OR DESTROYED, THEY WILL BE REPLACED IN AS GOOD A CONDITION AS THEY WERE IMMEDIATELY BEFORE THE PROPERTY WAS ENTERED UPON BY MIDWAY SEWER DISTRICT. THIS EASEMENT SHALL RUN WITH THE LAND AND SHALL BE BINDING ON THE SUCCESSORS, HEIRS, AND ASSIGNS OF ALL PARTIES INVOLVED.

PRIVATE STORM DRAINAGE EASEMENT PROVISIONS

1. THE 5' PRIVATE STORM DRAINAGE EASEMENT OVER, UNDER, AND ACROSS LOTS 1 AND 2, AND THE 10' PRIVATE STORM DRAINAGE EASEMENT OVER, UNDER, AND ACROSS LOTS 3 AND 4, THE OWNERS OF LOTS 1 AND 2 SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE STORM DRAINAGE FACILITIES WITHIN SAID EASEMENT.
2. THE 10' PRIVATE STORM DRAINAGE EASEMENTS OVER, UNDER, AND ACROSS LOTS 2, 3, AND 5, AS DEPICTED ON THE FACE OF THIS PLAT ARE FOR THE BENEFIT OF LOTS 2-5. THE OWNERS OF LOTS 2-5 SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE STORM DRAINAGE FACILITIES WITHIN SAID EASEMENTS.

FOUND BRASS MONUMENT IN CASE W/PUNCH AT THE INTERSECTION OF S 192ND ST AND 6TH AVE S. 0.05' N OF LINE, DOWN 0.5' VISITED 9-28-13



FOUND BRASS MONUMENT IN CASE W/PUNCH AT THE INTERSECTION OF SOUTH 192ND STREET AND 1ST AVENUE SOUTH DOWN 1.5' 0.5' OF CONTROL POINT #93H-802 VISITED 9-28-13

BASIS OF BEARING

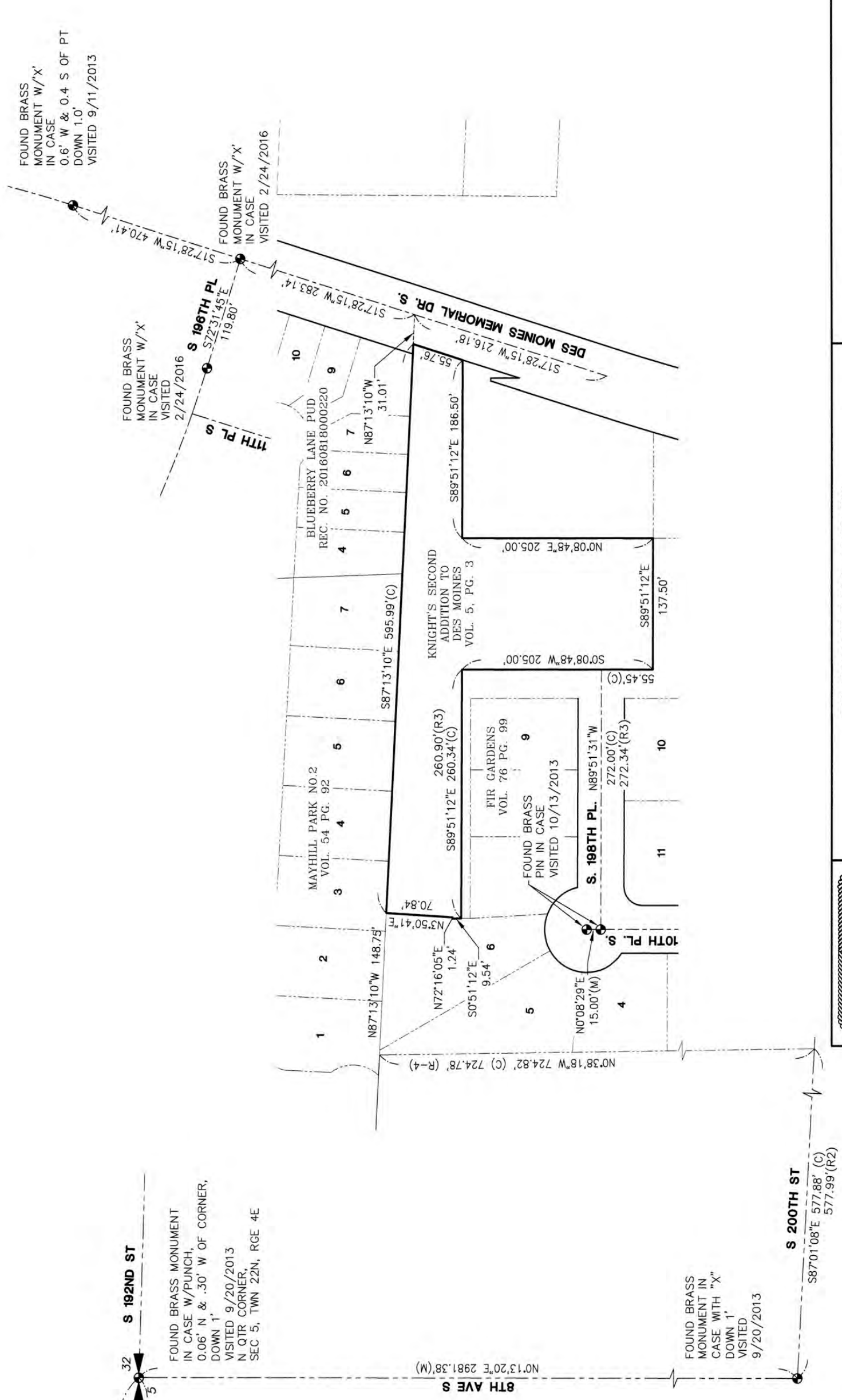
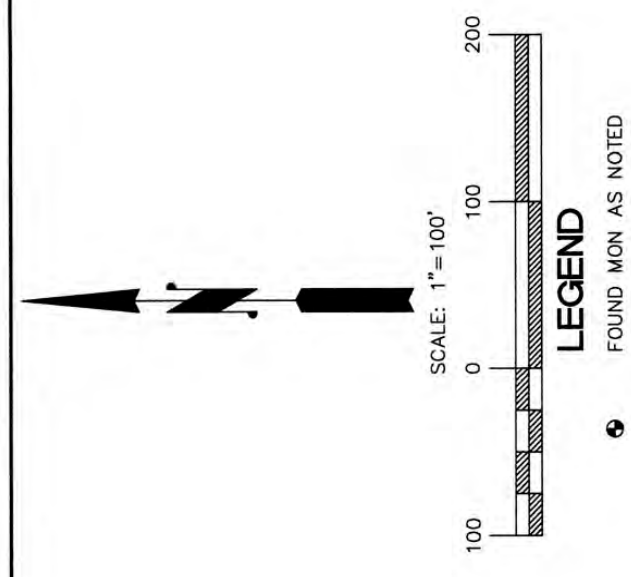
BASIS OF BEARINGS: NAD 1983/91
N 88°33'37" W AS MEASURED BETWEEN MONUMENTS LOCATED IN S. 192ND STREET AT THE INTERSECTIONS OF 1ST AVENUE S. AND 6TH AVENUE S.
CONTROL PT. 93H-802
BRASS CAP WITH PUNCH IN CONCRETE MONUMENT AT THE INTERSECTION OF S. 192ND STREET AND 1ST AVENUE S.
N. 160942.088
E. 1268555.852
CONTROL PT. F-00003
BRASS CAP WITH PUNCH IN CONCRETE MONUMENT AT THE INTERSECTION OF S. 192ND STREET AND 6TH AVENUE S.
N. 160896.466
E. 1270373.226

SURVEY NOTES

1. THIS SURVEY COMPLIES WITH ALL STANDARDS AND GUIDELINES OF THE "SURVEY RECORDING ACT", CHAPTER 36.09 RCW AND 352-150 WAC.
2. EQUIPMENT USED: GEOMAX ZOOM 80 TOTAL STATION
3. METHOD AND DATE OF MONUMENT LOCATION: FIELD TRAVERSE IN SEPTEMBER OF 2013, AND FEBRUARY OF 2016 MEETING OR EXCEEDING THE REQUIREMENTS OF WAC-352-150-090
4. HORIZONTAL DATUM: WASHINGTON STATE PLANE COORDINATE ZONE - NORTH ZONE - NAD 83/91.

REFERENCES

- R1 PLAT OF KNIGHTS SECOND ADDITION TO DES MOINES RECORDED IN VOLUME 5 OF PLATS, PAGE 3
- R2 PLAT OF FIR GARDENS RECORDED IN VOLUME 76 OF PLATS, PAGE 99
- R3 RECORD OF SURVEY FILED UNDER RECORDING NUMBER 8010079001
- R4 PLAT OF MAYHILL PARK NO.2 RECORDED IN VOLUME 54 OF PLATS, PAGE 92
- R5 BLUEBERRY LANE PUD, FILED UNDER RECORDING NUMBER 20160818000220, RECORDS OF KING COUNTY
- R6 SHORT PLAT NO 779007, RECORDED JANUARY 30, 1980, RECORDING NUMBER 8001300558, RECORDS OF KING COUNTY



BLUEBERRY LANE III
DES MOINES SHORT PLAT
SHORT PLAT NO. LUA2018-0067
CITY OF DES MOINES, WASHINGTON

ADDRESS: XXXX DES MOINES MEMORIAL DR. S., DES MOINES, WA
DRAWN BY: JC DATE: 8/1/2023 JOB #16068
CHECKED BY: CEP SCALE: 1" = 100' SHEET 2 OF 3

C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING
Bus: (253) 848-4282
ceservices@cesnwinc.com
429 29TH STREET, SUITE D
POYALLUP, WA 98372



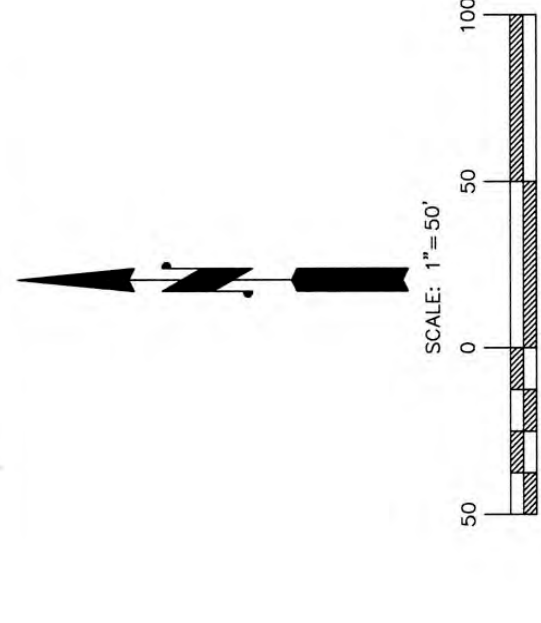
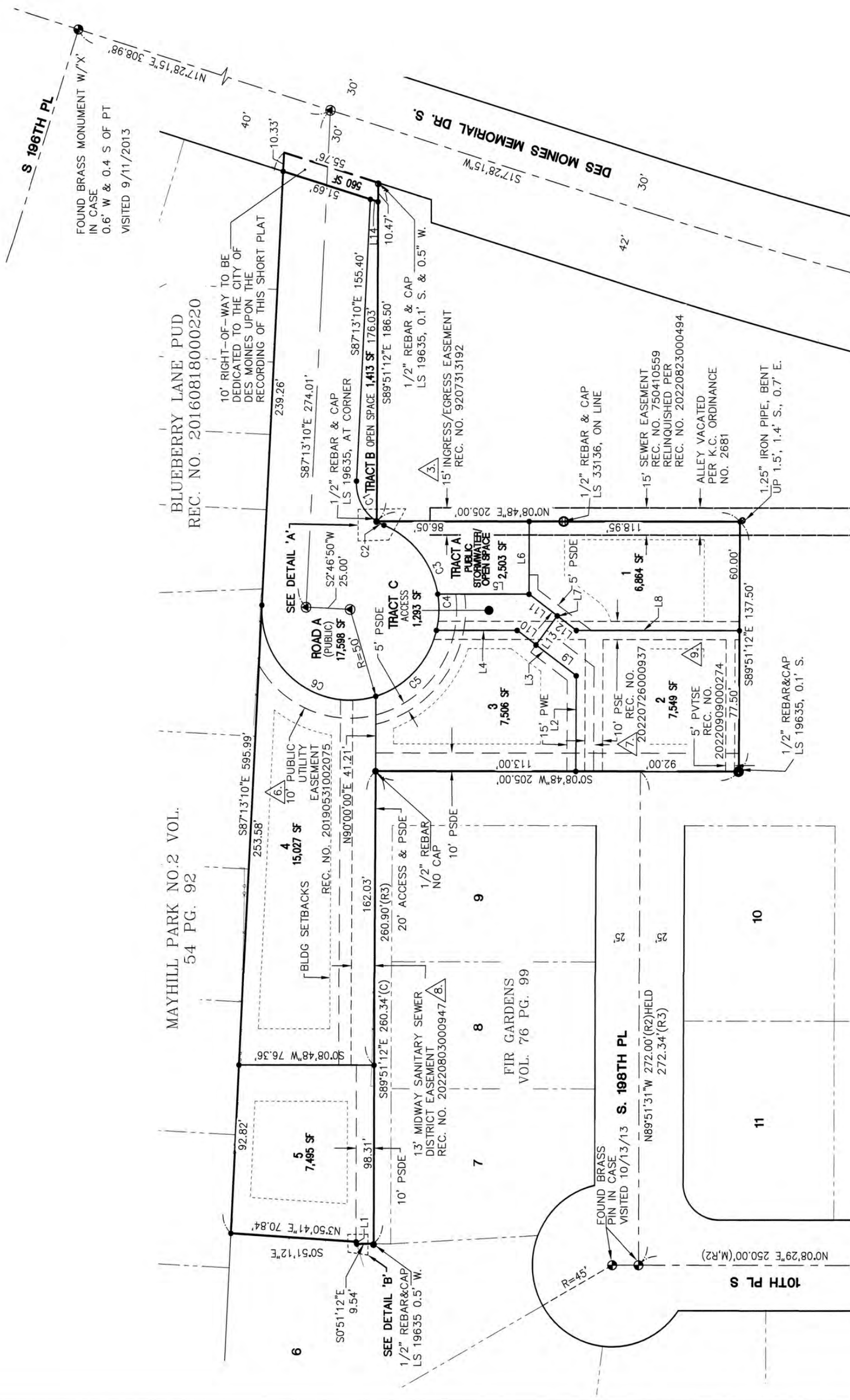
SHORT PLAT
CITY OF DES MOINES
SHORT PLAT NO. LUA2018-0067
KING COUNTY, WASHINGTON

RECORDING NO.

VOL./PAGE

SCALE: 1" = 50'

PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5,
TOWNSHIP 22 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN.



LEGEND

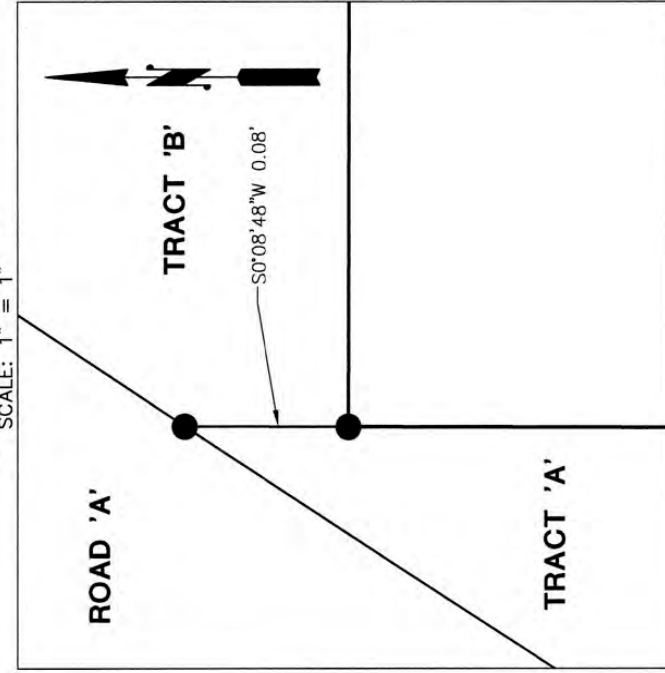
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- ⊙ SET KING COUNTY STANDARD MONUMENT "LS 50986"
- ⊙ FOUND REBAR/CAP AS NOTED
- FOUND IRON PIPE AS NOTED
- SET REBAR/CAP "LS 50986"
- PSDE PRIVATE STORM DRAIN EASEMENT
- PWE PRIVATE WATER EASEMENT (HIGHLINE WATER DISTRICT)
- PSE PUBLIC SEWER EASEMENT
- PVTSE PRIVATE SEWER EASEMENT

Line #	Length	Direction
L1	1.24	N72°16'05"E
L2	52.56	N89°51'12"W
L3	41.75	S36°49'56"W
L4	45.62	S07°08'48"W
L5	51.63	N0°08'48"E
L6	40.00	N90°00'00"E
L7	33.48	S36°49'56"E
L8	92.00	S07°08'48"W
L9	28.38	N36°49'56"E
L10	13.37	N36°49'56"E
L11	20.00	S36°49'56"W
L12	13.48	S36°49'56"W
L13	20.00	N53°10'04"W
L14	4.57	S17°28'15"W

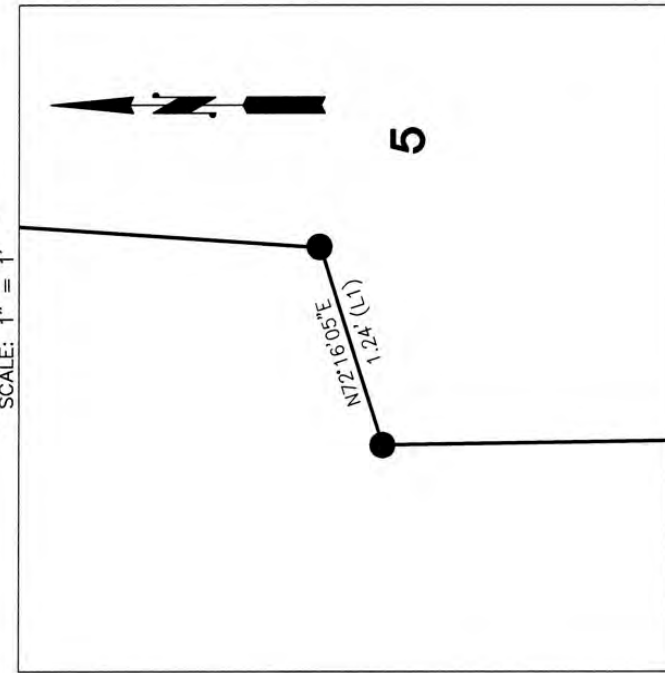
Curve #	Length	Radius	Delta
C1	26.09	25.00	59°48'18"
C2	4.68	25.00	10°43'26"
C3	50.73	50.00	56°07'50"
C4	20.15	50.00	23°05'07"
C5	52.05	50.00	59°36'39"
C6	95.66	50.00	109°37'13"

LOT #	ADDRESS
1	1309 S 198TH CT
2	1307 S 198TH CT
3	1035 S 198TH CT
4	1028 S 198TH CT
5	1022 S 198TH CT

DETAIL 'A'
SCALE: 1" = 1'



DETAIL 'B'
SCALE: 1" = 1'



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CHECKED BY: CEP SCALE: 1" = 50' SHEET 3 OF 3

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City of Des Moines



PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
21630 11TH AVENUE SOUTH, SUITE D
DES MOINES, WASHINGTON 98198-6398
(206) 870-7576 FAX (206) 870-6544



June 23, 2020

CES NW, Inc.
Attn: Jennifer Caldwell
429 29th Street NE, Suite D
Puyallup, WA 98372

SENT VIA EMAIL

Re: Blueberry Lane III Modified Short Plat – LUA2018-0067; Preliminary Plat Approval

Dear Ms. Caldwell,

The purpose of this letter is to provide written notice that City staff has approved, with conditions, the Preliminary Blueberry Lane III Modified Short Subdivision, King County Parcel #3917400130, pending concurrence by the Des Moines City Council.

Per Des Moines Municipal Code (DMMC) 17.20.020(3), the planning official shall provide notice of the modified short subdivision decision and written findings to the city council at a regularly scheduled meeting. The city council shall by motion decide whether to concur with the decision or review further. The decision shall not be considered final until city council action on the matter is complete.

City staff has determined that the preliminary modified short subdivision is consistent with the approval criteria established by DMMC 17.15.070. The approval of a preliminary modified short subdivision by the City constitutes approval only of the general concept and layout of the plat. Preliminary approval does not signify acceptance of all engineering details of the plat. These engineering details remain subject to approval and must be complete before final short plat approval.

The modified short subdivision process provides a mechanism whereby an applicant may propose and the City may consider and approve an innovative or unusual subdivision that does not comply with one or more of the requirements specified in chapter 17.35 DMMC – Layout and Design of Subdivisions and Similar Requirements. The aspects of this application that do not meet standard subdivision requirements are that Lot 4 would exceed the allowable lot width to depth ratio allowed by DMMC 17.35.050(2), and that access to Lot 5 is provided by an easement across Lot 4, which is not permitted by DMMC 17.35.070. Per DMMC 17.15.060(2), unique design features not ordinarily provided in traditional subdivisions/short subdivisions shall be incorporated into the proposal to offset the need for the modified standards. The following conditions of approval shall apply:

- To offset the proposed deviation to the lot width to depth ratios on Lot 4, a Type II – Visual Buffer landscaping strip and fencing shall be provided along the northern sides of Lots 4 and 5 for privacy screening for the adjacent lot owners.

- To offset the access easement, solid board fencing shall be provided between the access easement and buildable lot area on Lot 4 for screening purposes.
- Tract A (Drainage/Open Space) will include a play area, as grassed open space, in the proposed storm water tract. Per DMMC 18.195.330(1), a Type 1 planting strip not less than 10 feet in depth shall be provided along all property lines of Tract A abutting a Residential Zone. Landscaping shall be limited to shrubs and groundcover to be reviewed by Surface Water Management during civil review to ensure that they do not interfere with the functionality of the tract. Any surface improvements will need to be approved by Surface Water Management to ensure that such improvements do not interfere with the maintenance of the underground drainage facilities. A maintenance and operations agreement will be needed for the surface (SWM would not be maintaining the open space, just the drainage facilities).
- DMMC 17.35.180 requires that the applicant requesting a subdivision develops, dedicates, and improves space for use as a public park or provides a payment in lieu of this dedication. The applicant will be required to pay the park in-lieu fee at the time of final plat in order to meet the park requirement pursuant to DMMC 17.35.180.
- Per DMMC 18.235.050, multiple building permit applications by the same applicant or one standing in privity to the applicant for the construction of a series of single-family dwellings in the same subdivision or short subdivision are considered regulated improvements requiring a separate Design Review application.

The applicant shall submit detailed design documents for all required right-of-way, utility, or other improvements to the Planning, Building, and Public Works Department upon approval of the preliminary plat by City Council. See current fee schedule for engineering plan review. These documents shall be reviewed and approved by the City. Once the improvements have been substantially completed, the applicant may apply for final short plat approval.

The following comments shall be incorporated into the civil plan submittal for the proposed project:

TRANSPORTATION:

1. Public roadway cross section shall be consistent with the attached detail DM.A4.1.
 2. Private roadway cross section shall be consistent with attached detail DM.A6.1.
 3. Provide all driveway and curb ramp transition slopes to verify ADA compliance.
 4. Provide landscaping plans within Right-of-Way.
 5. Reference WSDOT Standard Plan F-10.12-03 for cement concrete curb and depressed curb.
 6. Reference WSDOT Standard Plan F-80.10-04 Type 1 for all driveway approaches.
 7. Stop sign and street name signage shall be consistent with attached detail DM.G1.1, DM.G1.2, and DM.G1.3.
 8. Install thermoplastic stop bar at approach to Des Moines Memorial Drive South per attached detail DM.H2.1.
 9. A 5 foot building setback shall be recorded for all access easements.
 10. It appears only two access points will now be within the cul-de-sac. If so, the depressed curb between the driveways is not needed. Provide two separate driveway approaches.
 11. Access by easement may be allowed as a part of the Modified Short Plat process.
- If you have any questions or need additional information, please call Tommy Owen at (206)870-6870.

SOUTH KING FIRE & RESCUE:

For building permits:

1. Water supply: A Certificate of Water Availability including a hydraulic fire flow model* shall be requested from the water district and provided at the time of building permit application.

- *A hydraulic fire flow model is required for single family residences that exceed 3600 square feet including garages and covered areas.
2. Fire hydrants: The proposed fire hydrant on page C4 of the Utility Plan is acceptable.
 3. Emergency access: Fire apparatus access roads shall comply with all requirements of Fire Access Policy 10.006. <http://southkingfire.org/DocumentCenter/Home/View/24>
 4. Fire sprinkler system: An NFPA 13D fire sprinkler system may be required in the structure built on Lot 5. Determination of requirements for residential fire sprinklers, if any, are made at the time of building permit application.

PLANNING:

1. For Civil Plan Review submittal:
 - a. The applicant shall submit a Grading Permit application in conjunction with the civil plans. Application and fee schedules are available at <http://desmoineswa.gov/184/Permit-Applications-Worksheets>. Engineering Plan Review fees per the current fee schedule will also be due with the civil plan submittal.
 - b. The applicant shall submit a Bond Quantity Worksheet for all required right-of-way, utility, or other improvements. <http://desmoineswa.gov/328/Forms-Documents>
 - c. A separate Right-of-Way Permit will be required for any work within public rights-of-way.
 - d. If the civil improvements associated with the subdivision require the removal/fill of more than 500 cubic yards of material, State Environmental Policy Act (SEPA) review will be required in conjunction with the civil plan review. A copy of the SEPA Checklist and the submittal requirements will be provided upon request.
 - e. Per DMMC 17.35.210 – Natural features – Significant vegetation, contains provisions for retention of significant vegetation. The civil submittal shall distinguish the significant trees on site per the definition in DMMC 17.01.050. Civil submittal materials shall address the retention criteria in DMMC 17.35.210 in the identification of significant trees to be retained or removed.

If you have any questions regarding the comments, please contact Laura Techico at ltechico@desmoineswa.gov or 206-870-6595.

DMMC 17.12.180 requires that the applicant submit the final short plat documents, together with required recording fees, to the City for recording with the county auditor within six months from the date of approval. If the final documents are not submitted within six months, the short plat is deemed void and any development rights that have vested in the applicant shall be considered abandoned.

The decision to approve or deny this application is a Type II land use action, which is appealable to the Hearing Examiner as provided in DMMC 18.20.170 and 18.240.170. An appeal must be filed with the City Clerk within ten (10) days from the final decision date.

Sincerely,



Laura Techico, AICP
Principal Planner

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Draft Resolution 23-061 Setting a Date for Public Hearing for Vacation of Right-of-Way known as 10th Ave South

FOR AGENDA OF: October 19, 2023

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: October 11, 2023

ATTACHMENTS:

- 1. Draft Resolution No. 23-061

CLEARANCES:

- City Clerk N/A
- Community Development Let
- Courts N/A
- Director of Marina Redevelopment N/A
- Emergency Management N/A
- Finance N/A
- Human Resources N/A
- Legal /s/ TG
- Marina N/A
- Police N/A
- Parks, Recreation & Senior Services N/A
- Public Works *Shawn Brown*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to set a public hearing date in compliance with DMMC 12.10.040 and RCW 35.79.010 to consider a street vacation application request involving public right-of-way within the City of Des Moines known as 10th Ave South, between South 247th Street and South 248th Street. The following motion will appear on the Consent Agenda:

Suggested Motion

Motion: "I move to adopt Draft Resolution No. 23-061 setting a public hearing on November 16, 2023, for a street vacation request relating to public right-of-way within the City of Des Moines."

Background

Behauden Omer and Ekram Hassen filed application materials with the City requesting a vacation of public right-of-way within an area known as 10th Ave South, between South 247th Street and South 248th Street. The area to be vacated is identified in Exhibit A of Attachment 1.

The area requested to be vacated is currently unimproved public right-of-way. The only public utility within the right of way is Midway Sewer District. Utilities that were contacted and are not affected are: Puget Sound Energy, Comcast, King County Water District 54, CenturyLink, AT&T, Highline Water District, Lakehaven Utility District, South King Fire & Rescue, Des Moines Surface Water Utility, and Southwest Suburban Sewer District.

Discussion

This Draft Resolution sets a public hearing date in compliance with DMMC 12.10.040 and RCW 37.79.010 to consider the vacation of public right-of-way known as 10th Ave South, between South 247th Street and South 248th Street.

Alternatives

The City Council may:

1. Adopt the draft resolution as written.
2. Adopt the draft resolution with amendments.

Financial Impact

This agenda item establishes a hearing date and time for consideration of a street vacation of public right-of-way. No financial impact is foreseen by setting the public hearing.

Recommendation

It is recommended that the City council approve the Draft Resolution setting a public hearing date.

Council Committee Review

Not applicable.

DRAFT RESOLUTION NO. 23-061

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider vacation of a segment of public rights-of-way in the City of Des Moines.

WHEREAS, the City Council is considering vacation of a portion of public rights-of-way known as 10th Ave South between South 247th Street and South 248th Street, located in the City of Des Moines as described and shown on Exhibit "A", attached hereto and incorporated by reference, by the petition method, and

WHEREAS, the provisions of RCW 35.79.010 authorize the City Council to fix a time for a public hearing in order to receive public comment regarding this proposal; now therefore,

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

The matter of the vacation of the following described portions of public rights-of-way in the City of Des Moines is set for a public hearing before the City Council on Thursday, November 16, 2023 at 6:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue So., Suite B, Des Moines, Washington:

10th Ave South, between South 247th Street and South 248th Street, located in the City of Des Moines as described and shown on Exhibit "A", attached hereto.

ADOPTED BY the City Council of the City of Des Moines, Washington this 19th day of October, 2023, and signed in authentication thereof this 19th day of October, 2023.

M A Y O R

APPROVED AS TO FORM:

Draft Resolution No. 23-061
Page 2 of 2

City Attorney

ATTEST:

City Clerk

EXHIBIT 'A'

ROAD VACATION DESCRIPTION-10th Ave S. :

A portion of the Southeast quarter of the Northeast Quarter of Section 20, Township 22 North, Range 4 East, Willamette Meridian in King County, Washington described as follows:

BEGINNING AT the Northeast corner of Lot 1, Block 36, Plat of the First Railroad Addition to Des Moines in Volume 4 of Plats, at Page 90, Records of King County, Washington;

Thence East 30 feet to the Center line of platted Vancouver Street, commonly known as 10th Avenue South;

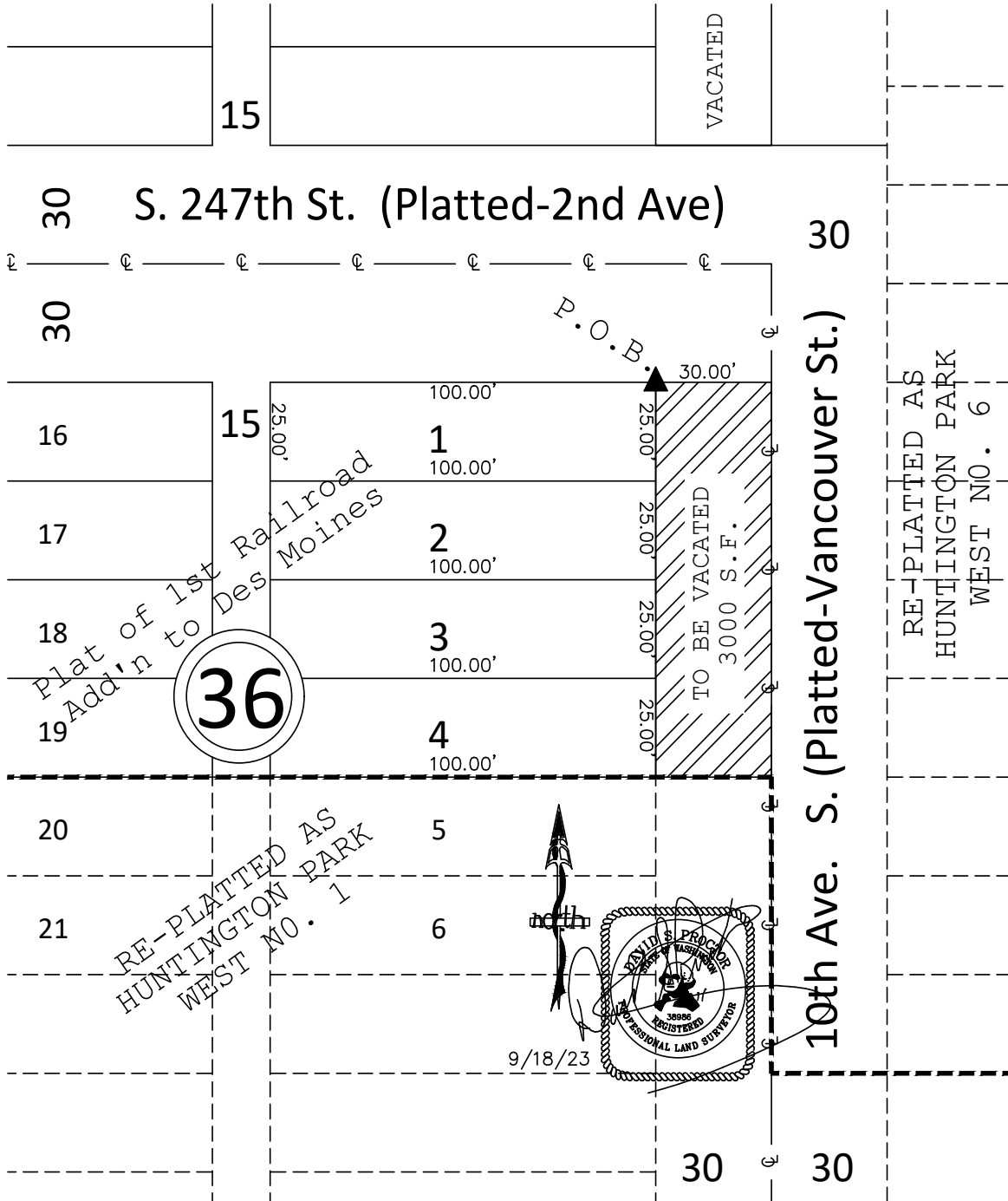
Thence South along said center line to a point which is 30 feet East of the southeast corner of Lot 4 of Block 36, of said Plat of First Railroad Addition to Des Moines;

Thence West to the Southeast corner of Lot 4 of said Block 36;

Thence North along the east line of said Block 36 to the POINT OF BEGINNING.



9/18/23



A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: North Hill Elementary Walkway
Improvements Project

FOR AGENDA OF: October 19, 2023

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: October 11, 2023

1. Parametrix Inc. Local Agency A&E Professional Services Consultant Agreement
2. WSDOT Safe Route To School Program Award Letter
3. Local Programs State Funding Agreement and Project Prospectus
4. 2024 – 2029 CIP Budget Worksheet

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Emergency Management _____
- Finance *MM 21* _____
- Human Resources _____
- Legal /s/ TG _____
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works *Richard Lopez* _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to seek approval for the Local Agency A&E Professional Services Consultant Agreement (Attachment 1) with Parametrix Inc. providing engineering design and right-of-way acquisition services for the North Hill Elementary Walkway Improvements Project, seek approval for the Local Programs State Funding Agreement with the Washington State Department of Transportation (WSDOT), and to direct staff to have all existing overhead utilities relocated aerially as needed for construction of the North Hill Elementary Walkway Improvements Project. The following motion(s) will appear on the Consent Agenda:

Suggested Motion(s)

Motion 1: “I move to approve the Local Agency A&E Professional Services Consultant Agreement with Parametrix Inc. to provide engineering design and right-of-way acquisition services for the North Hill Elementary Walkway Improvements Project in the amount of \$723,704.24, and further authorize the City Manager to sign said Agreement substantially in the form as submitted.”

Motion 2: “I move to accept the 2023-25 WSDOT Safe Routes to School Program grant for the North Hill Elementary Walkway Improvements project in the amount of \$3,000,000, and authorize the City Manager to sign the Local Programs State Funding Agreement and Project Prospectus substantially in the form as submitted.”

Motion 3: “I move to direct staff to have all of the existing overhead utilities relocated aerially as needed for construction of the North Hill Elementary Walkway Improvements Project, waiving the requirement for undergrounding of utilities in accordance with DMMC 12.25.110.”

Background

Motion #1 - Professional Services Consultant Agreement

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

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

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

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

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

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

Motion #2 - WSDOT Safe Route to School Program

In June of 2022, the City prepared a grant application for the WSDOT Safe Routes to School Program for the North Hill Elementary Walkways Improvement Project. Staff was notified on December 15, 2022 that the grant request, in the amount of \$3,000,000, was placed on the recommended prioritized funding list for the Safe Routes to School Program through WSDOT Local Programs. On June 22, 2023, the City was notified that the project was selected and awarded \$3,000,000 in state funding from WSDOT (Attachment 2).

Motion #3 - Utility Undergrounding Requirement

It is the policy of the City to require the underground installation of all new or relocated electrical and communication franchise facilities on streets undergoing roadway improvements. Generally, under the various franchise agreements, utility undergrounding is a shared cost with the City. This franchise utility undergrounding policy has exceptions that apply to City Public Work's projects.

The Des Moines Municipal Code contains the following section regarding utility undergrounding:

12.25.110 Improvement of Streets – Utility Undergrounding.

The City Council, when ordering the improvement of a street, shall determine whether the relocation of electrical and communication systems underground is required, and if so, the manner of payment. [Ord. 1578 § 83, 2013.]

The City Council has previously waived undergrounding requirements on Public Work's projects located at the following locations:

- 16th Ave South between South 260th Street and South 272nd Street
- South 268th Street between 16th Ave South and Pacific Highway South
- 24th Ave South between South 223rd Street and Kent-Des Moines Road South

These projects provided improved connectivity and safety for both pedestrian and vehicular users. Aerial facilities on all of the projects listed above were relocated behind newly constructed sidewalks in order to limit their impact to pedestrians and roadway users.

Discussion

Motion #1 - Professional Services Consultant Agreement

In order to fulfill the project design, permitting requirements, and right-of-way acquisition needs, consultant support will be needed. In May of 2023, City staff prepared and advertised a Request for Proposal (RFP) for engineering and right-of-way services for the North Hill Elementary Walkway Improvements Project. The City received four proposals from consulting firms that were reviewed and scored by a committee of City staff. Staff determined through this review process that Parametrix was best qualified to provide engineering design and right-of-way acquisition and requested their services (Attachment 1).

Specific elements of work included within the Professional Services Consultant Agreement include:

- Preliminary Engineering (Survey, Geotechnical, Utility Coordination, Cultural and Historical Resources Survey)
- WSDOT SRTS Grant Coordination
- Environmental Permitting (SEPA)

- Final Design (TESC, Demolition, Roadway Plans, Storm Drain Plans, Channelization, ADA Pedestrian Facilities, Driveway Plans, Illumination Plans, Enhanced Crossing Details, Retaining Wall Plans, Traffic Control Plans)
- Right of Way Acquisition Services

The Professional Services Consultant Agreement with Parametrix will position the project to be ready for construction bid advertisement in early 2025, with anticipated construction beginning in summer of 2025 subject to City Council approval.

Motion #2 - WSDOT Safe Routes to School Program

The Local Programs State Funding Agreement and Project Prospectus (Attachment 3) between WSDOT and the City allows for reimbursement of grant funding.

Utility Undergrounding Requirement (Motion #3)

DMMC 12.25.110 allows for the City Council, when ordering the improvement of a street, to determine whether the undergrounding of relocated electrical and communication systems is required. By proceeding with no undergrounding of utilities, this project will be able to progress within the constraints of the current CIP budget. The cost to underground utilities within the project is estimated at approximately \$750,000, which the project budget does not support at this time. The WSDOT Safe Routes to School Program grant does not cover the costs associated with undergrounding of utilities. The City's portion of the costs for undergrounding of utilities is entirely the City's responsibility and is not eligible to be paid for by grant funding.

The South 200th Street corridor is within a residential area and serves as access to North Hill Elementary, Maritime High School, and the North Hill neighborhood. The project corridor has a very different feel in comparison to commercially zoned areas such as the South 216th Street corridor and 24th Ave South corridor between South 208th Street and South 216th Street. The Transportation Gateway Projects in these commercial zones were designed with additional urban design features, not typically constructed in residential areas, which included relocating aerial facilities underground.

Alternatives

Motion #1 - Professional Services Consultant Agreement

The City Council could elect not to approve the Professional Services Consultant Agreement with Parametrix Inc. for engineering design and right-of-way acquisition services for the Project. The City does not have adequate resources to perform engineering design and right-of-way acquisition services and the Project would be placed on hold. This will delay the project as well as jeopardize the current and any future WSDOT project funding opportunities.

Motion #2 - WSDOT Safe Routes to School Program

The City Council could elect not to accept the WSDOT Safe Routes to School Grant and therefore not move forward with the project. This would result in forfeiting the awarded Safe Routes to School Program grant funding.

Motion #3 - Utility Undergrounding Requirement

The City Council could elect not to waive the requirement for undergrounding of utilities in accordance with Chapter 12.25.110 of the DMMC and direct staff to review all available funding resources for the undergrounding of utilities. This will delay the design of the project and potentially place WSDOT Safe Routes to School Program funds at risk.

Financial Impact

Motion #1 - Professional Services Consultant Agreement

The City's 2024-2029 CIP Budget Worksheet includes revenues to achieve full funding for the Professional Services Consultant Agreement (Attachment 4).

Motion #2 - WSDOT Safe Routes to School Program

Funding sources for this project will be realized through CIP funds as shown on the approved 2024 – 2029 CIP Budget Worksheet (Attachment 4).

Motion #3 - Utility Undergrounding Requirement

The Project will not incur additional costs associated with Franchise Utility Undergrounding.

Recommendation

Staff recommends adoption of the motions(s).

Council Committee Review

This project has been discussed during Transportation Improvement Plan (TIP) and Capital Improvement Plan (CIP) public hearings as well as committee CIP updates as Staff pursued grant support.

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

Agreement Number:

Firm/Organization Legal Name (do not use dba's): Parametrix, Inc.	
Address 1019 39th Avenue SE, Suite 100, Puyallup, WA 98374	Federal Aid Number N/A
UBI Number 600 135 349	Federal TIN 91-0914810
Execution Date	Completion Date 3/31/2025
1099 Form Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Federal Participation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Project Title North Hill Elementary Walkway Improvements	
Description of Work Parametrix will design improvements along approximately 800 ft. of South 200th Street from 8th Avenue South to 10th Place South and will design enhancements to a pedestrian crossing on 8th Avenue South near North Hill Elementary. Included with the engineering design will be coordination with Washington State Department of Transportation, environmental research, right-of-way acquisition, and geotechnical engineering.	
<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No DBE Participation <input checked="" type="checkbox"/> No MBE Participation <input checked="" type="checkbox"/> No WBE Participation <input checked="" type="checkbox"/> No SBE Participation
Maximum Amount Payable: 723,704.24	

Index of Exhibits

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

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

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

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

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

I. General Description of Work

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

II. General Scope of Work

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

III. General Requirements

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

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

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

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

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

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

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

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

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

If to AGENCY:

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

If to CONSULTANT:

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

IV. Time for Beginning and Completion

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

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

V. Payment Provisions

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

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

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

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

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

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

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

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

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

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

VI. Sub-Contracting

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

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

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

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

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

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

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

VII. Employment and Organizational Conflict of Interest

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

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

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

Agreement Number:

VIII. Nondiscrimination

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

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

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

IX. Termination of Agreement

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

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

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

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

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

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

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

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

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

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

X. Changes of Work

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

XI. Disputes

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

XII. Legal Relations

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

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

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

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

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

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

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

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

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

Insurance Coverage

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

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

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

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

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

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

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

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

XIII. Extra Work

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

XIV. Endorsement of Plans

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

XV. Federal Review

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

XVI. Certification of the Consultant and the Agency

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

XVII. Complete Agreement

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

XVIII. Execution and Acceptance

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

XIX. Protection of Confidential Information

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

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

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

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

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

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

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

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

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

XX. Records Maintenance

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

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

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

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

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

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



Signature

9/27/2023

Date

Signature

Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

***Exhibit A
Scope of Work***

Project No.

See Scope of Work on the following pages.

SCOPE OF WORK

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

PROJECT UNDERSTANDING

The City of Des Moines has requested that Parametrix prepare this scope of services for the design improvements along approximately 800 feet of S 200th Street, from 8th Avenue S to 10th Place S. This corridor has a speed limit of 25 mph outside the school zone and 20 mph within the school zone. The proposed roadway sections will have two 10-foot-wide vehicular lanes and 5-foot-wide bike lanes. Improvements include:

1. At the intersection of S 200th Street and 8th Avenue S:
 - a. Three ADA-compliant curb ramps.
 - b. Marked crossings.
 - c. Illumination for marked crossings.
2. Along S 200th Street, from 8th Avenue S to 10th Place S:
 - a. 6-foot sidewalk with curb and gutter along both sides.
 - b. 32 ADA-compliant curb ramps (3 intersection curb ramps and 29 driveway/ sidewalk ramps).
 - c. Marked bike lanes.
 - d. Two speed feedback signs, on either side of S 200th Street, near 10th Place S.
3. At the intersection of 8th Avenue S and north school entrance driveway:
 - a. Two rectangular rapid flashing beacons (RRFBs) on each side of 8th Avenue S.
 - b. Curb ramps, median refuge island and restriping lane configurations.
 - c. Marked crossings.
 - d. Illumination for marked crossings.

SCHEDULE

The budget estimate assumes the following schedule:

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

TASK 01 – PROJECT MANAGEMENT AND QA/QC

Approach

Parametrix will be responsible for continuous tracking and contract administration of this project, including coordination of work efforts with the City's project manager and coordination with subconsultants.

This task includes general management functions that include the following:

- Project Planning – Document and communicate the scope of work, budget, and schedule as a road map for the project team. Coordinate project team and issues throughout the project.
- Budget and Schedule Tracking – Track the project budget using Parametrix in-house tools to verify that progress is keeping pace with spending.
- Biweekly design team meetings with an issues list to document project design decisions, with meetings occurring more frequently as needed.
- Monthly Progress Reports – Prepare a monthly invoice for services performed by Parametrix.
- Correspondence – Prepare written correspondence as needed to document project management issues and/or concerns.
- Coordination with Washington State Department of Transportation (WSDOT).

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

Deliverables

Deliverables for this task include:

- Contractual documents for signature by the City.
- Project schedule.
- Miscellaneous correspondence to document project management issues.
- Monthly progress reports enclosed with invoices.

Assumptions

Assumptions for this task include:

- Project duration is 17 months from the notice to proceed.
- Budget assumes 40 meetings.
- Review comments will be for internal use, with documentation available to City staff upon request.

TASK 02 – MAPPING

Approach

Parametrix will provide topographic mapping and right of way determination and prepare an AutoCAD Civil 3D format base map identifying existing conditions and improvements to support design efforts. Parametrix will map the following limits as shown on Exhibit A (located on page 5):

- Beginning 100 feet west of the intersection of S 200th Street and 8th Avenue S, and ending 100 feet east of the intersection of S 200th Street and 10th Place S; approximately 1,000 linear feet
- 730 linear feet north of the intersection of S 200th Street and 8th Avenue S
- 100 linear feet south of the intersection of S 200th and 8th Avenue S
- 100 linear feet north along 9th Avenue S
- 100 linear feet north along 10th Place S
- Northerly driveway of the North Hill Elementary School and the northerly driveway of Southminster Presbyterian Church.
- Roadway channelization extending 100 linear feet north of the north driveway of North Hill Elementary School (No topography will be included other than channelization in this area).
- The sidewalk, curb, and gutter on the north side of S 200th Street between 10th Place S and Des Moines Memorial Drive, including all adjacent utilities.
- Parametrix will map the adjacent residential property driveway limits to the face of structure or back of driveway (18 total driveways)

TOPOGRAPHIC ELEMENTS

Topographic elements consist of information shown on a map which depicts the horizontal and vertical positions of natural and/or fabricated features and existing terrain surfaces. The topographic mapping will include evidence of, including but not limited to, the following improvements:

- Buildings
- Storm drainage and storm drain structures
- Meters or utility connects to existing buildings
- Curbs
- Sanitary sewer manholes and/or septic tank/drain field areas as identified to our field survey crew by the City
- Water valve boxes
- Sidewalks/paths
- Electrical power vaults and associated surface features
- Fire hydrants
- Driveways/curb cuts
- Overhead wires, guy wires
- Telephone pedestals
- Pavement delineation between concrete and asphalt
- Natural gas
- Signage
- Retaining walls, bulkheads, and fences – materials and heights
- Cable or fiber optic pedestals
- Ponds
- Street lighting
- Underground utility location paint marks set by others, if visible at time of the field survey

SCOPE OF WORK (continued)

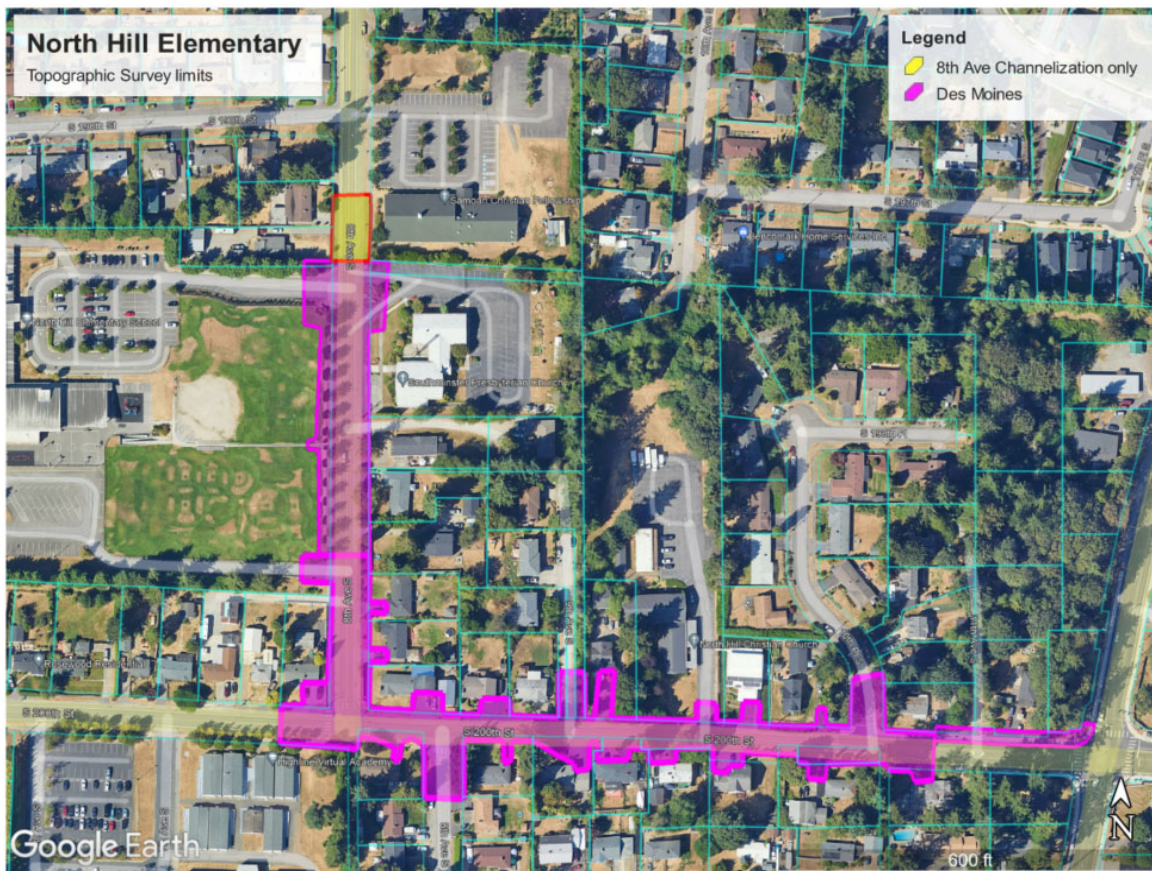
Assumptions

- Parametrix will be provided reasonable access to all areas requiring surveys.
- Parametrix will be provided right of entry on location of private property.
- Parametrix field crews may need to perform minor brushing with machetes to conduct this survey, and we have the City's permission to do so.
- Horizontal datum shall be North American Datum (NAD) 83/11 Washington Coordinate System, North Zone, and vertical datum shall be North American Vertical Datum of 1988 (NAVD 88).
- Base map will be developed using Parametrix Survey Mapping Standards.
- Right of entry will not be necessary to survey driveway lengths. The City will provide contact information to the survey crew, who can distribute the information to the property owners should they inquire about the survey effort. It is assumed that the survey crew will have unrestricted access to make measurements.
- The setting of any survey monuments at any of the right-of-way points of the subject properties has not been included in this proposal. The right-of-way of the property will be merged into the topographic mapping, as appropriate, and shown for graphical purposes only. This service can be provided if required at a later date; however, any setting of property corners, and filing of a record of survey (if required) will be considered Additional Services and billed separately as described below in Task MR.
- For safety reasons, our survey crews are not allowed to enter subsurface vaults. Our work will be conducted from the surface, using measure-down techniques. Crews will also not open any structure covers in excess of 80 pounds.

Deliverables

- Base map, in Civil 3D 2022 drawing file format of the right-of-way and topographic survey at a 1":40' scale unless otherwise directed.

Exhibit A



TASK 03 – RIGHT-OF-WAY ACQUISITION

Subtask 03.1 – Right-of-Way Acquisition (Epic, Inc.)

Approach

See scope of work prepared by Epic, Inc. in Exhibit E of the Local Agency Agreement.

Assumptions

See scope of work prepared by Epic, Inc. in Exhibit E of the Local Agency Agreement.

Deliverable

See scope of work prepared by Epic, Inc. in Exhibit E of the Local Agency Agreement.

SCOPE OF WORK (continued)

Subtask 03.2 – Right-of-Way Acquisition (Parametrix)

Approach

Parametrix will assist Epic, Inc. with the acquisition of temporary construction easements (TCEs) for 18 parcels. Parametrix will prepare a right-of-way map and up to 18 figures showing TCE lines, proposed project design features, and existing surveyed base map features for affected properties.

Assumptions

- TCEs are to be recorded at the City's discretion and, therefore, will require legal descriptions and exhibits.
- One iteration of right-of-way plan redline/comments are included in this proposal.

Deliverable

- Right-of-way plan and up to 18 figures showing property impacts.

Subtask 03.3 – Right-of-Way Plans

Approach

Parametrix will prepare right-of-way plans that depict the partial acquisition and TCE boundaries needed to construct the project. The plans will include parcel number and areas of both acquisition and TCEs. The right-of-way plans will be used by Epic, Inc., for the project funding estimate and may be used during property negotiations.

Assumptions

- Right-of-way plans will be half-size (11 by 17 inches) plans delivered in electronic format (PDF).
- One iteration of redlines/comments included in this proposal.

Deliverable

- Right-of-way plans and up to 18 figures showing property impacts in electronic format (PDF).

Subtask 03.4 – Legal Descriptions and Exhibits

Approach

Parametrix will prepare legal descriptions for the partial acquisitions and exhibits that depict both the partial acquisitions and TCE areas suitable for recording by the City.

Assumptions

- Legal descriptions and easements will be letter size (8.5"x11").
- Up to 18 legal descriptions and associated exhibits will be provided in electronic format (PDF).

SCOPE OF WORK (continued)

TASK 04 – GEOTECHNICAL

Approach

See scope of work prepared by PanGEO, Inc. in Exhibit E of the Local Agency Agreement.

Assumptions

See scope of work prepared by PanGEO, Inc. in Exhibit E of the Local Agency Agreement.

Deliverable

See scope of work prepared by PanGEO, Inc. in Exhibit E of the Local Agency Agreement.

TASK 05 – UTILITY COORDINATION

Approach

Parametrix will prepare a utility conflict map showing anticipated and/or potential conflicts between utilities as located in the field and proposed improvements.

Assumptions

- The City will schedule and facilitate all utility coordination meetings.
- The City will coordinate with Puget Sound Energy (PSE) on roadway illumination lighting.

Deliverable

- Utility conflict plans in electronic format (PDF).

TASK 06 – CONCEPTUAL DESIGN (15%)

Approach

Parametrix will prepare a preliminary conceptual plan to the 15% design level. The concepts will include different roadway centerline alignments based on limiting the project footprint while providing a maneuverable and safe corridor.

Assumptions

- This work will be completed once the survey base mapping is complete to ensure vertical tie-in accuracy.
- Up to three conceptual designs will be provided.

Deliverable

- Up to three conceptual designs in electronic format (PDF).
- Preliminary opinion of cost in electronic format (PDF).

SCOPE OF WORK (continued)

TASK 07 – 30% DESIGN

Approach

Parametrix will prepare preliminary plans to the 30% design level. The design will establish the footprint of the project to ensure the project can be constructed within the existing right-of-way. This footprint will provide a basis for an opinion of cost. The following design aspects will be included as part of this submittal:

- Cover, Vicinity Map, and Sheet Index.
- Legend and Symbols.
- Existing Conditions/Horizontal Control Plan.
- Typical Roadway Sections.
- Demolition and temporary erosion and sediment control (TESC).
- Roadway Plan and Profile.
- Storm Drain Plan and Profile.
- Channelization and Signing Plan.
- Illumination Plan and Details.
- WSDOT/City Standard Details.
- Enhanced Crossing, Details.
- Retaining Wall Plan and Profile.

Assumptions

- Documents and figures will be prepared using Parametrix’s internal company production standards.
- Plans will be prepared in AutoCAD Civil 3D, version 2022.
- The following design aspects will not be included as part of this submittal:
 - Intersection grading.
 - Curb ramp details.
 - Driveway details.
 - Traffic control plans.
 - Miscellaneous details, such as for retaining walls and RRFBs.
 - Specifications.
- Solar radar feedback signs will be used.
- Lighting at 8th Avenue S and School Entrance/S 200th Street will be from the existing service at S 200th Street and 8th Avenue S.
- Lighting at 10th Place S and S 200th will be from the existing service at S 200th Street and Des Moines Memorial Drive.
- Pole and fixtures will not be decorative.

SCOPE OF WORK (continued)

Deliverable

- Half-size (11 by 17 inches) preliminary plans in electronic format (PDF).
- Preliminary opinion of cost in Microsoft Excel format (.xlsx).

TASK 08 – 60% DESIGN

Approach

Parametrix will incorporate 30% review comments and prepare plans to the 60% design level.

Assumptions

- Documents and figures will be prepared using Parametrix's internal company production standards.
- Plans will be prepared in AutoCAD Civil 3D, version 2022.
- Up to 18 driveway profiles are anticipated for this project.

Deliverable

- Half-size (11 by 17 inches) plans in electronic format (PDF).
- Preliminary opinion of cost in Microsoft Excel format (.xlsx).
- Draft Stormwater Technical Information Report (TIR) in electronic format (PDF).

TASK 09 – 90% DESIGN

Approach

Parametrix will incorporate comments from the 60% review submittal and prepare plans to the 90% design level. Right-of-way plans will be included as part of this design level. Additionally, a field walk with the City will be included to assess any additional impacts and property considerations.

Assumptions

- 60% submittal City comments will be reviewed and discussed in one coordination meeting.
- City will provide standard legal documents as adopted by the City for reference and inclusion in the specification.
- Contract documents will be prepared using the 2024 WSDOT Standard Specifications.
- Parametrix will provide stormwater pollution and prevention plan (SWPPP) documentation for permitting and contractor use.

Deliverable

- Half-size (11 by 17 inches) plans in electronic format (PDF).
- Preliminary opinion of Cost in Microsoft Excel format (.xlsx).
- Updated Draft Stormwater TIR and SWPPP documentation for contractor use in electronic format (PDF).
- Right-of-way plans in electronic format (PDF).

SCOPE OF WORK (continued)

- Responses to review comments on the 60% submittal in electronic format (PDF).
- Specifications in electronic format (PDF).

TASK 10 – FINAL DESIGN AND CONTRACT DOCUMENTS

Approach

Parametrix will incorporate comments from the 90% review submittal and prepare plans to the final design level.

Assumptions

- 90% submittal City comments will be reviewed and discussed in one coordination meeting.

Deliverable

- Final bidding documents will include five sets of contract documents, including contract specifications and half size (11 by 17 inches) plans and an electronic (PDF) copy of the same for use by the online bidding center.
- Final opinion of cost in Microsoft Excel format (.xlsx).
- Final Stormwater TIR in electronic format (PDF).
- Responses to review comments on the 90% submittal in electronic format (PDF).

TASK 11 – BIDDING ASSISTANCE

Approach

Parametrix will assist the City during project bidding on an as-requested basis.

Assumptions

- 32 hours of engineering time and 12 hours of project manager time have been budgeted.
- Should requests go beyond the estimated hours, Parametrix will notify the City and additional budget could be utilized under the Management Reserve task.

TASK MR – MANAGEMENT RESERVE

Approach

Parametrix will assist the City with additional services on an as-need basis for unanticipated/out of scope work items.

Assumptions

- Parametrix will not proceed with work under this task until the City reviews the proposal for the additional work, authorizes the work, and has issued Parametrix a notice to proceed with the work.

SCOPE OF WORK (continued)

SHEET INDEX

Sheet Index	Sheets
Cover, Vicinity Map, and Sheet Index	2
Legend and Symbols	1
Existing Conditions/Horizontal Control Plan	2
Typical Roadway Sections	1
Demolition and TESC (aka Site Prep)	2
Roadway Plan and Profile	2
Storm Drain Plan and Profile	2
Channelization and Signing Plan	4
Intersection Grading Plan	4
Curb Ramp Details	4
Driveway Details	18
Illumination and Speed Sign Plan and Details	4
Details	2
WSDOT/City Standard Details	12
Enhanced Crossings (RRFB) and Details	2
Retaining Wall Plan and Profile	7
Traffic Control Plans	<u>5</u>
Total:	74

Exhibit B
DBE Participation Plan

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

Not applicable.

Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

Hard copy field books, all raw data, collection files, and text point files (comma delineated), AutoCAD, and Civil 3D

B. Roadway Design Files

AutoCAD and Civil 3D

C. Computer Aided Drafting Files

AutoCAD and Civil 3D

D. Specify the Agency's Right to Review Product with the Consultant

The Agency retains ownership of all electronic files created.

E. Specify the Electronic Deliverables to Be Provided to the Agency

AutoCAD, Civil 3D drawings, and signed and sealed PDFs

F. Specify What Agency Furnished Services and Information Is to Be Provided

Record drawings, GIS information, aerial and LiDAR

II. Any Other Electronic Files to Be Provided

As deemed necessary by agreement of the Agency and Consultant.

III. Methods to Electronically Exchange Data

FTP, email, and MS Teams

A. Agency Software Suite

AutoCAD and Civil 3D

B. Electronic Messaging System

Email and MS Teams

C. File Transfers Format

Standard formats for software noted above

Exhibit D
Prime Consultant Cost Computations

See attachments on the following pages:

1. Budget Estimate
2. WSDOT Cognizant Review confirming current Indirect Cost Rate

Client: City of Des Moines
 Project: North Hill Elementary Walkway Improvements

Exhibit D

North Hill Elementary Walkway Improvements
 Budget Estimate

Task	SubTask Description	Labor Dollars	Labor Hours	Regional Division Manager	Vice President	Designer IV	Engineer II	Sr Engineer	Engineer IV	Survey Supervisor	Sr Surveyor	Technical Lead	Surveyor III	Surveyor II	Sr Project Control Specialist	Sr Publications Specialist	Sr Project Accountant
01	Project Management & QA/QC	\$42,018.39	140	Cynthia M. Clark	Austin Fisher	John M. Betzvog	Lenaya Grabowski	Marc E. Kendall	Benjamin J. Schlachter	Justin Emery	Ken Van Cleave	Steven N. Sharpe	Joshua M. Kelly	Alain P. Desplanches	Christy Pope	Becky J. Taylor	Kassie N. Winters
02	Mapping	\$55,250.96	397	40	60					70	80	80	80	80	20		20
03	Right-of-Way Acquisition																
	03.1 Right-of-Way Acquisition (Epic, Inc.)	\$0.00	0														
	03.2 Right-of-Way Acquisition (Parametrix)	\$13,013.50	72		8	40	24										
	03.3 Right-of-Way Plans	\$23,483.75	146							58		88					
	03.4 Legal Descriptions and Exhibits	\$15,429.92	108								108						
04	Geotechnical	\$0.00	0														
05	Utility Coordination	\$12,246.14	68		4	40	16	8									
06	Conceptual Design (15%)	\$21,925.58	132		8	56	60	8									
07	30% Design	\$124,346.65	776		8	400	320	40	8								
08	60% Design	\$116,759.30	732		8	360	320	40	4								
09	90% Design	\$58,431.03	354		16	160	120	24	2							32	
10	Final Design & Contract Documents	\$26,430.16	162		8	50	70	16	2							16	
11	Bidding Assistance	\$5,137.64	26		4	20										2	
	Labor Hours Total		3,113	40	124	1,126	930	128	24	128	188	168	80	80	27	50	20
	Cost Total	\$514,473.04		13,931.15	45,803.93	193,873.94	122,885.39	28,276.25	4,201.06	24,999.35	26,859.49	23,206.76	9,738.54	8,201.89	4,468.91	5,412.64	2,613.75

Subconsultants

Applied Professional Services Inc.	\$3,120.00
Epic, Inc.	\$167,262.00
PanGeo, Inc.	\$16,410.00
Subconsultants Total:	\$186,792.00

Other Direct Expenses

Mileage - \$0.655/mile	\$519.20
Survey Equipment (\$160/Use)	\$1,920.00
Other Direct Expenses Total:	\$2,439.20

Project Subtotal	\$703,704.24
Management Reserve	\$20,000.00

Project Total \$723,704.24



**Washington State
Department of Transportation**

Development Division
Contract Services Office
PO Box 47408
Olympia, WA 98504-7408
7345 Linderson Way SW
Tumwater, WA 98501-6504

TTY: 1-800-833-6388
www.wsdot.wa.gov

May 31, 2023

Parametrix, Inc.
1019 39th Ave. SE, Suite 100
Puyallup, WA 98374-2215

Subject: Acceptance FYE 2022 ICR – Cognizant Review

Dear Brent Diemer,

We have accepted your firms FYE 2022 Indirect Cost Rate (ICR) of 171.54% of Combined/Corporate (rate includes 0.28% Facilities Capital Cost of Money) based on the “Cognizant Review” from the WSDOT Audit Office. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

Any other entity contracting with your firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at (360) 704-6397 or via email consultantrates@wsdot.wa.gov.

Regards;

Schatzie Harvey

[Schatzie Harvey \(Jun 1, 2023 05:57 PDT\)](#)

Jun 1, 2023

SCHATZIE HARVEY, CPA
Contract Services Manager

SH:HK

PARAMETRIX, INC.

**Statement of Direct Labor, Fringe Benefits and General Overhead
For the Fiscal Year Ended December 30, 2022**

Description	General Ledger Balance for the Fiscal Year Ended December 30, 2022	Unallowable Expenses	Ref.	Proposed Amount	Percent
Direct Labor	\$ 39,365,630	\$ -		\$ 39,365,630	100.00%
Fringe Benefits:					
Vacation, sick leave, holidays	9,170,364			9,170,364	23.30%
Payroll taxes	5,563,770	(37,702)	E	5,526,068	14.04%
Medical insurance	5,497,553			5,497,553	13.97%
ESOP retirement plan	7,500,000			7,500,000	19.05%
Total Fringe Benefits	27,731,687	(37,702)		27,693,985	70.35%
General Overhead:					
Administrative salaries	12,666,460	(141,287)	A	12,525,173	31.82%
Training salaries	1,090,894			1,090,894	2.77%
Bonuses/miscellaneous salaries	7,734,512	(1,721,935)	B	6,012,577	15.27%
Direct selling salaries	1,305,900			1,305,900	3.32%
Bid and proposal salaries	3,713,172			3,713,172	9.43%
Advertising expense	206,563	(206,563)	C		0.00%
Direct selling expenses	102,578	(45,444)	D	57,134	0.15%
Excise taxes	2,055,009			2,055,009	5.22%
Insurance	951,290			951,290	2.42%
Office rent	3,881,768			3,881,768	9.86%
Office expenses and supplies	180,825	(88,569)	F	92,256	0.23%
Staff appreciation/awards	325,829	(312,170)	G	13,659	0.03%
Printing, copier/printer supplies	41,078			41,078	0.10%
Telephone	153,177			153,177	0.39%
Depreciation (including gain/loss on disposal)	1,680,409			1,680,409	4.27%
Amortization	16,667	(16,667)	H		0.00%
Business meals	7,075	(7,075)	I		0.00%
Auto expense	311,555	(17,753)	J	293,802	0.75%
Billed in-house autos	(228,870)			(228,870)	-0.58%
Office travel	603,964	(160,897)	K	443,067	1.13%
Subscriptions, library material	106,071			106,071	0.27%
Dues	174,062	(24,225)	L	149,837	0.38%
Donations	57,011	(57,011)	M		0.00%
Professional licenses	39,233			39,233	0.10%
Postage, couriers, freight	39,297			39,297	0.10%
Training/education	389,260	(12,401)	N	376,859	0.96%
Field equipment/supplies	17,112			17,112	0.04%
Survey equipment/supplies	137,464			137,464	0.35%
Health and safety equipment/supplies	24,646			24,646	0.06%
Billed in-house equipment	(404,069)			(404,069)	-1.03%
Office furniture	8,608			8,608	0.02%
Office equipment	192,295	(41)	O	192,254	0.49%
Computer supplies, circuits	589,758			589,758	1.50%
Software/maintenance	2,832,226			2,832,226	7.19%
Recruiting costs	68,955			68,955	0.18%
Payroll, legal and audit	279,492	(51,113)	P	228,379	0.58%
Temporary Labor	55,541			55,541	0.14%
Consulting services	1,103,882	(114,000)	Q	989,882	2.51%
Bad debts	118,300	(118,300)	R		0.00%
Office moving/remodeling	18,779			18,779	0.05%
Personal property taxes	42,800			42,800	0.11%
Utilities/building maintenance	109,426			109,426	0.28%
Finance, bank charges	31,828	(11,308)	S	20,520	0.05%
Total General Overhead	42,831,832	(3,106,759)		39,725,073	100.91%
Total Indirect Costs	\$ 70,563,519	\$ (3,144,461)		\$ 67,419,058	171.26%
Percentage of Direct Labor (Less FCC)	179.25%			171.26%	
Facilities cost of capital (FCC)		110,070	T	110,070	0.28%
				\$ 67,529,128	
Percentage of Direct Labor (Includes FCC)				171.54%	

See accompanying notes.

Exhibit E
Sub-consultant Cost Computations

If no sub-consultant participation listed at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI “Sub-Contracting” of this AGREEMENT.

Subconsultants are as follows:

Applied Professional Services - Utility Locating

Epic, Inc. - Right-of-Way Acquisition

PanGEO, Inc. - Geotechnical Services

Applied Professional Services, Inc.

43530 SE North Bend Way
 North Bend, WA 98045
 Phone: (425)888-2590
 Fax: (425)888-2554



Bid Estimate to Perform Consulting Services to Parametrix

Date July 24, 2023	Services Performed By: Applied Professional Services, Inc. 43530 SE North Bend Way North Bend, WA 98045 Phone: (425)888-2590 Fax: (425)888-2554	Services Performed For: Parametrix Justin Emery, PLS 717 Pacific Ave Tacoma, WA 98402 (253) 785-3028
------------------------------	---	--

Site Address / Location

S 200th Street From 8th Ave S to 10th Pl S-Des Moines-WA (RM Locates®)

Scope of Work

Contractor shall provide the Services and Deliverable(s) as follows:

Conductible Locates: APS, Inc. will locate and field mark with paint, stakes or flags all unmapped known conductible utilities within the project area using the standard recommended APWA colors. We will also conduct an electronic sweep to identify any unknown and / or abandoned conductible utilities that might be within the project area. Note: APS cannot guarantee that it can find all unknown and / or abandoned utilities in a given area. We will, however, employ all best practices and to identify all conductible underground utilities.

RM Locating™:

Utilize GPS tracking to mark conductible utilities in real time. All utilities located by APS, Inc. will be marked in the field with APWA colors and plotted on a Google Earth map. The client will receive a link to the google earth map and a .SHP file as deliverables at the end of the project.

Cost Estimate

LABOR DESCRIPTION	HOURS	RATE	AMOUNT
RM Locates® (Conductible)	24	\$130.00	\$3,120.00
			\$0.00
		Labor Est. Total	\$3,120.00

Invoicing

Net 30 days on all billing unless specified otherwise under a separate contract or negotiation.

Disclaimer

APS, Inc, and or its employees cannot guarantee that all conductible and/or non-conductible utilities within the project boundaries can or will be found.

Project Estimate

NOT TO EXCEED WITHOUT WRITTEN CLIENT APPROVAL:

This hourly / not to exceed project estimate is based on the estimated number of hours it will take to perform the Scope of Work. If the project requires additional time or costs to complete the Scope of work, then written approval to exceed the original cost estimate is required.

Parametrix

Applied Professional
Services, Inc.

By: _____
Name:
Title:

By: *Trandin Murray*
Name: Trandin Murray
Title: South End Manager



Puget Sound Regional Office
1950 Black Lake Blvd SW, Suite B
Olympia, WA 98512
epicland.com

August 23, 2023

Austin Fisher, PE
Vice President
Parametrix

Via Email: afisher@parametrix.com

RE: Right of Way Scope of Work/Fee Proposal
North Hill Elementary Safe Routes to Schools project

Dear Austin,

Epic Land Solutions, Inc. ("Epic"), is pleased to provide right of way services for The City of Des Moines' ("City") North Hill Elementary Safe Routes to Schools project (Project). This letter confirms our commitment to provide valuation and acquisition services for this project, as well as outlines our scope of work and fee proposal. We are looking forward to working with you to serve the real estate consulting needs of the City.

SCOPE OF WORK

Epic understands the project is funded by Washington State through Washington State Department of Transportation ("WSDOT") Local Programs under the Safe Routes to Schools program, and will require WSDOT oversight and ROW Certification. Epic will prepare a Right of Way Funding Estimate based on City-provided ROW Plans. There are up to twenty (20) anticipated property impacts, which will include fee acquisition and temporary construction easements. Construction is expected to begin in early 2025.

Epic will follow all local, state, and federal policies and regulations including the Uniform Relocation Assistance and Real Property Acquisition Act (URA), WSDOT LAG, and WSDOT Right of Way Manuals. Epic will interface with the City and its partners to manage the scope of services necessary to deliver the project. Epic will prepare and maintain a detailed project schedule and provide periodic progress reports to the City.

Epic's Project Manager will assist the City to meet the project goals by managing these services from start to finish. We anticipate the key tasks and deliverables for the project will include:

- 1. VALUATION SERVICES**
- 2. ACQUISITION/NEGOTIATIONS**
- 3. CLOSING AND CERTIFICATION SUPPORT**

1. Valuation Services

For the purposes of this proposal, we are assuming that there will be up to twenty (20) valuations needed and that all of the valuations can be Administrative Offer Summaries (AOS). If any of the AOS' value over \$25k, an appraisal and appraisal review will be prepared, and the scope and fee will be adjusted accordingly. The AOS' will be prepared by qualified staff and presented to the City for Determination of Just Compensation and to set the initial offer amount. Epic will adhere to the WSDOT Right of Way protocols for the AOS Policy.

2. Acquisition/Negotiations

Epic will provide real estate acquisition and negotiation services for the parcels affected by this project. Epic will assist the City in developing all right-of-way documents and offer letters in accordance with the City's right-of-way procedures. Epic will provide these to City staff for pre-acquisition review before any offers are made to property owners.

Epic agents will act in good faith always and will never coerce owners in an attempt to settle the parcel. All negotiations will start with an in-person presentation of all offers when feasible. Epic will identify property owner issues, concerns and differences early on and document that information in the individual parcel negotiation diary. Epic will work with City staff throughout the negotiation process with the property owner until settlement is reached.

Epic will obtain and review title reports for the affected parcels and provide Title Review Memorandums identifying all potential encumbrances to project team members. Epic will assist in clearing the necessary encumbrances prior to closing, if feasible.

3. Closing and Certification Support

All federally funded projects require right of way certification by WSDOT. To assist the City in obtaining WSDOT Right of Way Certification and protect Federal Aid, Epic will maintain all files throughout the project and provide the files to the WSDOT Local Agency Coordinator electronically. Epic will also assist the City in preparation of the Right of Way Certification letter and spreadsheet for submittal to WSDOT. Epic will assist with recording conveyance documents as needed.

PROJECT TIME FRAME

Our staff has the availability to start the acquisition process once 60% ROW plans are received. The expected term of the project is twelve (12) months from issuance of the Notice to Proceed (NTP).

ASSUMPTIONS

1. Assumes up to twelve (12) client meetings, status report preparation, and related tasks.
2. Assumes no delays, unforeseen or complex issues, or meeting overages. Additional hours necessary to continue work due to demands of the project will require additional scope and fee.
3. Assumes up to twenty (20) parcels will be impacted requiring no full acquisitions or relocation services. Additional parcel impacts will require additional scope and fee.
4. Assumes valuations will be prepared by Epic. If the value is over \$25,000, an appraisal and appraisal review will be prepared and the scope and fee will be adjusted accordingly.
5. Assumes Epic will use WSDOT Right of Way document templates or templates provided by the City.
6. Assumes no eminent domain support is needed.
7. Assumes the acquisitions are non-complex. Complex acquisitions and/or additional takes outside of current project scope will require additional scope and fee.
8. Assumes project has no delays and that scope can be completed within twelve (12) months from NTP.
9. Assumes that if NTP is received after one hundred twenty (120) days from this proposal, fees and billing rates may require revision to reflect cost of living increases and current business conditions. With such a delay, staff could be revised as well.
10. Assumes legal descriptions of right of way areas, plat maps, and project Right of Way plans will be provided by Parametrix at NTP.
11. Assumes Title Reports will be obtained by Epic. Any additional title fees or title insurance will be billed directly to the City.
12. Epic will conduct a detailed analysis of the title. Tasks related to title clearance may result in additional scope/fees.
13. Signed conveyance documents will be delivered to the City for signatures. Epic will assist with recording documents for any files that are not closed through escrow. All recording fees will be paid by the City.
14. Assumes completed acquisition files (electronic) will be provided to the City for retention.

PROFESSIONAL SERVICES FEE

EPIC will perform the scope of services described herein to be invoiced on a time-and-materials basis within a fee amount Not to Exceed (NTE) **\$167,262.00** as shown below.

STAFF CLASSIFICATIONS	Principal in Charge	Advisor/ Manager	Project Manager	Senior ROW Agent	ROW Agent	Budget & Financial Controls	Project Support
FULLY LOADED HOURLY RATES	\$ 243.45	\$ 205.10	\$ 177.39	\$ 139.40	\$ 93.93	\$ 146.47	\$ 80.97

RIGHT OF WAY SERVICES								TOTAL HOURS	FEE PER TASK
Acquisition/ Negotiations - Assumes up to 20 parcels	3	32		360	144	7	142	748	\$95,833
Closing and Certification Support	3	57		71				131	\$22,319

TOTAL LABOR	6	149	0	431	144	7	142	879	\$118,152
	\$1,460.68	\$30,560.13	\$0.00	\$60,082.34	\$13,526.01	\$1,025.32	\$11,457.20		

OTHER DIRECT COSTS	
Mileage (IRS allowable rate) [Assumes up to 20 trips @ 100 mi/RT x allowable rate]	\$ 1,310.00
Postage/Overnight Packages [Assumes up to 40 mailings @ \$15 each]	\$ 600.00
Property Ownership and Real Estate Data - 12 months	\$ 1,200.00
Administrative Offer Summaries [assumes up to 20 reports at \$1,500 each]	\$ 30,000.00
Title Reports-up to 20 PTRs @ \$800	\$ 16,000.00
TOTAL ODCs	\$ 49,110

TOTAL LABOR AND ODCs	\$ 167,262
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NOTE ABOUT WSDOT RATES: The rates above reflect the direct salary rates for individuals that are currently anticipated to participate in work under this contract. The actual rate billed shall be based on the direct salary of the individual having performed the work, plus overhead and profit. These rates will be re-calculated at the beginning of each calendar year. Staff billing rates provided include the Washington Department of Transportation (WSDOT) approved overhead rate for Epic Land Solutions, Inc. and are suitable for state and federally funded projects.

If you have any questions, please do not hesitate to contact Jessica Niella at (360) 233-7666 or jniella@epicland.com. We look forward to working with Parametrix on this and future opportunities.

Sincerely,

Christine Nickerson

Christine Nickerson, SR/WA
 Vice President Northwest Right of Way Services
 Epic Land Solutions, Inc.



July 28, 2023 (*Revised August 17, 2023*)
File No. P-8644

Ms. Clara Dubow, P.E.
Parametrix
1019 – 39th Avenue SE, Suite 100
Puyallup, Washington 98374

Subject: Proposal for Geotechnical Services
North Hill Elementary Walkway Improvements
South 200th Street – 8th Avenue South to 10th Place South, Des Moines, WA

Dear Ms. Dubow,

Please find attached our proposal to provide geotechnical support for the design of the North Hill Elementary Walkway Improvements project in City of Des Moines 2023 pavement rehabilitation program. We understand it is planned to rehabilitate South 200th Street extending from 8th Avenue South to 10th Place South (approx. 800 lineal feet). The proposed roadway section will have two 10-foot-wide vehicular lanes, 5-foot-wide bike lanes, and 6-foot-wide sidewalks with curb and gutter along both sides. Streetlights will be installed as part of this project.

Our proposed scope of work is outlined in the attached Exhibit A. We propose to complete the scope of work on a time and materials basis. We estimate that a budget of \$16,410 will be needed to complete the scope of work. Details of our cost estimate are outlined in Exhibit B. We agree not to exceed the estimated budget without your prior approval.

Please call should you have any questions regarding this proposal.

Sincerely,

Steven T. Swenson, L.G.
Senior Geologist

Siew L. Tan, P.E.
Principal Geotechnical Engineer

3213 Eastlake Avenue East, Suite B
Seattle, WA 98102
Tel: (206) 262-0370
www.pangeoinc.com

Proposal for Geotechnical Engineering Services
North Hill Elementary Walkway Improvements, Des Moines, WA
July 28, 2023 (*Revised August 17, 2023*)

Enclosures: Exhibit A: Scope of Work;
Exhibit B: Cost Estimate

EXHIBIT A –SCOPE OF WORK

- 1. Site Reconnaissance** – Conduct a reconnaissance along the project alignment to observe surface conditions that could impact the proposed improvements. During the reconnaissance, we evaluate drilling equipment access, mark test boring locations for utility locates, and evaluate what traffic control measures may be needed during drilling (see Item 3, below).
- 2. Coordinate Field Work & Street-Use Permit** – Prepare a proposed test boring location plan for review by Parametrix and the City of Des Moines. Once the test boring locations have been approved, PanGEO will prepare traffic control plans for each boring location and apply for a street-use permit from the City of Des Moines. *We assume that the street use permit will be provided to PanGEO at no cost.*

Prior to the drilling, we will contact the 1-call center to request a utility locate. We will coordinate all field activities with Parametrix and the City of Des Moines.

- 3. Subsurface Explorations (Test Borings)** – Drill up to 3 test borings to determine the thickness of the existing pavement and the subgrade condition below the pavement. The locations of the test borings will be determined after our site reconnaissance, in conjunction with the project team.

The test borings will be drilled through the existing pavement and advanced to about 10 feet below the road surface to determine the existing pavement thickness and its subgrade condition. Standard Penetration Tests will be performed immediately below the pavement, at 2½- and at 5-foot in each test boring to obtain soil samples, and to estimate the density of the existing site soils below the pavement.

The test borings will be backfilled and patched with cold patch asphalt the same day. *Our fee proposed fee does not include other special patching treatments that may be required by the City or others.*

Excessive soil cuttings from the test borings will be removed from the site, assuming that the site soils are not contaminated.

We anticipate that the test borings will take one day to complete.

- 4. Infiltration Evaluation & Laboratory Testing** – Based on the geology map for the area, the soils underlying the project alignment is not glacially over-consolidated. If this is confirmed by the results of our proposed test borings, grain size analyses will be used to evaluate the infiltration potential of the soils using the methodology outlined in the current Department of Ecology stormwater design manual. No in-situ infiltration tests are planned at this time, and our cost estimate does not include in-situ infiltration tests.

Select soil samples for moisture content testing, grain size analysis, cation exchange capacity, and organic matter content. The grain size analyses, organic content, and cation exchange capacity results will be used to evaluate the infiltration and treatment potential of the soils based on the methodology outlined in the current Ecology stormwater design manual.

If the soils encountered in the test borings have been glacially consolidated, the use of grain size characteristics to evaluate infiltration rate is not permitted by the DOE manual. PanGEO can prepare a cost estimate to provide in-situ infiltration testing using the small Pilot Infiltration Test (PIT) method.

- 5. Engineering and Report** – We will perform appropriate engineering analysis based on the results of our field exploration, laboratory test program, and projected traffic data provided by others.

A draft report will be prepared and submitted to the project team, and the report will be finalized after we receive review comments from the project team. The report will summarize the results of our geotechnical study, and in general will include the following:

- A site map showing the locations of our test borings;
- Summary description of the existing pavement thickness, subsurface conditions, and summary boring logs;
- Pavement design recommendations to reconstruct the existing HMA pavements. Options considered will include conventional HMA on crushed rock base and on cement treated base (CTB). We assume that traffic data will be provided to PanGEO for pavement design and analysis;

- Suitability of site soils for treatment based on methodology described in the Department of Ecology's *Stormwater Management Manual for Western Washington* (WSDOE, 2019) and estimated infiltration rates based on the grain size analysis method (if applicable);
- Geotechnical design recommendations for streetlight pole foundation; and
- Earthwork recommendations including the suitability of the site soils as structural fill, subgrade preparation, temporary excavation, control of groundwater (if needed), and general earthwork discussions.

6. Post Report Consultation – Provide additional consultation on an as-needed basis.

Proposal for Geotechnical Engineering Services
 North Hill Elementary Walkway Improvements, Des Moines, WA
 July 28, 2023 (Revised August 17, 2023)

EXHIBIT B - COST ESTIMATE

ESTIMATED LABOR:

WORK TASK DESCRIPTION	PanGEO Labor Hours & Hourly Rates						COST
	S. Tan	S. Swenson	Staff Eng/Geo				
	\$225.00	\$165.00	\$135.00				
Site Reconnaissance		4	4				\$1,200
Coordinate Field Work & ROW Permit		3					\$495
Test Borings & Travel (1 Day)		1	10				\$1,515
Prepare Boring Logs & Figures			0.5	4			\$623
Review/Evaluate Lab Test Results				2			\$270
Engineering / Report Preparation	3	22					\$4,305
Meeting/Post Report Consultation	2						\$450
TOTAL LABOR:	0	5	30.5	20	0	0	\$8,858

LABORATORY TEST SUMMARY			
Test	Est. No.	Unit	Total
	Tests	Cost	Cost
Grain Size Analysis	6	\$150	\$900
Cation Exchange Capacity	4	\$75	\$300
Moisture Content	6	\$35	\$210
TOTAL LABORATORY TESTING:			\$1,410

ESTIMATED DIRECT EXPENSES:

Mileage:46 mi/RT * 2 trips*\$0.655/m	\$60
Field Consumables	\$25
TOTAL DIRECT EXPENSES:	\$85

ESTIMATED SUBSURFACE EXPL COSTS:

Flaggers (2 @ 8 hrs @ \$73/hr)	\$1,168
Traffic Control Supervisor (8 hrs @ \$83)	\$664
Traffic Control Sign Rental & Truck	\$500
Drill Rig Mobilization	\$900
DOE Filing Fee, 3x\$25	\$75
Drill Borings	\$1,500
Drill Cuttings Removal	\$700
TOTAL DRILLING COSTS:	\$5,507

PanGEO COST SUMMARY:

Estimated Labor Cost	\$8,858
Subsurface Exploration Costs + 10%	\$6,058
Lab Testing	\$1,410
Direct Expenses	\$85
PanGEO TOTAL:	\$16,410

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, (*Federal Highway Administration*), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. *[Include Washington State Department of Transportation specific program requirements.]*
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Washington State Department of Transportation specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the (*Federal Highway Administration*) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the (*Federal Highway Administration*), as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non- discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the (*Federal Highway Administration*) may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the (*Federal Highway Administration*) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Exhibit G
Certification Document

- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of Agency
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions
- Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
- Exhibit G-4 Certificate of Current Cost or Pricing Data

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of
Parametrix, Inc.

whose address is
1019 39th Avenue SE, Suite 100, Puyallup, WA 98374

and that neither the above firm nor I have

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the Washington State Department of Transportation
and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Parametrix, Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

9/27/2023

Date

Exhibit G-1(b) Certification of Agency

I hereby certify that I am the:

Other

of the City of Des Moines, and Parametrix, Inc.

or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; o
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature

Date

Exhibit G-2 Certification Regarding Debarment Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; an
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this proposal.

Parametrix, Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

9/27/2023

Date

Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:


1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the require certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Parametrix, Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

9/27/2023

Date

Exhibit G-4 Certification of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of North Hill Elementary Walkway Improvements * are accurate, complete, and current as of September 26, 2023 **.

This certification includes the cost or pricing data supporting any advance AGREEMENT's and forward pricing rate AGREEMENT's between the offer or and the Government that are part of the proposal.

Firm: Parametrix, Inc.



Signature

Senior Vice President

Title

Date of Execution 9/27/2023 ***:

*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)
**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.
***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Not Applicable

Exhibit H **Liability Insurance Increase**

To Be Used Only If Insurance Requirements Are Increased

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to \$ N/A .

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$ N/A .

Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$ N/A .

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit

N/A

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant has alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency’s Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency’s project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer’s concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include all decisions and descriptions of work, photographs, records of labor, materials, and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant’s alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant’s agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Step 5 Forward Documents to Local Programs

For federally funded projects, all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General’s Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Exhibit J

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) total a \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Step 3 Preparation of Support Documentation Regarding Consultant’s Claim(s)

If the Agency does not agree with the consultant’s claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency’s summation of hours by classification for each firm that should be included in the claim
- Any correspondence that directed the consultant to perform the additional work;
- Agency’s summary of direct labor dollars, overhead costs, profit and reimbursable costs associate with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant’s claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant’s claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant’s Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit



Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

June 22, 2023

Mr. R. Brandon Carver, PE
Public Works Director
City of Des Moines
21650 11th Avenue South
Des Moines, Washington 98198-6317

**RE: North Hill Elementary Walkway Improvements
2023-25 Safe Routes to School Program
State Funding**

Dear Mr. Carver:

WSDOT is pleased to advise you that the above-mentioned project was selected to receive funding through the Safe Routes to School program. The state funding is limited as shown below:

North Hill Elementary Walkway Improvements **\$3,000,000**
Scope: See attached project summary.

In order to meet state requirements, the following are required:

- Project expenditures incurred before receiving notice from Local Programs of state fund authorization are not eligible for reimbursement.
- Please refer to the Local Programs webpage for detailed authorization information, including: (<http://www.wsdot.wa.gov/localprograms/>)
 - ✓ Local Agency Guidelines (LAG) manual for detailed requirements;
 - ✓ Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP) amendments, as applicable;
 - ✓ Funding and billing forms;
 - ✓ Local Project Report is required to be completed by the end of June and December each year. To access the database you will need an account name and password. Your account name is **Des Moines** and your password is **DesMo938**. The password is case sensitive.

As a reminder, Local Programs encourages all agencies to submit monthly progress billings to ensure timely reimbursement of eligible expenditures.

For assistance, please contact your Region Local Programs Engineer, Mehrdad Moini, at (206) 440-4734 or Mehrdad.Moini@wsdot.wa.gov.

Sincerely,

Jay Drye, PE
Director
Local Programs

cc: Kelly McGourty, Transportation Director, PSRC
Mehrdad Moini, Northwest Region Local Programs Engineer

Project Summary

Program: Safe Routes To School

Date: May 2023

Agency: City of Des Moines

Project Title: North Hill Elementary Walkway Improvements

Project Description: Median refuge island, new marked crosswalk, rectangular rapid flashing beacon (RRFB), lane width reduction, speed feedback signs, ADA curb ramps, bike lanes, sidewalk (6'+) with curb

Detailed Project Description:

- 1) At the intersection of South 200th Street and 8th Avenue South install
 - a. ADA curb ramps (3)
 - b. Marked crosswalk
 - c. Intersection illumination
- 2) On South 200th St. between 8th Ave. S. and 10th Place South install
 - a. Sidewalk – 6' width with curb, both sides (~800')
 - b. ADA curb ramps (32) – Note: 3 intersection curb ramps and 29 driveway/sidewalk ramps
 - c. Bike lanes (~800') with bicycle pavement markings
 - d. Speed feedback signs (2) on either side near 10th Pl. S.
 - e. Roadway Illumination
- 3) At the intersection of 8th Ave. S. and School entrance driveway install
 - a. RRFB (2), on each side of 8th Ave. S.
 - b. Median refuge island
 - c. Marked crosswalk
 - d. Crosswalk illumination

Project Schedule:

Begin PE	06/23
Environmental Documents Approved	06/24
Right-of-Way Approved	01/25
Estimated Contract Ad	02/25
Estimated Contract Award Date	04/25
Open to Traffic	04/26
Design Complete (Design-only projects)	

Project Cost and Award Amount:

Phase	Total Project Cost	Amount Requested	Amount Awarded
Preliminary Engineering	\$589,961	\$589,961	\$589,961
Right-of-Way	\$466,700	\$466,700	\$466,700
Construction	\$3,421,771	\$1,943,339	\$1,943,339
Match	\$1,478,432	N/A	N/A
Total	\$4,478,432	\$3,000,000	\$3,000,000

Note: Local match is committed as shown above and may be applied in any of the project phases.

If you agree to the project summary described above, please sign below and return to [Charlotte Claybrooke](#) or [Brian Wood](#).

Concurrence: I agree to the project summary described above.

Approving Authority Name (Print): Andrew Merges, PE, EMPA
Public Works Director

Approving Authority Signature: 

Date: 5/25/2023

Local Programs State Funding Agreement Work by Public Agencies		Agency and Address
Agreement Number	Maximum Amount Authorized	Location and Description of Work (See also Exhibit "A")
Participating Percentage	Project Number	

This AGREEMENT is made and entered into between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE," and the above named organization, hereinafter call the "AGENCY."

WHEREAS, the AGENCY is planning the work shown above, and in connection therewith, the AGENCY has requested financial assistance for the project or program, and

WHEREAS, the AGENCY has requested funds for the above shown project or program, which has been selected by the STATE for funding assistance.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREE AS FOLLOWS:

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated State Funds
PE	a. Agency			
	b. Other			
	c. Other			
	d. State Services			
	e. Total PE Cost Estimate (a+b+c+d)			
Right of Way	f. Agency			
	g. Other			
	h. Other			
	i. State Services			
	J. Total R/W Cost Estimate (f+g+h+i)			
Construction	k. Contract			
	l. Other			
	m. Other			
	n. Other			
	o. Agency			
	p. State Services			
	q. Total CN Cost Estimate (k+l+m+n+o+p)			
	r. Total Project Cost Estimate (e+j+q)			

**I
General**

The AGENCY agrees to perform the above described work in accordance with the Project Application attached hereto as "Exhibit A" and made a part of this AGREEMENT.

Plans, specifications, and cost estimates shall be prepared by the AGENCY in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction and adopted design standards, unless otherwise noted. The AGENCY will incorporate the plans and specifications into the AGENCY's project and thereafter advertise the resulting project for bid and, assuming bids are received and a contract is awarded, administer the contract, or if the project is of a size which the AGENCY is authorized to perform with its own forces under the laws of the State of Washington, the AGENCY may proceed with its own forces.

All work performed under this AGREEMENT shall comply with the applicable provisions of state law.

**II
Payment**

The STATE, in consideration of the faithful performance of the work to be performed by the AGENCY, agrees to reimburse the AGENCY for the percentage of the actual direct and related indirect cost of the work shown above, up to the "MAXIMUM AMOUNT AUTHORIZED". The agency will comply with Governmental Accounting Auditing and Financial Reporting Standards and applicable state law and local regulations, policies and procedures. No payment will be made for work done prior to execution of this AGREEMENT.

Partial payments shall be made by the STATE, upon request of the AGENCY, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment. The AGENCY agrees to submit a final bill to the STATE within forty-five (45) days after the AGENCY has completed work.

The AGENCY agrees that all costs in excess of the amount authorized and the AGENCY's matching funds shall be the responsibility of the AGENCY.

**III
Audit**

The AGENCY agrees that an audit may be conducted by the STATE. During the progress of the work and for a period not less than three (3) years from the date of final payment to the AGENCY, the records and accounts pertaining to the work and accounting thereof are to be kept available for inspection and audit by the STATE and copies of all records, accounts, documents, or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the three-year retention period.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year last written below.

AGENCY

By: _____

Title:

Agency Date: _____

**IV
Legal Relations**

No liability shall attach to the AGENCY or the STATE by reason of entering into this AGREEMENT except as expressly provided herein.

**V
Nondiscrimination**

The AGENCY agrees to comply with all applicable state and federal laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of all subcontractors providing services or performing any work using funds provided under this AGREEMENT.

**VI
Venue**

For the convenience of the parties to this AGREEMENT, it is agreed that any claims and/or causes of action which the AGENCY has against the STATE, growing out of this AGREEMENT or the project or program with which it is concerned, shall be brought only in the Superior Court for Thurston County.

**VII
Termination**

The Secretary of the Department of Transportation may terminate this AGREEMENT if the funding becomes unavailable or if the Secretary determines that it is in the best interest of the STATE.

**VIII
Final Report and Final Inspection**

Within ninety (90) days following the completion of the project and submission of the final billing for the project, a final report and/or final inspection shall be submitted to the Director, Highways & Local Programs containing the following information:

Non-Capital Projects

1. A description of the project or program.
2. A summary of actual costs of the project or program.
3. An evaluation of the project or program. This should address aspects such as transportation and/or other benefits to the public.

Capital Projects

1. A final inspection is required.

**IX
Supplement**

This agreement may be modified or supplemented only in writing by parties.

STATE

By: _____

Director, Local Programs

Date: _____



**Local Agency Federal Aid
Project Prospectus**

Federal Aid Project Number	Prefix	Route	()	Date	
Local Agency Project Number			(WSDOT Use Only)	DUNS Number	
				Federal Employer Tax ID Number	

Agency	CA Agency Yes No	Federal Program Title 20.205 Other
Project Title	Start Latitude N End Latitude N	Start Longitude W End Longitude W
Project Termini From-To	Nearest City Name	Project Zip Code (+4)
Begin Mile Post	End Mile Post	Length of Project
Route ID	Begin Mile Point	End Mile Point
WSDOT Region	Legislative District(s)	Congressional District(s)
		Urban Area Number
		Award Type Local Local Forces State Railroad
		City Number
		County Number
		County Name

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date	
				Month	Year
P.E.					
R/W					
Const.					
Total					

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width	Number of Lanes

Description of Proposed Work

Description of Proposed Work (Attach additional sheet(s) if necessary)

Local Agency Contact Person	Title	Phone
Mailing Address	City	State Zip Code
Project Prospectus	By _____ Approving Authority	
	Title	Date

Agency	Project Title	Date
--------	---------------	------

Type of Proposed Work

Project Type (Check all that Apply)			Roadway Width	Number of Lanes
New Construction	Path / Trail	3-R		
Reconstruction	Pedestrian / Facilities	2-R		
Railroad	Parking	Other		
Bridge				

Geometric Design Data

Description	Through Route			Crossroad		
Federal Functional Classification			Principal Arterial			Principal Arterial
			Minor Arterial			Minor Arterial
	Urban		Collector	Urban		Collector
	Rural		Major Collector	Rural		Major Collector
	NHS		Minor Collector	NHS		Minor Collector
		Local Access			Local Access	
Terrain	Flat	Roll	Mountain	Flat	Roll	Mountain
Posted Speed						
Design Speed						
Existing ADT						
Design Year ADT						
Design Year						
Design Hourly Volume (DHV)						

Performance of Work

Preliminary Engineering Will Be Performed By	Others	Agency
	%	%
Construction Will Be Performed By	Contract	Agency
	%	%

Environmental Classification

Class I - Environmental Impact Statement (EIS) Project Involves NEPA/SEPA Section 404 Interagency Agreement	Class II - Categorically Excluded (CE) Projects Requiring Documentation (Documented CE)
Class III - Environmental Assessment (EA) Project Involves NEPA/SEPA Section 404 Interagency Agreements	

Environmental Considerations

Agency	Project Title	Date
--------	---------------	------

Right of Way

No Right of Way Needed * All construction required by the contract can be accomplished within the existing right of way.	Right of Way Needed	
	No Relocation	Relocation Required

Utilities

No utility work required

All utility work will be completed prior to the start of the construction contract

All utility work will be completed in coordination with the construction contract

Railroad

No railroad work required

All railroad work will be completed prior to the start of the construction contract

All the railroad work will be completed in coordination with the construction contract

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

FAA Involvement

Is any airport located within 3.2 kilometers (2 miles) of the proposed project? Yes No

Remarks

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Date _____ Agency
 By _____ Mayor/Chairperson

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Second Reading of Draft Ordinance No. 23-042: Public Hearing on proposed land use and text code amendments for the business park moratorium area and adopting findings of fact

FOR AGENDA OF: October 19, 2023

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: September 29, 2023

ATTACHMENTS:

1. Draft Ordinance No. 23-042
2. Figure 1
3. Proposed Amendment 1
4. Proposed Amendment 2
5. Written Comments Received

CLEARANCES:

- City Clerk _____
- Community Development *UET*
- Courts _____
- Emergency Management _____
- Finance _____
- Human Resources _____
- Legal */s/ TG*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services *W. M. Mohr*
- Public Works *Richard Boyes*

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

Purpose and Recommendation

The purpose of this agenda item is for the City Council to hold a second reading to consider Draft Ordinance No. 23-042 relating to land use and zoning amendments within the moratorium area established under Ordinances 1761, 1767 and 1771.

Suggested Motion

Motion 1: "I move to enact Draft Ordinance No. 23-042 adopting comprehensive plan and text code amendments and findings of fact for the moratorium area."

Optional Motions

Motion 1: "I move to include proposed Amendment 1 to Draft Ordinance No. 23-042."

Motion 2: "I move to include proposed Amendment 2 to Draft Ordinance No. 23-042."

Background

On October 27, 2022, the Des Moines City Council enacted a six-month moratorium prohibiting the submission or acceptance of development applications for new development within an area comprised of 73 acres located south of South 216th Street as identified on Figure 1.

A moratorium is a temporary limitation on development. It is one of the principal tools available to local government to implement planning and Growth Management Act (GMA) objectives. It provides the community sufficient time to conduct and review studies necessary for adopting or revising a land use plan and related regulations, and allowing for a “planning pause” period during which land development activity is frozen and limited until permanent regulations can be adopted consistent with changing city demographics and dynamics.

Key considerations influencing this work include the GMA periodic review and update, Puget Sound Regional Council’s VISION 2050, Countywide Planning Policies, and Des Moines’ 2044 growth targets (3,800 housing units and 2,380 jobs). The next periodic review and update of Des Moines’ Comprehensive Plan is underway and must be completed by December 31, 2024. Initiating this moratorium allows the City to make changes to the zoning and land use, preserving options for future development that may be incorporated into the City Comp Plan update. The rationale for this approach is explained below.

The City cited local dynamics justifying the moratorium:

- Over \$30 million invested in transportation and infrastructure improvements to facilitate freight mobility and the creation of family wage jobs in the business park area.
- With the exception of the Federal Aviation Administration office building, recent development of the Des Moines Creek Business Park (DMCBP) and adjacent commercial properties to the north have been predominantly distribution, warehouse, logistics, and light industrial uses. This current DMCBP, coupled with the development of the DMCBP West, will exceed 2.5 million square feet.
- Separately, Panattoni’s purchase and development of the two nurseries to the east on 24th Avenue just north of 216th, added an approximate 500,000 square feet of private development to the Business Park.
- Additionally, the City of SeaTac, following the Business Park model just to the north of Des Moines, off 24th Avenue South, has developed approximately 300,000 square feet of industrial and distribution.
- All of this Business Park development and the positive job relocation and creation has exceeded the anticipated growth of this sector. The City’s Comprehensive Plan assumed a more balanced mix of commercial and business uses and job opportunities.

In order to ensure a balanced approach, utilizing highest and best land use options and to take advantage of some significant recreational opportunities resulting in connectivity from the Des Moines Creek trail to the Barnes Creek trail, the City instituted the moratorium to study and evaluate land use options and to then make a recommendation to City Council as to how to proceed in the most sound manner assuring balanced options.

On December 8, 2022 the City Council held a public hearing to receive comments on the moratorium and adopt findings of fact to support the continuation of the moratorium to April 27, 2023, as stated in Ordinance 1767. At that time, staff informed the City Council of the likelihood of extending the moratorium another six months. Subsequently, on April 13, 2023, the City Council extended the moratorium to October 26, 2023.

In order to ascertain economic impacts of potential new zoning dynamics, the City engaged ECONorthwest, a member of the AHBL consultant team, to complete a Market Analysis and Prototype Feasibility Study of the Moratorium Area. This Market Analysis aimed to answer three primary questions:

- What types of development are most likely to locate in the study area given current zoning and current near-term market conditions?
- What are the implications of those development types for the City to meet the employment targets outlined in the King County Buildable Lands Report?
- What tools might the City employ to better assure development in the moratorium area meets City objectives?

The Market Analysis and Prototype Feasibility study was organized into the following sections:

- **Planning Context** provides an overview of the Des Moines Business Park and describes current land use plans, policies, and regulations in the moratorium study area.
- **Market Analysis Development Feasibility** presents the results of financial modeling for development prototypes and discusses future growth targets for Des Moines as well as market demand for various types of employment uses in Des Moines.
- **Potential Policy Options** outlines potential policy changes, modifications to the Des Moines development code and land use concepts for the moratorium study area.

ECONorthwest analyzed the financial feasibility of nine development types that could potentially occur in the moratorium study area and the market analysis finds that most development types tested are financially feasible noting the following key findings that support the proposed land use and zoning amendments:

- The Townhome development type was the most financially feasible development type analyzed in this study, which is consistent with similar studies ECONorthwest conducted in the region.
- Multifamily development is not as financially feasible as townhomes given current market dynamics, but it is far denser and improves the likelihood for Des Moines to meet its housing targets.
- The industrial and manufacturing development that has most recently occurred within the Des Moines Business Park have low employment densities; Des Moines will need to achieve higher employment densities to meet its employment targets.
- Given recent development in the Business Park and some of the new companies who have located within the study area, there is demonstrated demand for commercial uses in this part of the City.

Based on the key factors for initiating the moratorium along with findings from the Market Analysis and Prototype Feasibility study, the City and consultant team formulated a draft vision/land use concept for Council consideration that will include supporting goals, policies and implementation strategies to facilitate the desired outcomes for this area.

The Vision

The moratorium area provides an opportunity for the City to develop, in partnership with other public resources and private investment, a *Center for Excellence and Innovation District* that supports economic diversification, entrepreneurship, small business development, job creation, social equity and environmental sustainability.

The creation of new sources of employment and growth is paramount to maintaining competitiveness, reducing poverty, and increasing shared prosperity.
(Mulas, Minges, & Applebaum, 2015)

The proposed amendments are the mechanisms to effectuate the desired outcomes envisioned. Additionally, opportunities exist in this rezone to:

- 1) Restrict development along 24th Avenue S., south of S. 216th Street, to residential uses as that portion of 24th was not designed to accommodate industrial (i.e. Business Park) traffic;
- 2) Establish this Innovation District along S. 216th Street in the area currently zoned Business Park (B-P), east of the Post Office up to 24th Avenue S;
- 3) Develop work force housing, to the west of the current detention ponds (including participation of Habitat for Humanity in a portion of these) to encourage owner occupied housing;
- 4) Enhance and protect our recreational opportunities for the Barnes Creek Trail and connectivity with the Des Moines Creek trail that will connect with the Interurban trail going north, and with Highline College and the Kent-Des Moines Link Light Rail Station to the south; and
- 5) Provide for required environmental infrastructure to address stormwater detention from future development of the 16th Avenue S. roadway extension.

What is an Innovation District?

To facilitate the Vision and desired outcomes, Administration is proposing to establish an Innovation District Overlay. An Innovation District is a place-based urban development strategy that aims to regenerate an under-performing area into a desirable location for innovative and creative companies and workers. An Innovation District is a platform for all kinds of activity that stimulate innovation while offering value to entities that drive the economy. Innovation Districts have proven to be practical solutions for cities to modernize their economies and pivot from traditional industrial-based production to technology-driven services.

City Administration has been, and will continue to work with key stakeholders to develop an economic development plan for the Innovation District. The goal is to identify ways the City can support local entrepreneurs in imagining, starting, and running their own businesses, as well as to create physical features and spaces that will attract new residents and visitors.

The idea is to work with property owners, businesses, educational institutions, and other stakeholders to identify market niches that support small business development and entrepreneurship, and provide the support systems such as education, training and workforce housing. Potential stakeholders include Highline College Business Development Center, and others.

Providing for the creation of workforce, middle, and market rate housing in proximity to jobs, transit, recreation, and open space will complement the area and accomplish highest and best use. Envisioned outcomes include:

- Options for home ownership;

- People living closer to their jobs;
- Reduced vehicle miles travelled;
- Enhanced opportunities for multi-modal travel [the Metro Community Shuttle for example]; and
- Associated social, financial and environmental benefits that enhance quality of life and achieve sustainability on multiple levels.

What are the Potential Benefits of an Innovation District?

- The Innovation Overlay District will provide the regulatory framework for the desired redevelopment and land use options.
- The Innovation Overlay District will give the North Central Neighborhood a sense of place, an identity, and a vision for inclusive growth.
- The Innovation Overlay District will facilitate the ability of the City to generate accessible jobs.
- The Innovation Overlay District will contribute to economic growth by helping generate revenue.
- The Innovation Overlay District will help to provide educational and skill-training opportunities for Des Moines residents.

What are the Proposed Land Use and Zoning Changes?

The Innovation District is envisioned for the area between 24th Avenue S. and the Post Office that is currently zoned B-P Business Park. The properties within this area are nonconforming uses and it is assumed that land assembly would be necessary in order for redevelopment to occur. Until that time, the existing residences would continue as nonconforming uses.

Figure 2 shows the proposed changes to the Comprehensive Plan Preferred Land Use classification and Figure 3 shows the proposed changes to the zoning classification as well as the Innovation Overlay boundaries.

Text code amendments to the permitted uses and new development standards are also necessary in order to facilitate the vision for the Innovation District. Changes include limiting more truck intensive and distribution uses to B-P zoned properties located north of S. 216th Street as well as adding performance standards in chapter 18.105 DMMC that would apply to the properties within Innovation District Overlay, if they were to redevelop with business park uses in the future.

The Community Development Director, acting as the SEPA Responsible Official, has determined that the above-described proposal does not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(c). Pursuant to WAC 197-11-060(5), phased environmental review will be utilized for future development actions.

Discussion

On September 7, 2023 the City Council held a public hearing to take public comment and consider the amendments proposed by Draft Ordinance 23-042.

Council had several questions which are clarified below:

Definition of ‘workforce housing’ - The term “workforce housing” is most often used to indicate a program targeted at households that earn too much to qualify for traditional affordable housing subsidies.

RM-1,800 Zone Density – This is based on lot area per dwelling unit (e.g., one dwelling unit per 1,800 square feet) and this zone yields approximately 24 dwelling units per acre.

RM-2,400 Zone Density – This is based on lot area per dwelling unit (e.g., one dwelling unit per 2,400 square feet) and this zone yields approximately 18 dwelling units per acre.

Permitted uses within the RM-1,800 and RM-2,400 Zones – with the exception of automobile parking, which is permitted under the RM-1,800 zone, these zones allow for the same uses.

In addition to Council questions, a representative for the Hill property (PIN 0922049075) that is affected by the zoning reclassification, requested a higher density zone. Staff noted that the RM-1,800 Zone provides more density. In addition, staff indicated that increasing the building height may help. After further research, it was determined that no additional density would be gained with a building height increase; however, it would accommodate more bedrooms or living space which could be desirable from a market perspective. These changes would provide flexibility in the market and would be consistent with the findings of Des Moines Housing Needs Assessment and housing production targets.

Following the public hearing, property owners for PIN 0922049017 – Grakon/G3 Holdings and PIN 0922049038 – Pac Stainless/SEA Realty LLC requested further clarification for Limitation 93 to ensure their long-term investment and expansion goals for these properties are preserved.

The following amendments to Draft Ordinance 23-042 are proposed by staff to address the property owner concerns and planning objectives are provided for Council consideration:

- Amendment 1 - Amend Section 3 and Exhibit B to change the proposed zoning from the RM-2,400 to the RM-1,800 Residential Multifamily 1,800 Zone.
- Amendment 2 - Amend Section 5 to add amendments to Limitation 17 and Limitation 93 as follows:

17. Open Air Public Parking Areas. This regulation applies to all parts of Table 18.52.010A that have a [17], except that this use shall not be permitted on RM-1,800 zoned properties located in the West and South Subareas of the North Central Neighborhood.

93. Uses shall be limited to B-P Zoned properties located north of S. 216th Street, provided that ~~existing business park~~ legal conforming B-P developments that were permitted existed within the South Subarea of the North Central Neighborhood on the effective date of Draft Ordinance 23-042 are allowed to maintain and expand their current businesses under these use classifications exempt from this limitation.

Alternatives

1. Approve the Draft Ordinance as amended.
2. Approve the Draft Ordinance without the amendments.
3. Decline to pass the Draft Ordinance, and direct staff to prepare necessary documents to terminate the moratorium.

Financial Impact

New land use and zoning regulations may increase the value of the properties in this area, having long-term financial benefits, including creating new revenue, family wage jobs and new housing.

Recommendation

Administration recommends that the City Council pass the Draft Ordinance and the proposed amendments.

Council Committee Review

N/A

Draft Ordinance No. 23-042
Page 1 of 11

CITY COUNCIL'S DRAFT 10/12/2023

DRAFT ORDINANCE NO. 23-042

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to land use and zoning for the moratorium study area that was instituted through Ordinances 1761, 1767 and 1771, amending chapters 18.05 and 18.10 of the Des Moines Municipal Code (DMMC) to effectuate land use and zoning reclassifications for tax parcels 0922049075 and 0922049092, and a portion of Washington State Department of Transportation right of way (tax parcel 0922045999) and establish an 'Innovation Overlay District' in a portion of the B-P Zone, amending chapter 18.52 DMMC for permitted uses in the B-P Zone, and amending chapter 18.105 DMMC to establish 'Innovation Overlay District' development standards.

WHEREAS, on October 27, 2022, the Des Moines City Council instituted an emergency six-month moratorium prohibiting the submission or acceptance of development applications for new development within an area comprised of 73 acres, located in the business park area south of South 216th Street, that includes properties zoned Business Park (B-P), Residential Multifamily 2,400 (RM-2,400), Residential Single Family 8,400 (RS-8,400), and Suburban Estates (R-SE) to enable the City to study the highest and best use for this area in consideration of Des Moines' 2044 growth targets, Countywide Planning Policies, VISION 2050, and the periodic review and update to the Des Moines comprehensive plan and development regulations, and

WHEREAS, pursuant to Section 36.70A.390 and Section 35A.63.220 of the Revised Code of Washington on December 8, 2022, the Des Moines City Council held a public hearing within sixty days of the passage of Ordinance 1761 and the City Council enacted Ordinance 1767, stating findings of facts and conclusions in support of the continued maintenance of the moratorium for a period of six months until April 27, 2023, and

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WHEREAS, pursuant to Section 36.70A.390 and Section 35A.63.220 of the Revised Code of Washington, the City Council held a public hearing and enacted Ordinance 1771 in support of renewing the moratorium for a period of six months until October 26, 2023, and

WHEREAS, the City's consultant team and City staff have completed the necessary studies for the Moratorium Area that informed the land use and zoning amendments proposed by this Ordinance, and

WHEREAS, the amendments proposed by this Ordinance have been processed in accordance with the SEPA requirements established by chapter 197-11 WAC, and

WHEREAS, land use and zoning amendments proposed in this Ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, pursuant to DMMC 18.20.210 amendments to the Comprehensive Plan and Zoning Code (Title 18 DMMC) require the City Council to conduct a public hearing to receive public comment, and

WHEREAS, notice of the public hearing was provided on August 18, 2023 in accordance with the DMMC, and

WHEREAS, a public hearing was held on September 7, 2023 where all persons wishing to be heard were heard, and

WHEREAS, the public hearing was continued until October 19, 2023 for additional opportunities for public input, and at the hearing all persons wishing to be heard were heard, and

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

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Draft Ordinance No. 23-042

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

Sec. 1. Findings and Conclusions. The Council adopts all of the "whereas" sections, Definitions and Findings instituted through Ordinance 1761, Ordinance 1767 and Ordinance 1771 and all of the "whereas" sections in this Ordinance to support the amendments proposed by this ordinance, as well as the following:

(1) The moratorium study was completed as part of the periodic review of the Des Moines Comprehensive Plan, and is funded by the GMA Update Grant from the Washington State Department of Commerce.

(2) Key considerations influencing this work include Puget Sound Regional Council's VISION 2050, Countywide Planning Policies, and Des Moines' 2044 growth targets (3,800 housing units and 2,380 jobs).

(3) The City instituted the moratorium to study and evaluate land use options, to ascertain economic impacts of potential new zoning dynamics, and to then make a recommendation to City Council as to how to proceed in the soundest manner assuring balanced options.

(4) In order to ascertain economic impacts of potential new zoning dynamics, the City engaged ECONorthwest, a member of the AHBL consultant team, to complete a Market Analysis and Prototype Feasibility study of the Moratorium Area that aimed to answer three primary questions:

(a) What types of development are most likely to locate in the study area given current zoning and current near-term market conditions?

(b) What are the implications of those development types for the city to meet the employment targets outlined in the King County Buildable Lands Report?

(c) What tools might the city employ to better assure development in the moratorium area meets city objectives?

(5) ECONorthwest analyzed the financial feasibility of nine development types that could potentially occur in the Moratorium Study Area and the market analysis finds that most development types tested are financially feasible noting the following key findings that support the proposed land use and zoning amendments:

(a) The Townhome development type was the most financially feasible development type analyzed in this study, which is consistent with similar studies ECONorthwest conducted in the region.

(b) Multifamily development is not as financially feasible as townhomes given current market dynamics, but it is far denser and improves the likelihood for Des Moines to meet its housing targets.

(c) The industrial and manufacturing development that has most recently occurred within the Des Moines Business Park have low employment densities; given limited employment land, Des Moines will need to achieve higher employment densities to meet its employment targets.

(d) Given recent development in the Business Park and some of the new companies who have located within the study area, there is demonstrated demand for commercial uses in this part of the city.

(6) The Moratorium Area provides an opportunity for the City to develop, in partnership with other public resources and private investment, a Center for Excellence and Innovation District that supports economic diversification, small business development, entrepreneurship, job creation, social equity and

environmental sustainability and provides the following benefits:

(a) An innovation district is a place-based urban development strategy that aims to regenerate an under-performing area into a desirable location for innovative and creative companies and workers.

(b) Additional opportunities exist to develop workforce housing, to encourage owner occupied housing and enhance and protect recreational opportunities.

(c) Providing for the creation of workforce, middle, and market rate housing in proximity to jobs, transit, recreation, and open space will complement the area and accomplish highest and best use.

Sec. 2. DMMC 18.05.050 and section 3 of Ordinance No. 1469 as amended by section 2 of Ordinance No. 1528, as amended by section 2 of Ordinance No. 1551, as amended by section 1 of Ordinance No. 1623, as amended by section 1 of Ordinance No 1664, as amended by section 1 of Ordinance No. 1712 are amended to read as follows:

Preferred land use map designation.

The map filed in the City Clerk's office and marked Exhibit "B" to Ordinance No. 1469 and adopted November 12, 2009, as amended by Exhibit "B" to Ordinance No. 1528, as amended by Exhibit "B" to Ordinance No. 1551, as amended by Exhibit "B" to Ordinance No. 1623, as amended by Exhibit "B" to Ordinance No. 1664, as amended by Exhibit "B" to Ordinance No. 1712, as amended by Exhibit "B" to Ordinance No. 1731 is amended as described in Exhibit "A" to Draft Ordinance No. 23-042 and constitutes the comprehensive land use map, also referred to as the preferred land use map, for the

City. The map referenced herein supersedes all previously adopted preferred land use maps.

Sec. 3. Area of zone reclassification.

The zoning classification of the following legally described property as shown on Exhibit B to Draft Ordinance No. 23-042 is amended from B-P Business Park Zone to RM-2,400 Residential Multifamily 2,400 Zone:

PARCEL "0922049075"

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMEETE MERIDIAN, IN KING COUNTY, DESCRIBED AS FOLLOWS:

THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER LESS THE SOUTH 10 FEET THEREOF AND EXCEPT COUNTY ROAD LESS ALL C/M.

Parcel "0922049092"

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMEETE MERIDIAN, IN KING COUNTY, DESCRIBED AS FOLLOWS:

THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, LESS COUNTY ROAD LESS C/M RGTS.

Parcel "0922045999"

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, IN TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLAMEETE MERIDIAN, IN KING COUNTY, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION STATE ROUTE 509 RIGHT OF WAY LOCATED SOUTH OF AND ABUTTING SOUTH 216TH STREET THAT IS BOUNDED BY PARCEL 0922049183 ON THE WEST, THE SOUTH 216TH STREET RIGHT OF WAY ON THE NORTH, THE UNDEVELOPED 16TH AVENUE SOUTH CITY RIGHT OF WAY ON THE EAST AND THE UNDEVELOPED SOUTH 218th STREET EXTENSION RIGHT OF WAY ON THE SOUTH.

Sec. 4. Area of zone reclassification.

The zoning classification for Parcels 0922049015, 0922049081, 0922049165, 0922049166, 0922049174, 0922049175, 0922049207, 0922049221, 0922049252, 0922049341, 0922049358, and 0922049386 is amended to establish an Innovation District Overlay Zone as shown on Exhibit B to Draft Ordinance No. 23-042.

Sec. 5. DMMC 18.52.010B, and those parts of the Commercial Use Chart and section 133 of Ordinance 1591 as amended by section 12 of Ordinance 1601 as amended by section 8 of Ordinance 1618A as amended by section 2 of Ordinance 1644 as amended by Section 1 of Ordinance 1645 as amended by section 8 of Ordinance 1655 as amended by section 4 of Ordinance 1656 as amended by section 2 of Ordinance 1661 as amended by section 2 of Ordinance 1669 as amended by section 1 of Ordinance 1672 as amended by section 3 of Ordinance 1697 as amended by section 1 of Ordinance 1701 as amended by section 2 of Ordinance 1714 as amended by section 1 of Ordinance

Draft Ordinance No. 23-042
 Page 8 of 11

1719 as amended by section 9 of Ordinance 1737 as amended by section 3 of Ordinance 1750, shall be amended to read as follows:

Use is:	NC	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
P: Permitted									
P/L: Permitted, but with special limitations									
CUP: Conditional use review required									
UUP: Unclassifie d use review required									

08/18/2023
 Draft Ordinance No. 23-042

Automobile, parking	P/L[5]		P/L[93]	P/L[16] [20]	P/L[22] 1	P	P	P/L[54]	P/L[72]
Self-storage/ mini-warehouse leasing			P/L[93]				P/L [44]	P/L [62]	
Transportation and wholesale trade			P/L[11, 93]						
Warehouse distribution centers, home deliveries			P/L[93]			P	P/L[52, 51]		

93. Uses shall be limited to B-P Zoned properties located north of S. 216th Street, provided that existing business park developments that were permitted within the South Subarea of the North Central Neighborhood are allowed to maintain and expand their current businesses under these use classifications.

Sec. 6. DMMC 18.105.070, and section 263 of Ordinance 1591 as amended by section 12 of Ordinance 1655 as amended by section 1 of Ordinance 1673 are hereby amended to read as follows:

...

(16) Development proposals within the Innovation Overlay Districts shall:

(a) Recognize the distinct physical characteristics of the individual Innovation Overlay District and enable new development, infill, and redevelopment that will complement and

08/18/2023

enhance those characteristics, support small business development and entrepreneurship, and provide the support systems such as education, training and workforce housing.

(b) Increase opportunities for small business development in order to:

(i) Create greater efficiencies in land use;

(ii) Promote a more efficient use of infrastructure in order to reduce associated costs;

(iii) Create opportunities to fulfill some daily tasks without the use of an automobile; and

(iv) Support alternative transportation (non-motorized and bus transit).

(c) Promote context sensitive massing, proportion, positioning, height, streetscape elements, and landscaping.

Sec. 7. Moratorium Rescinded.

Upon the effective date of this Ordinance, the moratorium created by Ordinance No 1767 and extended by Ordinance 1771 is rescinded.

Sec. 8. 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.

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Page 11 of 11

Sec. 9. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication 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 _____, 2023.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

08/18/2023
Draft Ordinance No. 23-042



City of Des Moines Comprehensive Plan Preferred Land Use

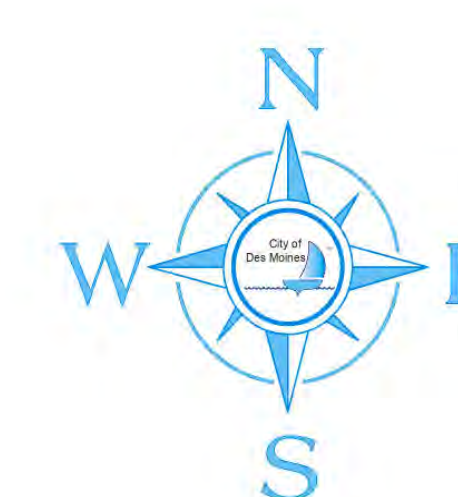
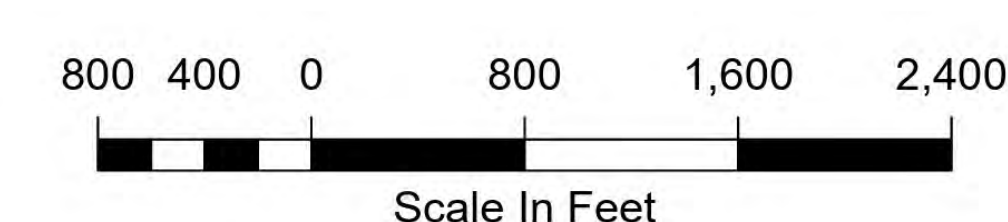
Designations

- RESIDENTIAL
- MF - Multifamily
 - PR-R - Pacific Ridge Residential
 - SF - Single Family
 - T - Townhome
 - TC-R - Transit Community Residential
 - TC-T - Transit Community Townhome
- COMMERCIAL/NON RES
- 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
- Des Moines City Limits
- Streams
- Neighborhood Planning Areas
- PUD See Plan For Density

**CITY OF DES MOINES
COMPREHENSIVE PLAN MAP SERIES**
This map series is intended for general planning purposes related to the City of Des Moines Comprehensive Plan.

Enacting Ordinances

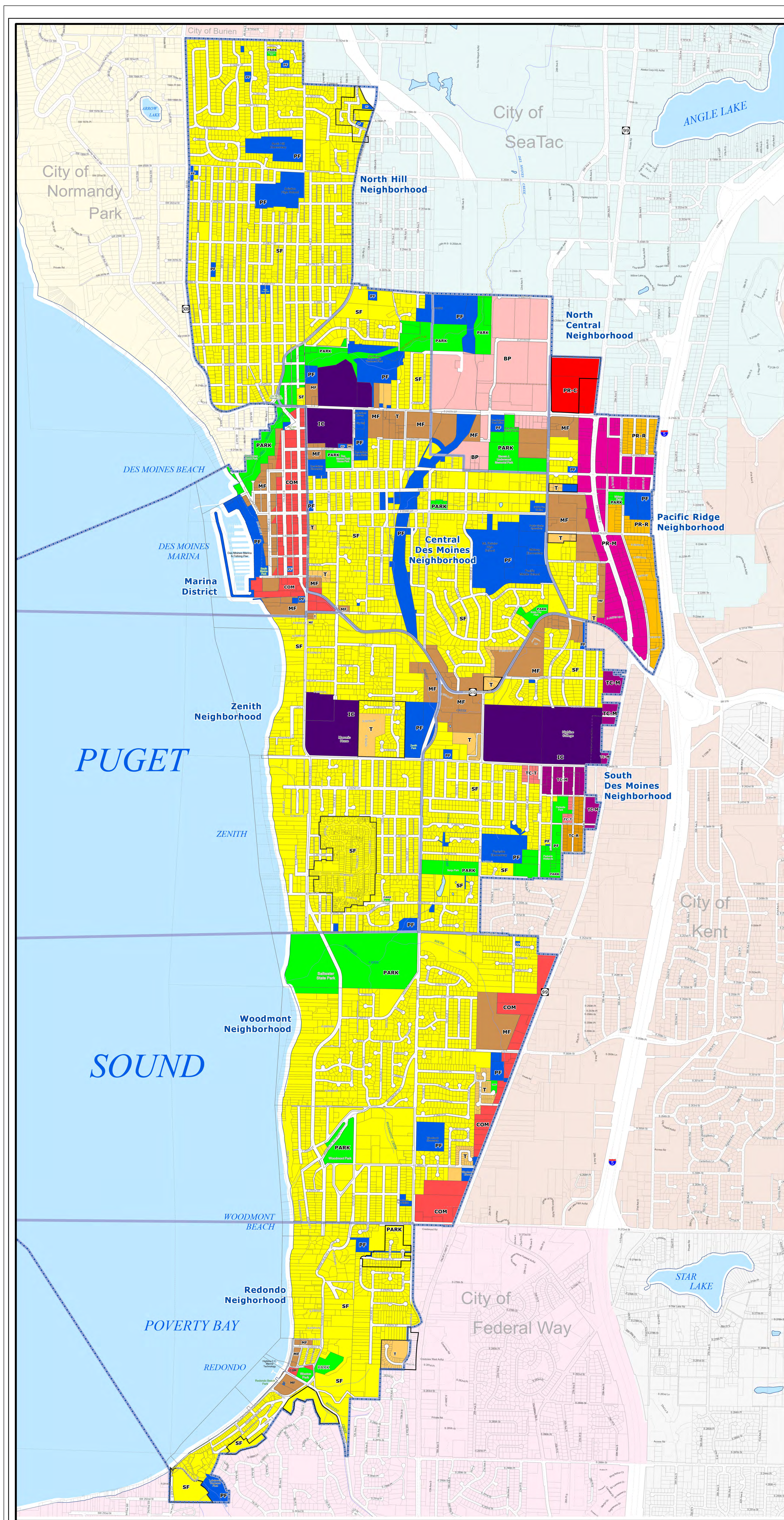
- ORDINANCE, YEAR
- Ord. 23-042, 2023
 - Ord. 1712, 2018
 - Ord. 1664, 2016
 - Ord. 1623, 2015
 - Ord. 1551, 2012
 - Ord. 1528, 2011
 - Ord. 1499, 2010
 - Ord. 1469, 2009
 - Ord. 1425, 2008
 - Ord. 1376, 2006
 - Ord. 1232, 2003
 - Ord. 1265, 2000
 - Ord. 1238, 1999
 - Ord. 1176, 1996
 - Ord. 1160, 1995



Planning, Building & Public Works

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WEB: <http://www.desmoineswa.gov>

Map Generated: Aug 30, 2023
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File: CompPlan.mxd





City of Des Moines Zoning

RESIDENTIAL ZONING

- R-SE Residential: Suburban Estates
- R-SR Residential: Suburban Residential
- RS-15,000 Residential: Single Family 15,000
- RS-9,600 Residential: Single Family 9,600
- RS-8,400 Residential: Single Family 8,400
- RS-7,200 Residential: Single Family 7,200
- RS-4,000 Residential: Single Family 4,000
- RA-3,600 Residential: Attached Townhouse & Duplex
- RM-2,400 Residential: Multifamily 2,400
- RM-1,800 Residential: Multifamily 1,800
- RM-900 Residential: Multifamily 900
- RM-900A Residential: Multifamily 900A
- RM-900B Restricted Service Zone
- PR-R Pacific Ridge Residential

COMMERCIAL ZONING

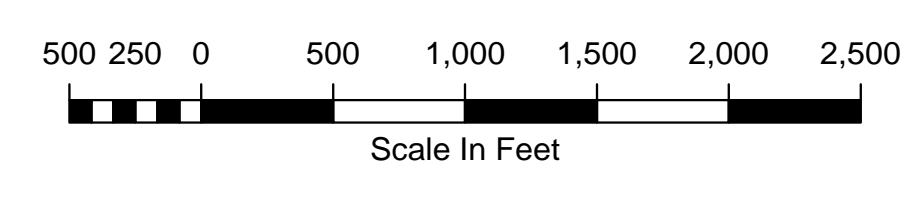
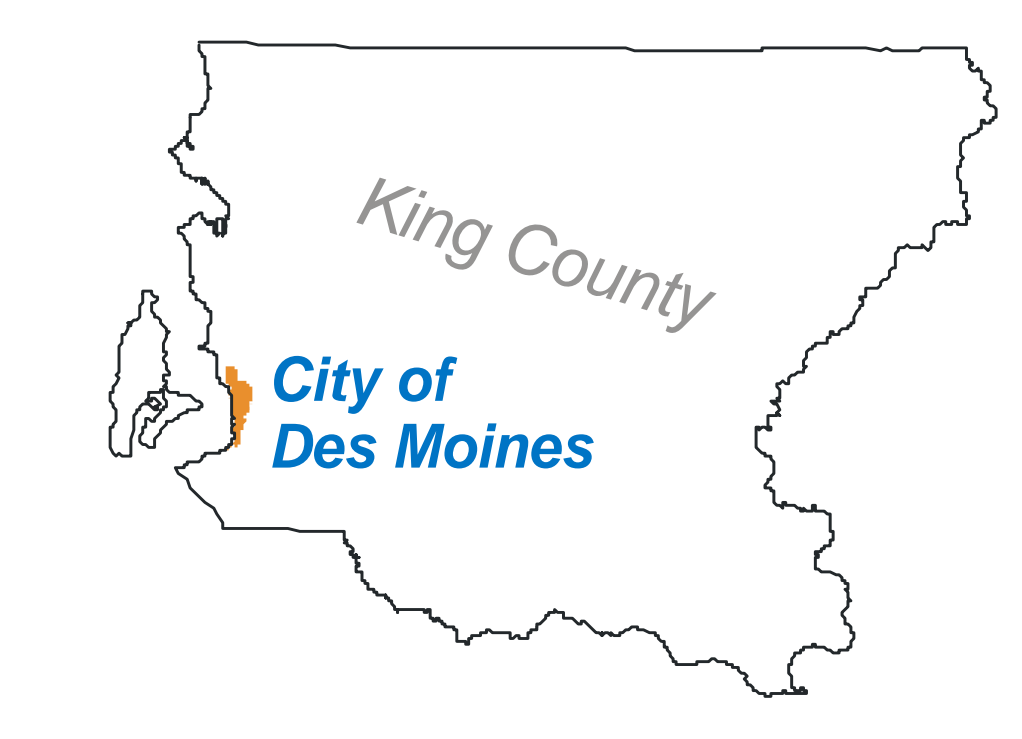
- N-C Neighborhood Commercial
- B-C Business Commercial
- C-C Community Commercial
- D-C Downtown Commercial
- C-G General Commercial
- B-P Business Park
- I-C Institutional Campus
- H-C Highway Commercial
- PR-C Pacific Ridge Commercial
- T-C Transit Community
- W-C Woodmont Commercial

- See Comprehensive Plan for Development Potential
- Planned Unit Development
- Des Moines City Limits
- Tax Parcels
- Tidelands

Enacting Ordinances

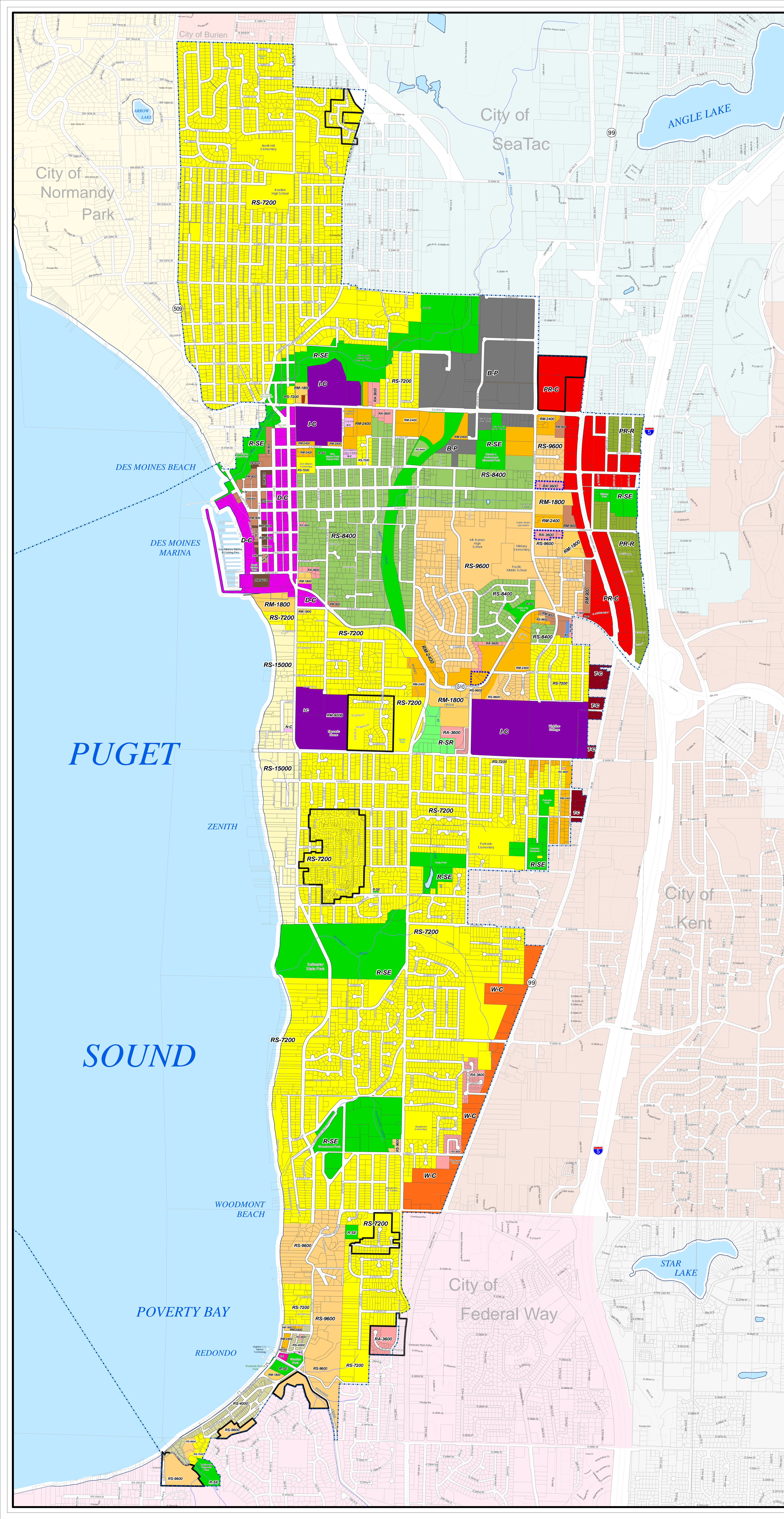
Description	Ordinance	Effective Date
Adoption of digital zoning map	1235	May 5, 1999
Renaming of zones	1237	May 17, 1999
Business Park (B-P) rezoning	1261	June 21, 2000
Pacific Ridge rezoning	1267	July 25, 2000
Redondo Riviera annexation	1270	September 1, 2000
Adoption of GIS maps	1289	October 11, 2001
Mitchell/Chamlian rezoning	1372	January 11, 2006
Redondo rezoning	1397	March 7, 2007
Crestwood Park	1420	December 6, 2007
Granville rezoning	1431	June 26, 2008
Sea Mar rezoning	1520	October 13, 2011
Barton rezoning	1546	July 26, 2012
Addition of I-C zone	1563	March 28, 2013
Pacific Ridge rezoning	1576	September 12, 2013
Addition of T-C Zone	1601	June 26, 2014
Addition of W-C Zone	1618-A	March 17, 2015
Blueberry Lane Rezoning	1660	September 8, 2016
S 216th Street Rezoning	1663	October 13, 2016
Moratorium Rezoning	23-042	Pending Approval

IN PROVIDING THIS MAP, THE CITY MAKES NO WARRANTY OF ANY KIND, expressed or implied, including without limitation, any warranties as to its fitness for a particular purpose or use. To the fullest extent permitted by law, the City shall not be liable for any damages to persons or property, whether direct, indirect, special or consequential, arising from the distribution or use of this map, including without limitation claims for damages based upon inaccuracies or erroneous information presented on this document. The user should not rely upon this document as a complete, current or accurate depiction of existing City zoning definitions, or other regulations, and IN USING THIS DOCUMENT, THE USER ASSUMES ALL RISK OF INJURY OR DAMAGE THAT MIGHT FLOW THEREFROM.

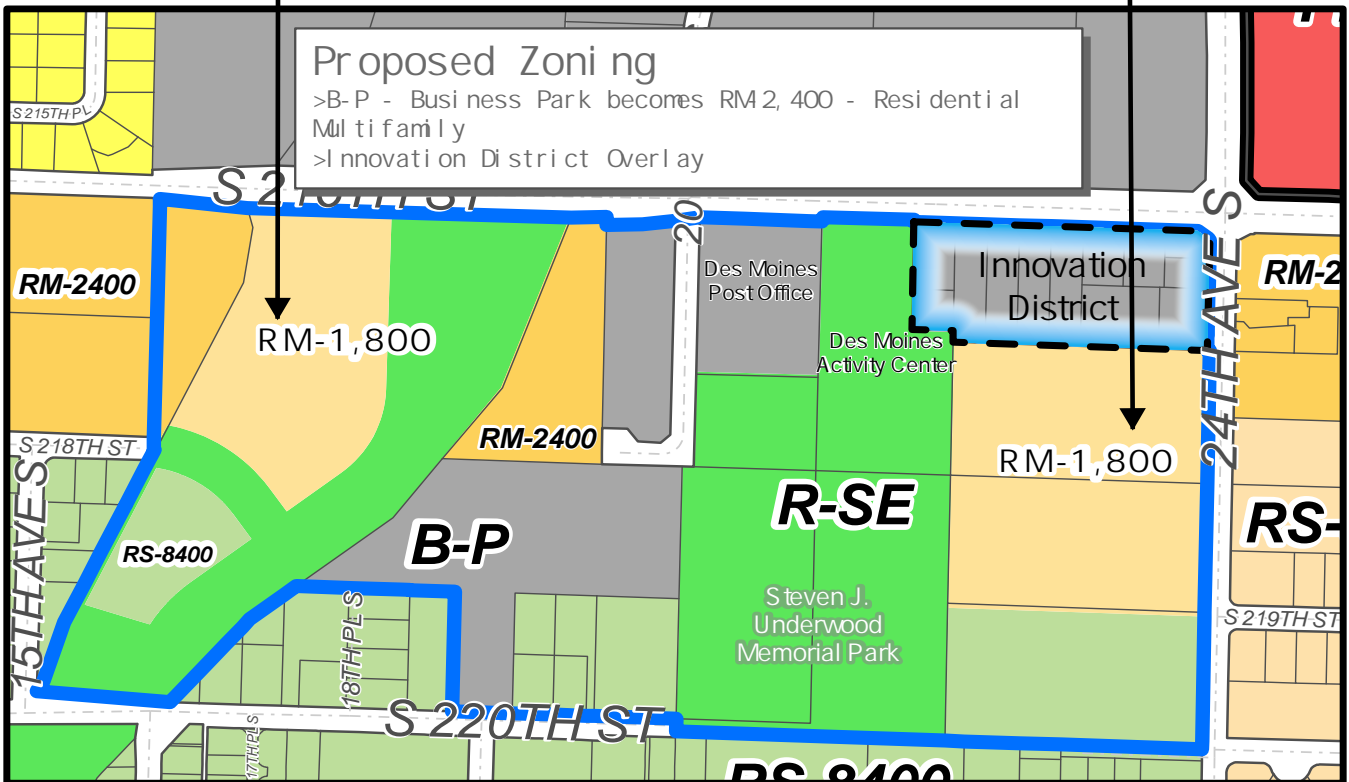
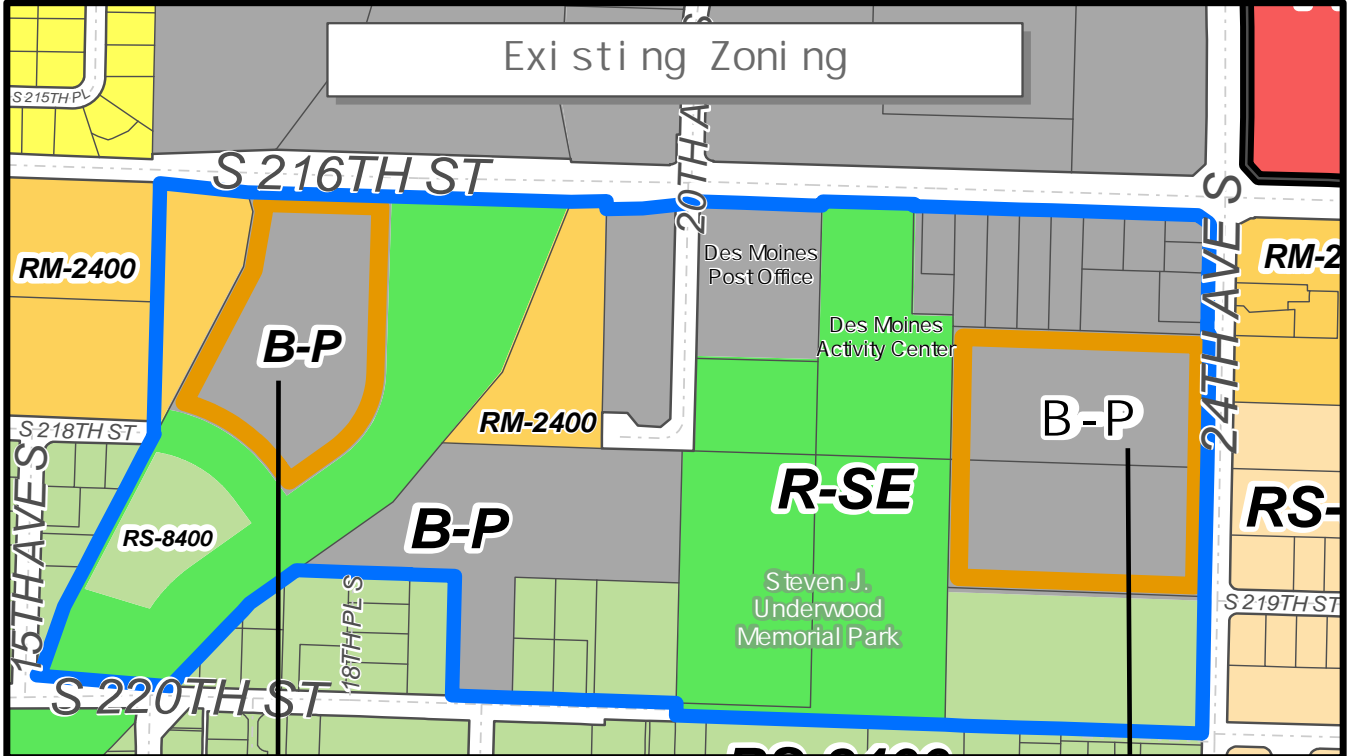


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 Map Name: ZoningPLUDesignationProposedChanges



Proposed Zoning Amendments



Amendment 1
Suggested Motion

Motion 1: "I move to include proposed Amendment 1 to Draft Ordinance No. 23-042."

Amend Section 3 and Exhibit B to change the proposed zoning from the RM-2,400 to the RM-1,800 Residential Multifamily 1,800 Zone.

Sec. 3. Area of zone reclassification.

The zoning classification of the following legally described property as shown on Exhibit B to Draft Ordinance No. 23-042 is amended from B-P Business Park Zone to RM-~~2,400~~1,800 Residential Multifamily ~~2,400~~1,800 Zone:



City of Des Moines Zoning

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- RM-2,400 Residential: Multifamily 2,400
- RM-1,800 Residential: Multifamily 1,800
- RM-900 Residential: Multifamily 900
- RM-900A Residential: Multifamily 900A
- RM-900B Restricted Service Zone
- PR-R Pacific Ridge Residential

COMMERCIAL ZONING

- N-C Neighborhood Commercial
- B-C Business Commercial
- C-C Community Commercial
- D-C Downtown Commercial
- C-G General Commercial
- B-P Business Park
- I-C Institutional Campus
- H-C Highway Commercial
- PR-C Pacific Ridge Commercial
- T-C Transit Community
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See Comprehensive Plan for Development Potential

Planned Unit Development

Des Moines City Limits

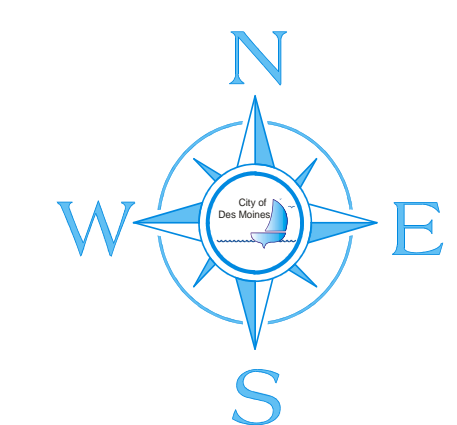
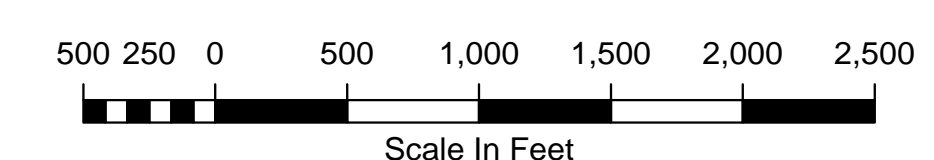
Tax Parcels

Tidelands

Enacting Ordinances

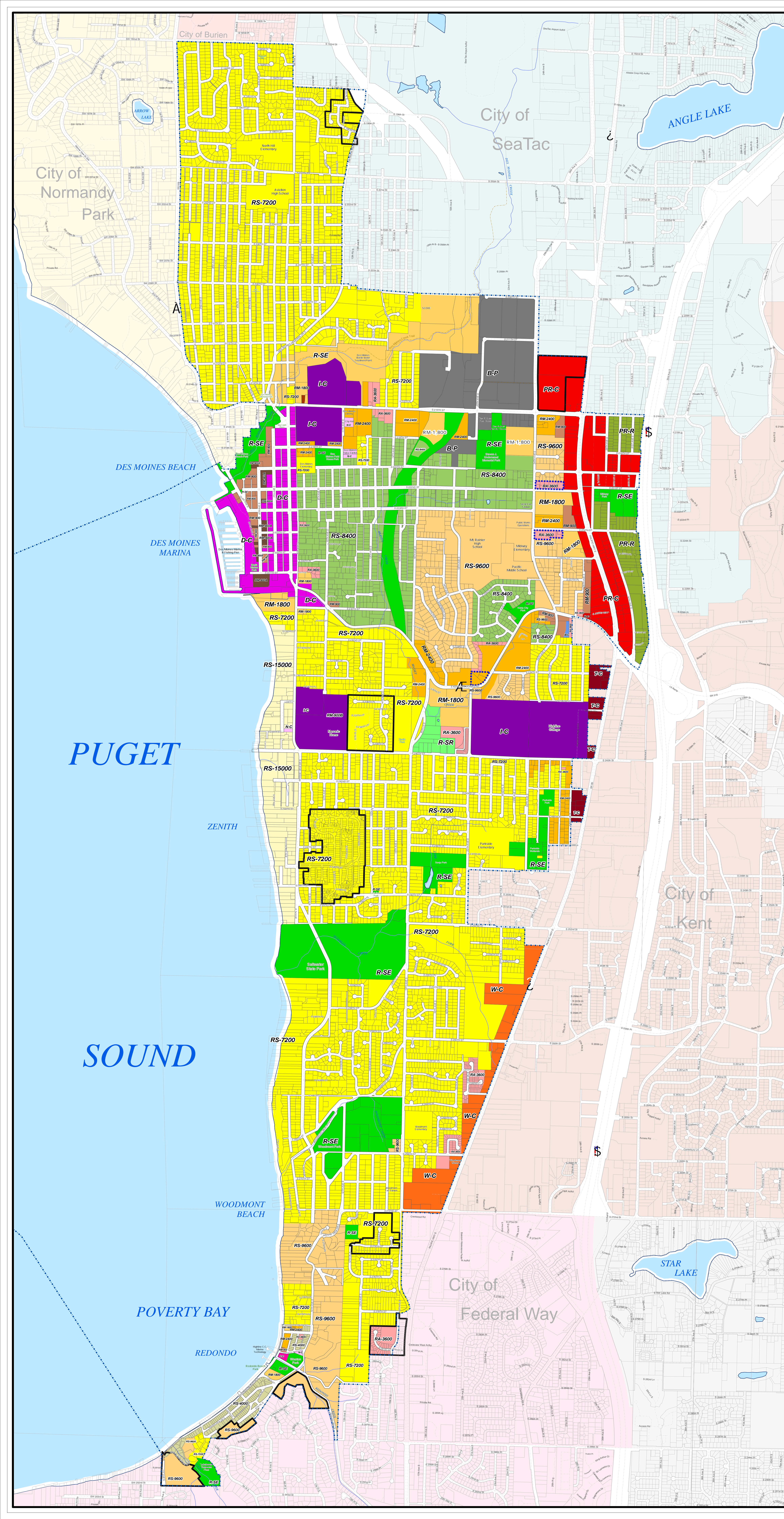
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Moratorium Rezoning	23-042	Pending Approval

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 Map Name: ZoningPLUDesignationProposedChanges



Amendment 2

Suggested Motion

Motion 2: "I move to include proposed Amendment 2 to Draft Ordinance No. 23-042."

Amend Section 5 to add amendments to Limitation 17 and Limitation 93 as follows:

17. Open Air Public Parking Areas. This regulation applies to all parts of Table 18.52.010A that have a [17], except that this use shall not be permitted on RM-1,800 zoned properties located in the West and South Subareas of the North Central Neighborhood.

93. Uses shall be limited to B-P Zoned properties located north of S. 216th Street, provided that existing business park legal conforming B-P developments that were permitted existed within the South Subarea of the North Central Neighborhood on the effective date of Draft Ordinance 23-042 are allowed to maintain and expand their current businesses under these use classifications exempt from this limitation.

Denise Lathrop

From: Kelsey Diller <kelsey@cityclosers.com>
Sent: Thursday, August 24, 2023 10:48 AM
To: Denise Lathrop
Subject: LUA2022-0051

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Hi Denise,

I received the Notice of Determination of Non-Significance and Public Hearing. I'm writing because if I understand this notice correctly, SEPA and Des Moines found no problem with re-zoning the Steven J Memorial Park and part of the Barns Creek Trail into Multi Family housing? I'm for development but not when it takes away a newer play park and woods trail that our family uses daily. Re-zone those properties people are requesting that are privately owned. No significant impact? There are otters in those woods as well as many other species. The Baseball Park is my toddler's favorite park. Is it even legal to give away public lands without a vote of the people? I'm distraught to say the least.

If I have misunderstood this letter, please let me know. Otherwise, please take my comments to the hearing. Thank you.

Kelsey Diller
Owner, Designated Broker

Mobile: 206.915.6028
Kelsey@CityClosers.com
Specializes in Industrial Flex Owner User Sales
CCIM Candidate

21811 15th Ave S.
Des Moines, WA 98198
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We Listen. We Solve. We Close.





STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

August 31, 2023

Denise Lathrop, Community Development Director
Planning, Building, and Public Works Department
City of Des Moines
21630 11th Ave S, Suite D
Des Moines, WA 98198

**Re: Des Moines Moratorium Study Area Land Use and Zoning Code Amendments
File# LUA2022-0051, Ecology SEPA# 202303982**

Dear Denise Lathrop:

Thank you for the opportunity to provide comments on the State Environmental Policy Act (SEPA) determination of nonsignificance (DNS) for the Des Moines Moratorium Study Area Land Use and Zoning Code Amendments. Based on review of the checklist associated with this non-project action, the Department of Ecology (Ecology) has the following comments:

Ecology recognizes that this is a land use and zoning reclassification proposal; however, future development of these properties into residential housing prompts the following comment. This proposed project is located in an area that may have been contaminated with heavy metals due to the air emissions originating from the old Asarco smelter in north Tacoma (visit Ecology's Tacoma Smelter Plume map search tool: <https://fortress.wa.gov/ecy/dirtalert/>). Soil contamination from the former Asarco smelter poses a risk to human health and the environment. Children are at especially high risk from direct exposure to contaminated soil. Construction workers, landscapers, gardeners, and others who work in the soils are also at risk. Ecology recommends that the lead agency include soil sampling and analysis for arsenic and lead as a condition of approval prior to land clearing and grading, and sending the results to Ecology for review. If arsenic or lead are found at concentrations above the state cleanup levels, Ecology may recommend soil remediation and entering the Voluntary Cleanup Program with Ecology. The state cleanup level for arsenic is 20 parts per million (ppm) and lead is 250 ppm.

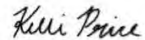
If soils are found to be contaminated with arsenic, lead, or other contaminants, extra precautions shall be taken to avoid escaping dust, soil erosion, and water pollution during grading and site construction. Contaminated soils generated during site construction shall be

Denise Lathrop
August 31, 2023
Page 2

managed and disposed of in accordance with state and local regulations, including the Solid Waste Handling Standards regulation (Chapter 173-350 WAC). For information about soil disposal contact the local health department in the jurisdiction where soils will be placed. The link below provides a fact sheet that explains more how the arsenic and lead clean-up levels were set and why Ecology sees that they are protective for human health:
<https://apps.ecology.wa.gov/publications/SummaryPages/1109095.html>.

Thank you for considering these comments from Ecology. For assistance and information about Tacoma Smelter Plume and soils contamination, contact Diana Ison with the Toxics Cleanup Program at 360-999-9593 or via email at diana.ison@ecy.wa.gov.

Sincerely,



Kelli Price
SEPA Coordinator

Sent by email: Denise Lathrop, dlathrop@desmoineswa.gov

ecc: Diana Ison, Ecology

Denise Lathrop

From: Justin Graham <justin.graham@soundstar.com>
Sent: Friday, September 1, 2023 12:54 PM
To: Denise Lathrop; Michael Matthias
Cc: Gary Ohrt
Subject: Notice of DNS and Public Hearing - Grakon and PAC Stainless Properties (original Des Moines Business Park)
Attachments: DNS - Des Moines 2023.pdf

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Denise E. Lathrop, AICP
Community Development Director
City of Des Moines Community Development Department

Michael Matthias
City Manager
City of Des Moines

Dear Ms. Lathrop and Mr. Matthias,

We are in receipt of the attached Notice of Determination of Non-Significance and Public Hearing. As key stakeholders, we would like to provide our input, comments and concerns. We have spoken to Ms. Lathrop about the City interests and shared with her the critical feedback regarding our two properties; The Grakon/G3 Holdings LLC site (0922049017) and the PAC Stainless/SEA Realty LLC site (0922049038).

Gary Ohrt (PAC Stainless) and I (Grakon) built our businesses in the City. In the case of Grakon, we built a small building just west of Wally's Chowder House, which as the company grew and continued hiring, doubled in size. Meanwhile Gary and PAC Stainless were growing its global business and employee base. As two of the larger growing global businesses in the City, we discussed facility and employee expansion plans with Council and City Staff. The City placed high value on our long and close partnerships and our growth opportunities. Gary and we agreed to purchase large sites up near the Post Office and work closely with the City on what is now an expanded and greatly successful Business Park Zone and sports park. Grakon and PAC Stainless went on to grow and hire and become proud models for the City Staff and Council. Over the years, we have hosted more City tours of our facility than I can count.

The Grakon/G3 building has a new very high profile tenant, Riot Games, who is owned by one of the largest technology companies in the world. Riot will operate a state-of-the-art facility and global media broadcast operation of which certain City Staff are now aware. Jobs in our building will continue to be plentiful and high paying. This tenancy will increase global focus on the City of Des Moines and the benefits will be immense. However, as technology companies can change and evolve, we don't know if in 10 years we will have expanded Riot's footprint to the originally intended footprint (2X the current size) of the Grakon building, or if we will need to find a new tenant as a result of their expansion or business changes. For this reason, we have been careful to only allow Riot the ability to build out their improvements in a thoughtful way allowing efficient restoration of the building back to a warehouse, distribution and light manufacturing use. This is critical – as the current use is extremely rare and not the original design intent of the building.

We need to be certain that no changes are made to the Business Park Zoning or Permitted Uses for our parcels. While tenants may change for short terms, the buildings were designed for industrial uses including light manufacturing,

warehouse, distribution and related activities. We need to make sure that the same Permitted Uses that were allowed these buildings at the time of their development and supported by the City to encourage our long-term business retention and the major long-term investment in the City of Des Moines, are fully retained for these parcels. To be clear, we don't mean the current uses of any single tenant, we mean the original allowed Business Park permitted uses.

The Grakon building was originally designed to double in size. We hope to do this for Riot or an existing high-value industrial tenant in the coming years. Both the PAC Stainless building and the Grakon building were designed with an abnormally high office to warehouse ratio, including Class-A office spaces. These are not your typical industrial buildings as are found in the Kent Valley. They are designed to house knowledge workers, design and engineering, research and corporate administration together with industrial uses.

Gary Ohrt will attend the Public Hearing on September 7. If any changes are contemplated to the Zoning and/or Permitted Uses of our parcels, please let us know in writing and in advance. Changes would contradict the original intentions of the partnership and limit future high value and employment opportunities. We need to retain the long-term plan and original B-P Permitted Uses. There can be no new use, parking, traffic or other restrictions on our specific parcels South of 216th St, without material economic impact to us and the City. And without a impact to our original partnership and long-term investment.

Sincerely,

Justin Graham
Managing Member



G3 HOLDINGS, LLC

Mobile: +1 206.660.7061
justin.graham@soundstar.com

-And-

Gary Ohrt
SEA Realty LLC



CH& CAIRNCROSS&HEMPELMANN
ATTORNEYS AT LAW

524 2nd Ave., Suite 500
Seattle, WA 98104
www.cairncross.com

office 206.587.0700
fax 206.587.2308

September 1, 2023

VIA HAND DELIVERY

City of Des Moines
Planning Building & Public Works Department
21630 11th Ave. S., Suite D.
Des Moines, WA 98198
ATTN: Denise Lathrop

**Re: Comments on Notice of DNS and Public Hearing, LUA2022-0051
and Request for Records
James H. Hill, Thomas H. Hill and John E. Hill, Parcel Number 0922049705**

To Ms. Lathrop:

We were hired yesterday to represent James H. Hill, Thomas H. Hill, and John E. Hill (the “**Hill family**”), owners of property located at 21815 24th Ave S. Des Moines, WA 98198, Tax Parcel Number 092204-9075. We are writing to submit this comment letter on behalf of the Hill family regarding the proposed amendment to the Des Moines Comprehensive Plan Preferred Land Use Map and Title 18 of the Des Moines Municipal Code, specifically concerning the reclassification of their property from BP-Business Park to RM-2,400 Residential: Multifamily 2,400 Zone, and the City’s SEPA Notice of Determination of Non-significance (“**DNS**”).

It appears that the City has not actively engaged with the Hill family regarding the future development potential of their property. The Hill family property was under contract for an industrial development to be designed and constructed using the existing Business Park zoning. Unfortunately, the City imposed a moratorium on new development permits and that industrial developer has walked away from its contract. Now, based on our review of the DNS, it appears the City proposes lifting the development permit moratorium after redesignating and downzoning the Hill property.

The City’s proposal appears to be to retain the B-P Business Park Zone for essentially all parcels affected by the moratorium, while somewhat limiting the permitted uses such as warehouse distribution centers. However, as to the Hill family property, the City appears to have singled it out, together with the fully developed church next door, for a downzone to RM-2,400 Residential: Multifamily 2,400 Zone. The RM-2,400 Zone appears to allow the Hill family property to redevelop at one dwelling unit per 2,400 square feet of lot area, with a maximum height of 35 feet, likely driving either garden

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nrogers@cairncross.com
direct: (206) 254-4417

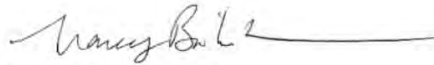
apartments or townhome development. Currently, the Hill family is collaborating with its real estate brokers to fully comprehend the future value implications of this proposed rezoning for their property. Their perspective on this matter may evolve, and they might consider alternative zoning classifications that align with their long-term goals and aspirations for the property. As such, in addition to this letter they may participate in the public hearing scheduled for September 7th to share their insights and concerns.

As to the City's SEPA DNS, we note that the City's role is to integrate environmental review with its planning decisions, at the point in the planning and decision-making process when the principal features of a proposal and its environmental impacts can be reasonably identified. A significant concern lies in the potential lack of notice and involvement of the Hill family in a matter that appears to be a site-specific down-zone, rather than an area-wide rezone. For example, should the Hill family believe a different multi-family zone would be more appropriate – and the City agrees – then the City's issuance of the current DNS appears premature. The relationship of the proposed rezoning to the existing land use plan, transportation infrastructure, public services, parks, and potential impacts on other elements of the built and natural environment all depend on the type and density of the potential future development. It is unclear whether the current DNS sufficiently addresses these needs, including if the proposed zoning classification is increased to add more density, or change uses, or retains the existing B-P zoning, or proceeds with the RM-2,400 zone.

We are committed to working collaboratively with the City to ensure that the Hill family's interests, as well as responsible development practices, are sustained through this process. Please provide us access to/copies of the City's file materials for LUA2022-0051. To date, we have only reviewed the Notice of Determination of Non-Significance and Public Hearing, dated August 18, 2023. If we need to file a formal public records request, please let me know. I can be reached at nrogers@caimcross.com or at 206-254-4417.

Thank you for your attention to this matter.

Very truly yours,



Nancy Bainbridge Rogers

NBR:alw



CITY OF DES MOINES, WASHINGTON
 Community Development Department
 21630 11th Avenue South, Suite D
 Des Moines, WA 98198
 Phone: (206) 870-7576 Fax: (206) 870-6544

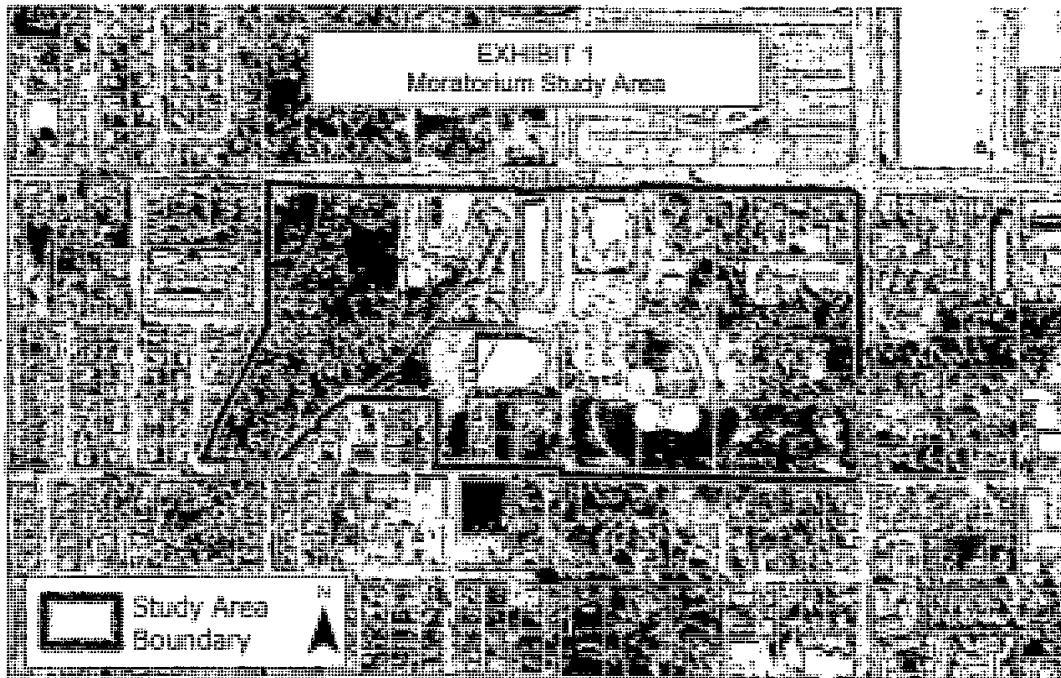
NOTICE OF DETERMINATION OF NON-SIGNIFICANCE AND PUBLIC HEARING

Notice is hereby given that the City of Des Moines Responsible SEPA Official has determined that the following described proposal is not anticipated to create significant adverse environmental impacts and will not require preparation of an environmental impact statement.

NOTICE DATE:	August 18, 2023	COMMENT DUE DATE:	September 1, 2023
PROPOSAL:	<p>The City proposes to amend the Des Moines Comprehensive Plan Preferred Land Use map and Title 18 of the Des Moines Municipal Code (DMMC) related to comprehensive plan and zoning reclassifications and permitted uses for properties located in the Moratorium Study Area (Exhibit A) as described below:</p> <ol style="list-style-type: none"> 1. Amend Des Moines 2035 Comprehensive Plan and Des Moines Municipal Code (DMMC) 18.05.050 Preferred land use map designation, to reclassify tax parcels 0922049075 and 0922049092 and a portion of Washington State Department of Transportation (WSDOT) right of way (tax parcel 0922045999) from BP-Business Park to MF – Multifamily. 2. Amend DMMC 18.10.050 – Adoption of official zoning map, to reclassify tax parcels 0922049075 and 0922049092, and a portion of WSDOT right of way (tax parcel 0922045999) from B-P Business Park to RM-2,400 Residential: Multifamily 2,400. 3. Amend chapter 18.52 DMMC - Permitted Uses for the B-P Business Park Zone to limit vehicle parking, self-storage/mini-warehouse leasing, transportation and wholesale trade, and warehouse distribution centers to B-P Zoned properties located north of S. 216th Street. 4. Amend chapter 18.105 DMMC - Business Park Zone to establish and Innovation District Overlay Zone and associated development standards. 		
PROPOSER:	City of Des Moines		
LOCATION:	Moratorium Study Area (PIN 0922045999, 0922049015, 0922049016, 0922049017, 0922049017, 0922049038, 0922049075, 0922049077, 0922049081, 0922049092, 0922049122, 0922049123, 0922049131, 0922049154, 0922049165, 0922049166, 0922049174, 0922049175, 0922049183, 0922049194, 0922049199, 0922049207, 0922049208, 0922049221, 0922049252, 0922049305, 0922049341, 0922049349, 0922049358, 0922049386, and 0922049405)		
FILE NUMBER:	LUA2022-0051		
ENVIRONMENTAL DOCUMENTATION:	LUA2022-0051 SEPA Checklist – Non-project action amending land use and zoning regulations for the Moratorium Study Area.		
COMMENTS:	Written comments concerning the DNS may be submitted to the Des Moines Planning, Building & Public Works Department (PBPW), located at 21630 11 th Avenue South, Suite D, Des Moines, WA 98198, by 4:30 p.m., September 1, 2023 . Comments should discuss specific environmental issues associated with this proposal and identify how the DNS does or does not address those issues.		

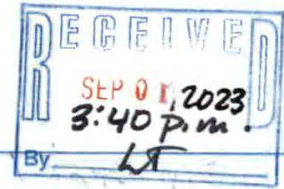
Published in The Seattle Times, August 18, 2023.

APPEAL:	The decision to issue the DNS may be appealed by filing an appeal consistent with Sections 16.05.300 and 18.240.170, if applicable, of the Des Moines Municipal Code. Appeals must be complete and filed with the City Clerk by 4:30 p.m., on September 11, 2023 . The appeal letter must cite specific procedural errors, omissions, environmental impacts, inaccurate environmental information or failure to comply with specific adopted policies or codes which dispute the validity of the DNS.
PUBLIC HEARING:	<p>Notice is hereby given that the Des Moines City Council will conduct a Public Hearing on September 7, 2023 at 6:00 p.m. or as soon thereafter as the matter may be heard.</p> <p>Written comments concerning the proposal are encouraged and may be submitted to the City of Des Moines Community Development Department, 21630 11th Avenue South, Suite D, Des Moines, WA 98198 prior to the close of the public hearing and should reference File Number LUA2022-0051.</p> <p>The City of Des Moines provides special accommodations such as hearing devices, wheelchair space, and large print material for city meetings. Anyone needing special assistance should contact the city clerk at 206-870-6552.</p>
CONTACT:	For further information contact Denise Lathrop, Community Development Director, by email dlathrop@desmoineswa.gov or by phone 206-870-6563.
MORE INFORMATION:	<p>The documents associated with these amendments are available at: http://desmoineswa.hosted.civiclive.com/cms/one.aspx?pageId=17478428</p> <p>Click on Click to Search under the Permit Search Section and then enter the File Number LUA2022-0051. The Search by ID Number box and then click Search to access the information.</p>



Published in The Seattle Times, August 18, 2023.

9/1/23



To whom it may concern;

My name is Hattie Stewart and I Reside at
21912-18th Pl. South, Des Moines WA 98198.

The purpose of this letter is to inform
the City of Des Moines staff that the link
to the documents ~~assoen~~ connected to
File number: LUA2022-0051 are not accessible
to me on-line, or the public.

I am requesting to have the documents
connected to file number LUA2022-005
accessible to the public to Review for
Comments.

I disagree with the City of Des Moines
moving forward with their decision that
the new zoning will not provide significant adverse
environmental impact. Seeing that, the public does
not have access to Review the files, → over

Handwritten notes at the top of the page, including a date "10/10/19" and several lines of text.

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Sincerely,
Hattie Steward



9/7/23

Frederick and Hattie Steward
PO BOX 98371
Des Moines, WA 98198

Dear Denise Lathrop,

My Husband and I own a home in the City of Des Moines, WA. We are writing to appeal the Determination of Non significance for Project File Number: LUA2022-00551.

Second, we are requesting the City of Des Moines, prepare a State Environmental Policy Act (WAC 197-11). To help the public understand how the comprehensive plan and zoning re-classifications and permitted uses for properties located in the Moratorium study area Project File Number: LUA2022-0055, could possibly affect the environment in our community.

Here are our specific environmental concerns:

1. The potential for increased traffic volume in our community as well as increased noise levels.
2. The potential of exposure of toxic chemicals and or hazardous waste that could likely enter into the environment in our community.

In closing, I was not able to locate a visual of the building plans for the Innovation Overlay District.

For the City's proposed amendments related to chapters 18.05 and 18.10 of the Des Moines Municipal Code (DMMC) to effectuate land use and zoning re-classifications for tax parcels 0922049075 and 0922049092, and a portion of Washington State Department of Transportation right of way (tax parcel 0922045999) and establish an 'Innovation Overlay District' in a portion of the B-P Zone, and amend chapter 18.52 DMMC for permitted uses in the B-P Zone, and chapter 18.105 DMMC to establish 'Innovation Overlay District' development standards. Proponent: City of Des Moines Location of proposal, including street address, if any: City Wide Project File No: LUA2022-0051 Lead Agency: City of Des Moines.

We would like to know is there a copy of the building plans for the Innovation Overlay District plan available for the public to view.

Sincerely,

Mr. Frederick and Hattie Steward

LUA2022-0051 Moratorium Study Area SEPA Comment Period (8/18/2023 – 9/1/2023)
Record of Phone Communications with Denise Lathrop, SEPA Official:

8/22/2023 – phone communication with Rosalee Matt 206/824-3384 at 2215 S 216th Street, regarding notice she received; 92 years old, lived at home since 1958; children will inherit; wanted to know how changes would impact her:

- Explained long-term vision for area for the Innovation District Boundary where her property is located.
- Explained that the single family residence is an existing nonconforming use that can continue until the property is redeveloped.

8/30/2023 – phone communication with Steve Parker 206/878-7878 at 1906 S. 220th Street regarding notice he received, asked about rezone and innovation district and discussed his thoughts on future development options for his property such as developing more housing.

9/1/2023 – phone communication with Justin Graham, GHC Holdings, LLC, 206/660-7061, regarding Grakon/G3 Holdings, LLC and PAC Stainless/SEA Realty LLC properties (PIN 0922049017 and 0922049038) regarding the notice he received. Discussed his and his business partner Gary Ohrt's (PAC Stainless) interest that no changes are made to the B-P zoning or permitted uses for their properties to preserve their long term investment goals for these properties as previously permitted by the City. A detailed comment letter was also submitted and attached for the public record.