



**Des Moines**  
WATERLAND CITY

**AGENDA**  
**DES MOINES CITY COUNCIL**  
**REGULAR MEETING**  
**City Council Chambers**  
**21630 11th Avenue S, Suite C**  
**Des Moines, Washington**  
**Thursday, October 23, 2025 - 6:00 PM**

Members of the public who wish to provide comment during the meeting via Zoom must register in advance. To register, please email [cityclerk@desmoineswa.gov](mailto:cityclerk@desmoineswa.gov) by 12:00 p.m. (noon) on the Wednesday prior to the meeting. [Click Zoom Link Here](#).

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

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL**

**COMMENTS FROM THE PUBLIC**

**REGIONAL COMMITTEE REPORT**

**CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS**

- Item 1. DISCUSSION OF CITY OF BURIEN LETTER TO PORT OF SEATTLE  
[Discussion of City of Burien Letter to Port of Seattle](#)
- Item 2. WAREHOUSE TAX COLLECTIONS UPDATE
- Item 3. [City Manager Report - October 23, 2025 PowerPoint](#)

**CONSENT AGENDA**

- Item 1. APPROVAL OF VOUCHERS  
**Motion:** To approve the payment vouchers through October 09, 2025 and payroll transfers through October 03, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#12527-12604	\$1,237,181.60
Wires	#3097-3132	\$1,261,394.51
Accounts Payable Checks	#167073-167117	\$ 208,531.19
Payroll Checks	#20022-20025	\$ 1,696.31
Payroll Advice	#15129-15295	\$ 472,433.90
Payroll Checks	#15296-15296	\$ 2,074.96
Payroll Advice	#15297-15298	\$ 672.57

Total Checks and Wires for A/P & Payroll: \$3,183,985.04

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES

**Motion:** To approve the minutes from the September 11, 2025 and September 25, 2025 Regular City Council Meetings.

[Approval of Minutes](#)

Item 3. 2026 BUSINESS LICENSE FEE SCHEDULE

[2026 Business License Fee Schedule](#)

Item 4. TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH FORGED FIBER 37, LLC - 2nd READING

[Telecommunications Franchise Agreement with Forged Fiber 37, LLC](#)

Item 5. 2026 VEHICLE PURCHASE

[2026 Vehicle Purchase](#)

## **PUBLIC HEARING/CONTINUED PUBLIC HEARING**

Item 1. 2026 PROPERTY TAX LEVY - 1st READING

Staff Presentation by Finance Director Jeff Friend

[2026 Property Tax Levy](#)

[2026 Property Tax Levy PowerPoint](#)

## **NEW BUSINESS**

Item 1. MARINA STEPS PROJECT – PUBLIC WORKS CONSTRUCTION CONTRACT AWARD AND CONSULTANT SERVICES AGREEMENTS FOR CONSTRUCTION ADMINISTRATION, INSPECTION AND ENGINEER OF RECORD SERVICES

Staff Presentation by Public Works Director Mike Slevin

[Marina Steps Project – Public Works Construction Contract Award and Consultant Services Agreements for Construction Administration, Inspection and Engineer of Record Services](#)

[Des Moines Marina Steps Bid Award PowerPoint](#)

- Item 2. WATER/SEWER FRANCHISE AGREEMENTS  
Staff Presentation by Surface Water/Environmental Engineer Tyler Beekley  
[Water Sewer Franchise Agreements](#)  
[Water-Sewer Franchise Agreements PowerPoint](#)
- Item 3. B&O TAX MODEL ORDINANCE UPDATE - 1st READING  
Staff Presentation by Assistant City Attorney Matthew Hutchins  
[B&O Tax Model Ordinance Update](#)  
[Draft Ordinance 25-100 B&O Tax Model Ordinance Update PowerPoint](#)
- Item 4. CONSIDERATION OF MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF DES MOINES AND KING COUNTY METRO TRANSIT DEPARTMENT  
Staff Presentation by City Manager Katherine Caffrey  
[Consideration of Memorandum of Understanding between City of Des Moines and King County Metro Transit Department](#)  
[Memorandum of Understanding between City of Des Moines and King County Metro Transit Department PowerPoint](#)
- Item 5. CONSULTANT SERVICES CONTRACT WITH NELSON-NYGAARD  
Staff Presentation by City Manager Katherine Caffrey  
[Consultant Services Contract with Nelson-Nygaard](#)  
[Consultant Services Contract with Nelson - Nygaard PowerPoint](#)
- Item 6. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

## **COUNCILMEMBER REPORTS**

(4 minutes per Councilmember) - 30 minutes

## **PRESIDING OFFICER'S REPORT**

## **EXECUTIVE SESSION**

## **NEXT MEETING DATE**

November 06, 2025 City Council Study Session

## **ADJOURNMENT**

[Projected Future Agenda Items](#)

[Public Comment 10.23.2025](#)



**Des Moines**  
WATERLAND CITY

# Mission & Vision

Des Moines is a waterfront community committed to maintaining a safe, sustainable environment, while ensuring a high quality of life for all to live, work and play.

## VISION

To be the premier waterfront destination in the Pacific Northwest.

## VALUES

Core Values of the City of Des Moines are:

- Safety
- Sustainability
- Integrity
- Transparency
- Innovation

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: City Manager Report: Discussion of  
City of Burien letter to Port of Seattle

FOR AGENDA OF: October 23, 2025

DEPT. OF ORIGIN: Administration

ATTACHMENTS:

DATE SUBMITTED: October 14, 2025

- 1. Letter from City of Burien

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal /s/TG \_\_\_\_\_
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

The purpose of this item is for the Council to discuss a letter the City of Burien recently sent to the Port of Seattle Commission regarding noise insulation packages, and to provide guidance to staff if the Council wishes to consider sending similar correspondence.

**Suggested Motion**

N/A

**Background**

At its October 6 meeting, the Burien City Council voted to send a letter to the Port of Seattle Commission expressing frustration with the Port’s failure to repair or replace residential noise insulation packages.

Similar insulation systems, commonly referred to as “Port packages,” were installed in a number of homes in Des Moines as part of the same airport noise mitigation efforts.

At the October 13, 2025, Des Moines Airport Committee meeting, members reviewed Burien’s letter and discussed whether the City of Des Moines should consider sending a similar communication. Committee members are willing to review and draft a recommendation for Council consideration, should the City Council wish to pursue this approach.

**Discussion**

Staff is seeking direction from the City Council on whether to move forward with a similar letter to the Port of Seattle Commission.

If the Council is interested, staff can work with the Airport Committee to prepare an initial draft for review and bring it back to Council for discussion and approval at a future meeting.



City of Burien  
400 SW 152nd Street  
Suite 300  
Burien, WA 98166-1911

P 206.241.4647  
F 206.248.5539

[burienwa.gov](http://burienwa.gov)

October 9, 2025

Port of Seattle Commissioners  
2711 Alaskan Way  
Seattle, WA 98121

Dear Port Commissioners:

The City of Burien calls to your attention the Port of Seattle's multi-decade failure to repair or replace Port-installed noise insulation packages, commonly known as "Port packages," which have degraded or failed.

We believe it is time for the Port to abandon its current program, and to work with Burien and other airport cities to design—and fund with Port resources—a viable program that will provide our residents with long-awaited relief. Burien suggests you consider as a model the program at San Francisco International Airport, where proceeds from city-county property tax revenues are used to repair and replace failed sound insulation installations.

Starting in the mid-1980s, approximately 9,400 homes adjacent to Sea-Tac Airport were outfitted with Port packages. Exactly how many have failed is unclear, but there is evidence to suggest they number, at a minimum, in the hundreds. To the best of our knowledge, not one failed Port package has been repaired or replaced unless by property owners forced to use their own funds. To date, there has been no comprehensive effort to identify and analyze these failed packages.

In February 2024, the Port authorized the Port's Sound Insulation Repair and Replacement Pilot Program (SIRPP) to identify and evaluate failed packages. The Port contacted 3,000 homeowners where Port packages were previously installed—all within the 2014 SEA 65 DNL Noise Remedy Boundary, which delineates the noise zone where Federal financial support would theoretically be available.

Many homes with failed packages are now outside that boundary and, thus, ineligible for Federal financial assistance. This is patently unfair. It is our position that any home with a failed port package should be eligible for remediation.

Of those 3,000 homes initially contacted, 30 (only a one percent sample rate) were chosen for initial evaluation to determine if they qualified for repair/replacement. Notably, this evaluation was based only on the internal noise level in the home—the criterion that would allow for use of Federal funds. Other

problems—and there are many—were not considered. Of the 30 homes evaluated, not one qualified for replacement or repair.

We recommend you review the Port’s own “Sound Insulation Repair and Replacement Pilot Program: Assessment Technical Report” that describes the program and its results [That report can be found here. \(https://www.portseattle.org/sites/default/files/2025-02/SEA-SIPP%20Technical%20Report%20Assessment.pdf\)](https://www.portseattle.org/sites/default/files/2025-02/SEA-SIPP%20Technical%20Report%20Assessment.pdf). Causes of identified in the report include the age of the packages, poor installation, parts not being available, product quality, and issues with the manufacturer’s design. Please see Table 26 in the report for a specific breakdown of window problems.

We would also refer you to Table 24, which shows the breakdown of survey respondents by income and household size. Please note the high number of lower-income households.

It seems reasonable to suggest that if zero out of 30 homes within the 65 DNL boundary qualified, none of the properties outside the boundary will qualify for repair or replacement. While aircraft may have become quieter over the years, total noise and particle pollution has increased along with the sharp rise in annual aircraft operations—from 365,000 prior to the opening of the “third runway” (34L/16R) to 423,000 in 2024. This will intensify with the Port’s projected increase of 28 per cent, to 540,000 aircraft operations by 2034—which will certainly leading to a further reduction in the quality of life for thousands of Burien residents.

The Port of Seattle has only shown interest in repairing failed packages if it can obtain Federal or state funds to cover most of the costs. Especially under our current political and economic circumstances, that is unrealistic.

The City of Burien believes it is time to stop taking the same approach while expecting a different result. We ask the Port of Seattle to create a new and viable program that will actually provide relief to our residents, many of whom are of lesser means and many of whom have been waiting for decades for the Port to act. We look forward to working with you.

Sincerely,



Mayor Kevin Schilling



Deputy Mayor Sarah Moore



Councilmember Hugo Garcia



Councilmember Linda Akey



Councilmember Jimmy Matta



Councilmember Alex Andrade



Councilmember Stephanie Mora

# CITY MANAGER REPORT

October 23, 2025



# City of Burien Letter to Port of Seattle

Burien City Council voted to send a letter to Port of Seattle Commission regarding Port's failure to repair or replace residential noise insulation packages

Des Moines has largest number of homes that received "port packages" (est. 3500+)

**Does the City Council want to consider drafting similar correspondence to the Port of Seattle Commission?  
If so, would you like the Airport Committee to take this up?**



# Warehouse Tax Collections Update

- Tax effective Jan 1, 2025 for warehouses >4,000 sq. ft.
- Businesses pay either Business & Occupation (B&O) or square footage tax (whichever is greater)
- Initially identified 24 potentially affected businesses
- After outreach and verification:
  - 2 businesses not subject (retail/small tenant)
  - 1 large warehouse vacant (530,000 sq. ft.)
  - 21 active taxable businesses remain



# Warehouse Tax Collections Update

- Enforcement Actions:
  - Letters, follow-up emails, and City Attorney notices sent
  - Direct assistance provided to businesses for filing
  - Considering audits and assessment letters for 2 noncompliant firms
- Results”
  - **43% compliance in Q1 → 91% compliance as of Oct 2025**
  - Collections to date:
    - \$123K (through mid-Sept) + \$98K (through Oct 16)
    - Forecast \$515K annual revenue
    - Expect \$80K more by Oct 31, bringing all current except 2 delinquent
- Continue enforcement for remaining accounts
- Maintain conservative forecasting given state economic slowdown





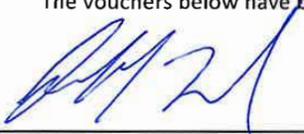
**Des Moines**  
WATERLAND CITY

**CITY OF DES MOINES**  
**Voucher Certification Approval**  
**October 23, 2025**  
**Auditing Officer Certification**

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

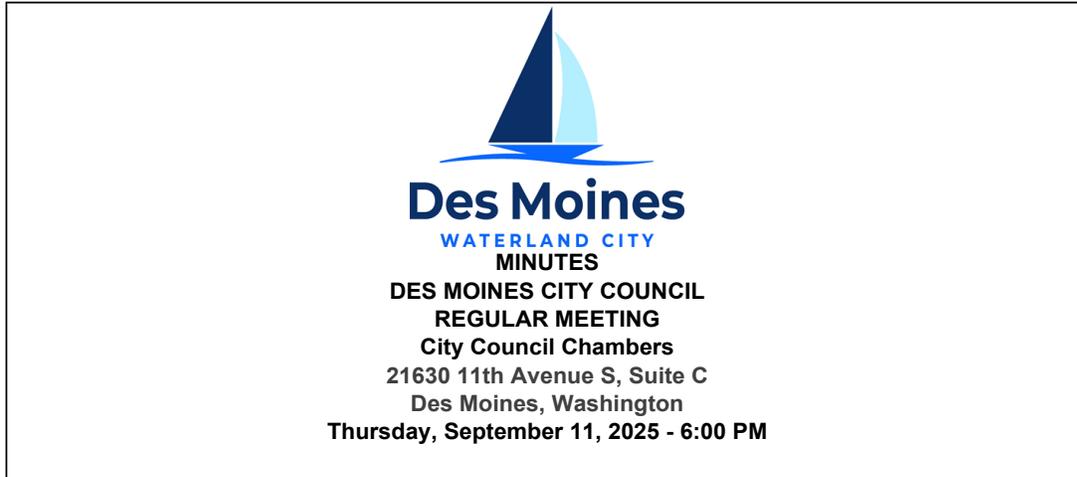
As of **October 23, 2025** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through October 9, 2025 and payroll transfers through October 3, 2025 included in the attached list and further described as follows:

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



\_\_\_\_\_  
 Jeff Friend, Finance Director

		# From	# To	Amounts
<b>Claims Vouchers:</b>				
EFT's		12527	12604	1,237,181.60
Wires		3097	3132	1,261,394.51
AP Checks		167073	167117	208,531.19
<b>Total Vouchers paid</b>				<b>2,707,107.30</b>
<b>Payroll Vouchers</b>				
Payroll Checks	10/3/2025	20022	20025	1,696.31
Payroll Advice		15129	15295	472,433.90
Payroll Advice		15296	15296	2,074.96
Payroll Advice		15297	15298	672.57
<b>Total Paychecks &amp; Direct Deposits</b>				<b>476,877.74</b>
<b>Total checks and wires for A/P &amp; Payroll</b>				<b>3,183,985.04</b>



**CALL TO ORDER**

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

**PLEDGE OF ALLEGIANCE**

The flag salute was led by Councilmember JC Harris.

**ROLL CALL**

**Council Present:**

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

**Council via Zoom:**

Deputy Mayor Harry Steinmetz and Councilmember Jeremy Nutting

**Staff Present:**

City Manager Katherine Caffrey; Assistant City Manager Adrienne Johnson-Newton; City Attorney Tim George; Assistant City Attorney Matt Hutchins; City Prosecutor Tara Vaughn; Finance Director Jeff Friend; Director of Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Assistant Police Chief Cory Stanton; Public Works Director Michael Slevin; Community Development Director Rebecca Deming; Planning & Development Services Manager Laura Techico; City Engineer Tommy Owen; Surface Water and Environmental Engineering Manager Tyler Beekley; Administrative Coordinator Laura Hopp; and City Clerk Taria Keane

## PROCLAMATIONS

### MOUNT RAINIER POOL DAY PROCLAMATION

#### **Direction/Action**

**Motion** made by Councilmember Gene Achziger to adopt the Proclamation recognizing September 21, 2025 as Mount Rainier Pool Day; seconded by Councilmember Yoshiko Grace Matsui.  
Motion passed 7-0.

Councilmember Gene Achziger read the Mount Rainier Pool Day Proclamation into the record.

## CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

- No additional correspondence outside of the emails already received by Council.

## COMMENTS FROM THE PUBLIC

- Steven Larson, Short-term Rentals
- Scott Deschenes, Mount Rainier Pool

## REGIONAL COMMITTEE REPORT

### EMERGENCY MANAGEMENT ADVISORY COMMITTEE:

Councilmember JC Harris

- Councilmember JC Harris gave an update on the Emergency Management Advisory Committee Meeting held on September 10, 2025.

### SOUND CITIES ASSOCIATION PUBLIC ISSUES COMMITTEE

MEETING: Deputy Mayor Harry Steinmetz

- Deputy Mayor Harry Steinmetz gave an update on the Sound Cities Association Public Issues Committee Meeting held on September 10, 2025.

## CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

### Item 1: RECOGNITION OF LEGACY FOUNDATION'S SKATE PARK IMPROVEMENT PROJECT

- City Manager Katherine Caffrey and Assistant City Manager Adrienne Johnson-Newton gave a PowerPoint Presentation on the Legacy Foundation's Skate Park Improvement Project and the Midway Park Summer Program and presented the Legacy Foundation with a skateboard in recognition of the skatepark improvements. .

Regular Meeting Minutes  
September 11, 2025

- Item 2: 2025 2ND QUARTER FINANCIAL REPORT
- Finance Director Jeff Friend gave a PowerPoint Presentation on the 2025 2nd Quarter Financial Report.
- Item 3: ~~BOUNDARY LINE ADJUSTMENT WITH NORMANDY PARK DISCUSSION~~
- Item 4: CITY HALL TO YOUR HOME: JOIN COUNCIL ON ZOOM
- Director of Administrative Services Bonnie Wilkins gave a PowerPoint Presentation on joining Council on Zoom.

### **NEW BUSINESS**

- Item 1: PRESENTATION OF GENERAL FUND FINANCIAL FORECAST AND DEVELOPMENT IMPACT MODEL BY FCS GROUP
- Principal and Economist Todd Chase, Project Manager Tim Wood, and Senior Analyst Luke Nelson with FCS Group gave a PowerPoint Presentation on the Financial Forecast and Development Impact Model.
- Item 2: DISCUSSION ON POTENTIAL MANAGEMENT AGREEMENT AND LICENSE BETWEEN CITY OF DES MOINES AND NWS HOLDINGS (PERFECT GAME) FOR STEVEN J. UNDERWOOD FIELDS
- Public Works Director Mike Slevin along with, Darren Larson and Lee Larson from Perfect Game, gave a PowerPoint Presentation on a potential Management Agreement and License between the City of Des Moines and NWS Holdings, Perfect Game.

### **EXECUTIVE SESSION**

#### **ROLL CALL**

##### **Council Present:**

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

##### **Council via Zoom:**

Deputy Mayor Harry Steinmetz and Councilmember Jeremy Nutting

##### **Others Present:**

City Manager Katherine Caffrey; Assistant City Manager Adrienne Johnson-Newton; Assistant Police Chief Cory Stanton; and City Attorney Tim George

Council held an Executive Session pursuant to RCW 42.30.140(4)(a) to discuss labor negotiations. The session was expected to last 15

Regular Meeting Minutes  
September 11, 2025

minutes.

The meeting adjourned at 8:37 p.m.

Councilmember Jeremy Nutting left the meeting at 8:37 p.m.

**CONSENT AGENDA**

Item 1: APPROVAL OF VOUCHERS

**Motion:** To approve the payment vouchers through August 28, 2025 and payroll transfers through August 20, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#12224-12407	\$2,478,280.90
Wires	#3041-3073	\$2,248,516.18
Accounts Payable Checks	#166930,167013	\$1,364,045.47
Voided Checks	#165313, 165359, 165476, 166978	\$ (5,040.91)
Payroll Checks	#19987-19987	\$ 304.00
Payroll Checks	#19988-20000	\$ 12,949.53
Payroll Advice	#14422-14600	\$ 490,381.48
Payroll Checks	#20001-20001	\$ 2,737.34
Payroll Checks	#20002-20011	\$ 13,789.99
Payroll Advice	#14601-14778	\$ 483,727.57
Total Checks and Wires for A/P & Payroll:		\$7,089,691.55

Item 2: APPROVAL OF MINUTES

**Motion:** To approve the minutes from the City Council Regular Meeting held on August 07, 2025.

Item 3: REDONDO BEACH CONDOMINIUM PUBLIC DRAINAGE EASEMENT

**Motion:** To approve the "Public Drainage Easement" signed by the Redondo Beach Condominium Association, on July 8th, 2025, and to authorize the City Manager to sign the easement on behalf of the City in substantially the form as submitted.

Item 4: INTERLOCAL AGREEMENT WITH MIDWAY SEWER DISTRICT

**Motion:** To approve the Interlocal Agreement between the City of Des Moines and Midway Sewer District regarding the 16th Ave S Force Main Project, and further authorize the City Manager to sign said Interlocal Agreement substantially in the form as Submitted.

Item 5: DRAFT ORDINANCE 25- 062 CITIZENS ADVISORY BOARD - Second

Regular Meeting Minutes  
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Reading

**Motion:** To approve Draft Ordinance No. 25-062 creating a Citizens Advisory Board.

- Item 6: ~~BOUNDARY LINE ADJUSTMENT WITH NORMANDY PARK~~  
~~**Motion:** To enact Draft Resolution 25-075 approving an adjustment of the City's common boundary with the City of Normandy Park.~~

- Item 7: SEA-TAC STAKEHOLDER ADVISORY ROUND TABLE (StART) POSITION APPOINTMENT  
**Motion:** To appoint of Barton DeLacy to a term on the StART Committee effective immediately and expiring on September 30, 2027.

- Item 8: CITIZEN'S ADVISORY BOARD APPOINTMENTS  
**Motion 1:** To confirm Bill Linscott to the Citizens Advisory Board as the Marina Tenant representative, effective immediately with an expiration date of June 30, 2027.

**Motion 2:** To confirm Jim Lampariello to the Citizens Advisory Board as an At Large representative, effective immediately with an expiration date of June 30, 2027.

**Motion 3:** To confirm Mackenzie Meyers to the Citizens Advisory Board as a Business Owner representative, effective immediately with an expiration date of June 30, 2027.

**Motion 4:** To confirm Alyson Chapin to the Citizens Advisory Board as the North Central representative, effective immediately with an expiration date of June 30, 2027

**Direction/Action**

**Motion** made by Councilmember Matt Mahoney to approve the Consent Agenda as read; seconded by Councilmember Yoshiko Grace Matsui. Motion passed 6-0.

**PUBLIC HEARING/CONTINUED PUBLIC HEARING**

- Item 1: COMPREHENSIVE PLAN PERIODIC UPDATE - First Reading  
Staff Presentation by Community Development Director Rebecca Deming

At 8:41 p.m. Mayor Traci Buxton opened the Public Hearing.

Community Development Director Rebecca Deming and Planning and Development Service Manager Laura Techico gave council a PowerPoint Presentation regarding the Comprehensive Plan Periodic

Regular Meeting Minutes  
September 11, 2025

Update.

Public Comment

- Jonathan Boyer, Executive Director of Judson Park Retirement Community - Opponent

Mayor Traci Buxton asked 3 times if anyone wished to speak.

Mayor Traci Buxton asked Council if they had any questions.

At 8:55 p.m. Mayor Traci Buxton closed the Public Hearing.

**Direction/Action**

**Motion** made by Councilmember Matt Mahoney to move draft Ordinance 25-087 to a second reading on September 25, 2025. Motion passed 6-0.

**Motion** made by Mayor Traci Buxton to direct staff to incorporate the Judson Park Rezone Request into the Comprehensive Plan; seconded by Councilmember Matt Mahoney. Motion passed 4-2.

**For:** Mayor Traci Buxton, Deputy Mayor Harry Steinmetz, Councilmember Yoshiko Grace Matsui, and Councilmember Matt Mahoney.

**Against:** Councilmember JC Harris, and Councilmember Gene Achziger.

**NEW BUSINESS CONTINUED**

Item 3: NEW AGENDA ITEMS FOR CONSIDERATION

- There were no new items for future consideration.

**COUNCILMEMBER REPORTS**

(4 minutes per Councilmember) - 30 minutes

**COUNCILMEMBER JC HARRIS**

- Thanked the City Manager for writing a letter concerning tree cutting

**COUNCILMEMBER GENE ACHZIGER**

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- No Report

**COUNCILMEMBER MATT MAHONEY**

- Tribute to police and fire for 9/11

**COUNCILMEMBER YOSHIKO GRACE MATSUI**

- No report

**DEPUTY MAYOR HARRY STEINMETZ**

- Council at Farmers Market Saturday September 13th
- Des Moines Oktoberfest September 20 & 21st at the Quarterdeck

**PRESIDING OFFICER'S REPORT**

- Last day of Farmers Market Saturday September 27th
- Talks with King County Council Member regarding ferry
- Met with Representative Kristine Reeves and Senator Tina Orwall regarding airport initiatives

**NEXT MEETING DATE**

September 25, 2025 City Council Regular Meeting

**ADJOURNMENT**

**Direction/Action**

**Motion:** made by Councilmember JC Harris to adjourn the meeting;  
seconded by Councilmember Matt Mahoney.

Motion passed 6-0.

The meeting adjourned at 9:13 p.m.



**Des Moines**  
WATERLAND CITY  
MINUTES  
DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11th Avenue S, Suite C  
Des Moines, Washington  
Thursday, September 25, 2025 - 6:00 PM

## **CALL TO ORDER**

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

## **PLEDGE OF ALLEGIANCE**

The flag salute was led by Councilmember Gene Achziger.

## **ROLL CALL**

### **Council Present:**

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

### **Council via Zoom:**

Councilmember Jeremy Nutting

### **Staff Present:**

City Manager Katherine Caffrey; City Attorney Tim George; Judge Lisa Leone; Police Chief Ted Boe; Community Service Officer Tonya Seaberry; Assistant City Attorney Matt Hutchins; City Prosecutor Tara Vaughn; Harbormaster Scott Wilkins; Finance Director Jeff Friend; Community Development Director Rebecca Deming; Planning & Development Services Manager Laura Techico; City Engineer Tommy Owen; Surface Water and Environmental Engineering Manager Tyler Beekley; and Director of Administrative Services Bonnie Wilkins

## **PROCLAMATIONS**

DOMESTIC VIOLENCE AWARENESS MONTH PROCLAMATION

Regular Meeting Minutes  
September 25, 2025

- Sarah Tuttle, the Executive Director of Lighthouse NW, gave Council an update on Lighthouse NW.

**Direction/Action**

**Motion** made by Councilmember Yoshiko Grace Matsui to approve the Proclamation recognizing October as Domestic Violence Awareness Month; seconded by Deputy Mayor Harry Steinmetz.  
Motion passed 7-0.

Sara Tuttle, the Executive Director of Lighthouse NW read the Domestic Violence Awareness Month Proclamation into the record.

**CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL**

- No additional correspondence outside of the emails already received by Council.

**COMMENTS FROM THE PUBLIC**

- Vicci Rudin - League of Women Voters, Invitation to Candidate Forum 10/14
- Jim Jollimore, Short-term Rentals
- Richard Nagle, Thank you and update on cars

**REGIONAL COMMITTEE REPORT**

REGIONAL TRANSIT COMMITTEE

- Councilmember JC Harris gave an update on the Regional Transit Committee Meeting held on September 17, 2025.

PORT OF SEATTLE HIGHLINE FORUM

- Councilmember Matt Mahoney gave an update on the Highline Forum with the Port of Seattle held at the Des Moines Police Station September 24, 2025.

SOUTH KING HOUSING AND HOMELESSNESS PARTNERSHIP  
LEGISLATIVE FORUM

- Councilmember Gene Achziger gave an update on the South King Housing and Homelessness Partnership Legislative Forum meeting held at the Tukwila Community Center September 19, 2025.

PUGET SOUND REGIONAL COUNCIL

- Mayor Traci Buxton gave an update on the Puget Sound Regional Council Executive meeting held September 25, 2025.

### CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- Item 1: POLICE UPDATES
- Police Chief Ted Boe and Community Service Officer Tonya Seabury gave a PowerPoint Presentation on the 2024 Crimes in Washington Report, Animal Control Options, and Summer and Fall Outreach Efforts.
- Item 2: PROPERTY ACQUISITION: WOOTON PARK OPEN SPACE
- Surface Water and Environmental Engineering Manager Tyler Beekley gave Council an update on the Property Acquisition of Wooton Park Open Space.

### CONSENT AGENDA

- Item 1: APPROVAL OF VOUCHERS
- Motion:** To approve the payment vouchers through September 11, 2025 and payroll transfers through September 05, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#12408-12478	\$2,531,332.07
Wires	#3074-3091	\$ 493,765.20
Accounts Payable Checks	#167014-167046	\$ 64,391.48
Payroll Checks	#20012-20012	\$ 875.46
Payroll Checks	#20013-20020	\$ 8,894.23
Payroll Advice	#14779-14961	\$ 478,110.93

Total Checks and Wires for A/P & Payroll: \$3,577,369.37

- Item 2: APPROVAL OF MINUTES
- Motion:** To approve the minutes for the Committee of the Whole and Study Session held on September 04, 2025.
- Item 3: COMPREHENSIVE PLAN PERIODIC UPDATE - SECOND READING
- Motion:** To adopt draft Ordinance 25-087 adopting 2024 periodic update to the Des Moines Comprehensive Plan.
- Item 4: CONFIRMATION OF CITY MANAGER'S RE-APPOINTMENT OF LISA LEONE TO THE MUNICIPAL COURT JUDGE POSITION
- Motion:** To confirm the City Manager's re-appointment of Lisa Leone to the Municipal Court Judge position effective January 1, 2026 through December 31, 2029.
- Item 5: PUBLIC WORKS MAINTENANCE EQUIPMENT PURCHASE

Regular Meeting Minutes  
September 25, 2025

**Motion:** To approve the purchase of equipment identified in Attachment 1 for a total estimated amount of \$170,000 and authorize the City Manager or the City Manager's designee to sign the purchase order at the time they are created.

Item 6: PROPERTY ACQUISITION: WOOTON PARK OPEN SPACE

**Motion:** To ratify and approve the executed agreements for the purchase of the Parcel A and Parcel B located along Redondo Way South in Des Moines, for the purchase price of \$425,000.00 plus closing costs, and direct Administration to bring forward a budget amendment reflecting the cost of the purchase.

**Direction/Action**

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

## UNFINISHED BUSINESS

Item 1: DRAFT ORDINANCE 25-001 SHORT TERM RENTALS - SECOND READING

- Prosecutor Tara Vaughn gave Council a PowerPoint Presentation on Draft Ordinance 25-001 Short Term Rentals - Second Reading.

**Direction/Action**

**Motion** made by Deputy Mayor Harry Steinmetz to incorporate the proposed amendments shown in Draft Ordinance 25-001 as submitted; seconded by Councilmember Yoshiko Grace Matsui. Motion passed 7-0.

**Motion** made by Councilmember JC Harris to amend section 1 (7) to change language to read "Short Term Rental" means a lodging use, excluding hotels, motels, or bed and breakfasts, in which a dwelling unit, or portion thereof, is offered or provided by a Property Owner to a guest for a fee for a period of not less than one night but not more than thirty consecutive nights; seconded by Deputy Mayor Harry Steinmetz. Motion passed 4-3.

**For:** Mayor Traci Buxton, Deputy Mayor Steinmetz, Councilmember JC Harris, and Councilmember Gene Achziger.

**Against:** Councilmember Matt Mahoney, Councilmember Jeremy Nutting, and Councilmember Yoshiko Grace Matsui.

Regular Meeting Minutes  
September 25, 2025

**Motion** made by Councilmember JC Harris to amend section 6 to add "and available for public inspection".  
Motion fails for lack of a second.

**Motion** made by Deputy Mayor Harry Steinmetz to approve Draft Ordinance No. 25-001 as amended, regulating Short Term Rentals; seconded by Councilmember Matt Mahoney.  
Motion passed 7-0.

Council took a 5 minute break at 8:00 p.m.

Councilmember Jeremy Nutting left the meeting at 8:00 p.m.

Council resumed the meeting at 8:05 p.m.

## **NEW BUSINESS**

Item 1: REVENUE ENHANCEMENT OPTIONS

- City Manager Katherine Caffrey and Finance Director Jeff Friend gave a Council PowerPoint Presentation on Revenue Enhancement Options.

Following the presentation, the Council made recommendations to staff.

### **Direction/Action**

**Motion** made by Councilmember Matt Mahoney to direct staff to place the Public Safety Sales Tax on the next agenda for Council consideration; seconded by Deputy Mayor Harry Steinmetz.  
Motion passed 6-0.

Item 2: PLANNING COMMISSION DISCUSSION

- Community Development Director Rebecca Deming gave Council a PowerPoint Presentation regarding the Planning Commission Discussion.

Following the presentation, the Council provided feedback to staff.

### **Direction/Action**

**Motion** made by Mayor Traci Buxton to move the rest of the Planning Commission Discussion to the Committee of the Whole and amend the agenda to adjourn the meeting.  
Motion passed 6-0.

Regular Meeting Minutes  
September 25, 2025

**NEXT MEETING DATE**

October 02, 2025 City Council Study Session

**ADJOURNMENT**

**Direction/Action**

**Motion** made by Councilmember Gene Achziger to adjourn the meeting;  
seconded by Councilmember Yoshiko Grace Matsui.  
Motion passed 6-0.

The meeting adjourned at 9:30 p.m.

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: 2026 Business License Fee Schedule

FOR AGENDA OF: October 23, 2025

ATTACHMENTS:

1. Draft Resolution 25-109
2. Current Business License Fee Table

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: October 13, 2025

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

The purpose of this agenda item is for the City Council to consider Draft Resolution No. 25-109 (Attachment 1) which proposes to increase two business license fees for 2026.

**Suggested Motion**

**Motion: "I move to adopt Draft Resolution No. 25-109 updating the business license fee schedule."**

**Background**

Currently, businesses that rent dwelling units (e.g. houses, apartments, etc.) pay \$75 for a business license in their first year in business. In subsequent years, the following schedule applies:

Fee	Amount
1 to 10 dwelling units	\$100
11 to 30 dwelling units	\$200
31 to 99 dwelling units	\$350
100 or more dwelling units	\$500

The business license fee for solicitors is currently \$75 for the first five solicitors and \$20 for each additional solicitor.

**Discussion**

Staff proposes eliminating the initial \$75 business license fee for lessors in the first year and applying the standard fee schedule beginning in year one. This change would align business license fees for rental property owners with those paid by other in-City commercial businesses, which pay \$100 for a business license. It would also ensure fee consistency from year to year. In 2024, the City received 14 applications from property owners subject to the initial \$75 fee, resulting in total revenue of \$1,050. A \$25 fee increase does not result in significant revenue for the City but ensures a consistent business fee schedule.

Staff also proposes to increase the business license fee for solicitors to \$100 for the first five solicitors and \$25 for each additional solicitor. This would also align the fee with those paid by businesses in the City. Furthermore, it would help cover costs for background checks required for solicitor business licenses. In 2025, 16 solicitor licenses were issued to one organization, resulting in total revenue of \$295. Background checks cost \$11 per person for a total cost so far in 2025 of \$176. The difference between the revenue and expense for these licenses was \$119.

**Alternatives**

Council may decide to:

- 1) Not adopt Draft Resolution 25-109
- 2) Adopt Draft Resolution with higher fees

**Financial Impact**

The financial impact of the fee increase is insignificant. The purpose of the Draft Resolution is to ensure the business license fee schedule is consistent and fair for all businesses in the City.

**Recommendation**

Staff recommends adoption of Draft Resolution 25-109.

**CITY ATTORNEY'S FIRST DRAFT, 10/13/2025**

**DRAFT RESOLUTION NO. 25-109**

**A RESOLUTION OF THE CITY OF DES MOINES, WASHINGTON,** updating business license registration fees under Title 5 DMMC, and superseding Resolution No. 1472.

**WHEREAS,** the City Council finds that the essential purposes of establishing business licenses are to regulate businesses in the City of Des Moines, provide business license enforcement, and provide funds for appropriate municipal expenditures to improve the business climate in the City of Des Moines, and

**WHEREAS,** the Des Moines City Council establishes fees for business licenses by resolution pursuant to DMMC 5.04.030(1), and

**WHEREAS,** the City Council finds that based on general inflationary considerations, including the costs of administering the business license ordinance, business license fees need to be increased, and

**WHEREAS,** business license fees shall be assessed on a license year basis and it is the intent of this resolution to increase business license fees beginning with the license year 2026; now therefore,

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

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

**Sec. 2.** Effective with the license year 2026, except for businesses engaged in the rental of real property, the commercial business license registration fees under Chapter 5.04 DMMC for businesses located inside the City of Des Moines shall be \$100.00 per year.

**Sec. 3.** Effective with the license year 2026, the commercial business license registration fees under Chapter 5.04 DMMC for businesses engaging in business within the City of Des Moines but not physically located in the City shall be \$140.00 per year.

Resolution No. \_\_\_\_  
Page 2 of 2

**Sec. 4.** Effective with the license year 2026, the commercial business license registration fees under Chapter 5.04 DMMC for businesses engaged in the rental of real property inside the City of Des Moines shall be as follows:

1 to 10 units	Fee is \$100.00
11 to 30 units	Fee is \$200.00
31 to 99 units	Fee is \$350.00
100 or more units	Fee is \$500.00

**Sec. 5.** Effective with the license year 2026, partially due to the cost of background checks required for each solicitor, the business license fee under chapter 5.08 DMMC for solicitors shall be \$100.00 for one to five individuals and an additional \$25.00 for each individual beyond five, per year.

**Sec. 6.** Any portions of Resolution No. 1414 that are inconsistent with the terms and intent of this Resolution are hereby superseded.

**PASSED BY** the City Council of the City of Des Moines, Washington this \_\_\_\_ day of \_\_\_\_\_, 2025 and signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

**CITY OF DES MOINES -  
BUSINESS LICENSE FEE SCHEDULE**



	<b>Type</b>	<b>Fees</b>	<b>Notes</b>
<b>1.</b>	<b>General Business License:</b>		
	a. Commercial License, business physically located inside the City of Des Moines	\$100	
	b. Commercial License, business <b>not</b> physically located inside the City of Des Moines	\$140	
	c. Home Occupation	\$100	
	d. Family Daycare	\$100	
	e. Adult Family Home	\$100	
	f. Rental of Real Property: Initial license fee	\$75	
	Renewal fee:		
	1 to 10 units	\$100	
	11 to 30 units	\$200	
	31 to 99 units	\$350	
	100 or more units	\$500	
	g. Solicitor	\$75 - one to five / \$20 for each after 5	
<b>2.</b>	<b>Special License Endorsements:</b> <i>requires commercial business license also</i>		
	a. Special Occasion Cabaret (Operation less than 30 days in any 12 month period)	\$5 per day	Only valid for specific days listed on application
	b. Adult Entertainment Premises	\$750 application fee	
	c. Adult Entertainment Premises Manager	\$200 per manager application fee	
	d. Adult Entertainer	\$200 per entertainer application fee	
	e. Panoram Premises	\$100 application fee	
	f. Panoram Device	\$50 per device application fee	
	g. Panoram Operator's License	\$725 per operator application fee	
	h. Cabaret (per entertainer) – Requires an Unclassified Use permit in all zones except Pacific Ridge	\$150 – one \$325 – more than one \$40 – for 3 months - one \$85 – for 3 months - more than one	
	i. Cabaret Admission Charge Tax	\$.25 per ticket	
	j. Secondhand Dealer	\$100	
	k. Pawn Broker/Pawn Shop – Requires Secondhand Dealer endorsement also	\$300	
	l. Cardroom	\$250 per table	
	m. Massage Parlor	\$500 \$100 – Masseur License	
<b>3.</b>	<b>Mobile and Stationary Vendors</b>		
	a. Mobile Vendor	\$100	
	b. Stationary Vendor	\$100	



**Notes:**

- 1) General Business License fee based on when the business started; the “Full” year applies if the business started before July 1<sup>st</sup> and the “Half” year fee applies if the business started after July 1<sup>st</sup>.
- 2) Renewal Penalties – Licenses renewed one month past the due date will be charged \$25; licenses renewed two months past the due date will be charged \$50; and licenses renewed three months past the due date will be charged \$100.
- 3) Massage businesses that gain customers through medical practitioner's referrals apply for a regular commercial business license or home occupation.

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Katherine Caffrey, City Manager

Date

**Effective for January 1, 2025 per Council Resolution 1472**

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Telecommunications Franchise Agreement with Forged Fiber 37, LLC

FOR AGENDA OF: October 23, 2025

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

- 1. Draft Ordinance No. 25-085
- 2. Application Cover Letter dated July 16, 2025

DATE SUBMITTED: October 13, 2025

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

The purpose of this agenda item is for the City Council to approve a telecommunications Franchise Agreement with Forged Fiber 37, LLC for the installation of fiber optic facilities in City right-of-way. A first reading of this Ordinance was held on October 9, 2025. The following motion will appear on the consent calendar:

**Suggested Motion**

**Motion 1: "I move to pass Draft Ordinance No. 25-085 approving a telecommunications Franchise Agreement with Forged Fiber 37."**

**Background**

A franchise agreement authorizes an entity to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public. The grant of a franchise is a special privilege that allows particular individuals to profit from the use of the city streets in a manner not generally available to the public as a common right. The legislature has

granted authority to cities to grant a nonexclusive franchise. RCW 35A.47.040. Once granted, a franchise is a contract which is binding on both the grantor and the grantee.

Forged Fiber 37 submitted a telecommunications franchise application in July of 2025 seeking to deploy fiber optic cables and equipment in City right-of-way to provide voice and data service to businesses and residential customers. Forged Fiber 37 is owned and operated by AT&T, and is currently acquiring the fiber assets and associated facilities that are owned by Lumen that are currently in City right of way.

The City has a standard telecommunications franchise template that was used as the basis for this agreement. A first reading of this draft ordinance was held on October 9, 2025 and the Council unanimously passed the ordinance to a second reading.

### **Discussion**

The key terms of the franchise agreements are detailed below. The terms of the agreements are consistent with the approved telecommunications franchises previously issued by the City.

1. **Franchise Term:** The term of the Franchise is for 10 years. After 5 years, if either party identifies a specific issue that needs to be addressed, the parties are required to meet to negotiate. This language requires the parties to discuss such issues in good faith at the half-way mark of the 10 year term. The term will extend another 10 years unless either party notifies the other in writing 180 days before the end of the Agreement.
2. **Relocation:** Forged Fiber is solely responsible for relocation costs unless state law requires otherwise. RCW 35.99.060 applies specifically to telecommunications franchises and requires cities to share in some relocation costs for specific instances where a city requires relocation for a private party's benefit or if a city requires relocation twice within a 5 year period.
3. **Right of Way Management, Planning, and Operations:** The Franchise reflects current City practice. Forged Fiber is required to follow City permitting processes prior to installation of facilities or any work in the right-of-way.
4. **Indemnification and Insurance:** The Agreement provides that Forged Fiber will indemnify the City for actions of the company or their agents. Forged Fiber is required to maintain \$5,000,000 in automobile and general liability insurance coverage. This coverage exceeds any reasonably expected liability that could occur from this Agreement.
5. **Franchise Fee:** Forged Fiber will pay the City a one-time franchise fee of \$5,000. This flat fee is consistent with RCW 35.21.860 which requires that a franchise fee be limited to the actual administrative expenses incurred by the City in the negotiation of the franchise. This amount will reimburse the City for the staff costs of the negotiations over the last several months.
6. **Taxes:** Under DMMC 3.68.060(3) the City imposes a 6% tax on telephone businesses. To the extent that revenue is received from the installation of these facilities, the City will receive 6%.

7. **Abandonment:** The Franchise requires that Forged Fiber remove any facilities that have been abandoned in the right of way at their own expense. The City has the option to allow them to be abandoned in place or removed.
8. **Vacation** – The proposed language is an accurate reflection of current practice and does not restrict the City’s authority to vacate a right of way. The Agreement requires the City to notify Forged Fiber of a vacation so that they can obtain an easement if one is needed.
9. **Collaboration on City projects** – This Agreement expressly calls out RCW 35.99.070 which requires a service provider that is operating in public right-of-way to provide the City with additional duct or conduit for the City’s purposes. The City would receive this benefit at cost under the Franchise Agreement.
10. **Additional Terms** – The majority of the remainder of the Agreement is boilerplate legal language. All language and terms have been thoroughly reviewed and negotiated and the City’s interests are protected throughout these Agreements.

**Alternatives**

1. Pass the Draft Ordinance.
2. Pass the Draft Ordinance with amendments.
3. Do not pass the Draft Ordinance and provide rationale for not passing.

**Financial Impact**

The City will receive an initial \$5,000 to cover the City’s costs of the negotiation of this Franchise Agreement. Additionally, the City will receive all permitting costs for work to be conducted and any additional staffing time that is spent administering this Agreement can be billed to Forged Fiber.

Finally, the City will receive 6% utility tax on any eligible business activities conducted by Forged Fiber.

**Recommendation**

The Legal Department, Planning, Building, and Public Works, and Finance Department recommend passing the Draft Ordinance.

**DRAFT ORDINANCE NO. 24-085**

**AN ORDINANCE OF THE CITY OF DES MOINES** granting a non-exclusive Franchise to construct, install, operate, maintain, repair, or remove telecommunications facilities within the public ways of the City of Des Moines ("City") to Forged Fiber 37, LLC, a Delaware limited liability company ("Grantee"). Grantee's telecommunications facilities shall not include antennas and support structures specifically for attaching antennas that are used for personal wireless communications services. The City and Grantee are sometimes hereinafter collectively referred to individually as a "party" and collectively as the "parties."

**WHEREAS**, Forged Fiber 37, LLC, a Delaware limited liability company, is a competitive telecommunications company providing telecommunication services, including voice, internet and data services, which desires to occupy the City of Des Moines rights-of-ways to install, construct, operate, and maintain its telecommunications facilities and network for the purpose of providing services to its customers at locations within the City, and

**WHEREAS**, the Grantee has represented to the City that it provides internet access services or acts as a service provider as such term is defined in RCW Section 35.99.010, and

**WHEREAS**, Grantee has applied to the City for a non-exclusive telecommunications service franchise to enter, occupy, and use public ways to construct, install, operate, maintain, and repair telecommunications facilities to offer and provide telecommunications service for hire, sale, or resale in the City, and

**WHEREAS**, the City is authorized by applicable law to grant one or more nonexclusive franchises within the boundaries of the City, and

**WHEREAS**, the 1934 Communications Act, as amended relating to telecommunications providers recognizes and provides local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis, and

**WHEREAS**, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization

required by the City, including without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the City after review of specific plans, and

**WHEREAS**, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways, and

**WHEREAS**, the City and Grantee desire to effectuate good coordination of the use of the rights-of-way, and

**WHEREAS**, the City Council finds that the franchise terms and conditions contained in this Ordinance are in the public interest; now therefore,

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

**Sec. 1. Definitions.**

(1) **Use of words and phrases.** For the purposes of this Franchise, the following terms, phrases, words, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in the Des Moines City Code (DMMC), or in the Federal Communications Act of 1934 as amended, unless inconsistent herewith. The headings contained in this Franchise are to facilitate reference only, do not form a part of this Franchise, and shall not in any way affect the construction or interpretation hereof. The words "shall," "will," and "must" are mandatory, and the word "may" is permissive or directory.

(2) "Abandonment" means the disconnection by the Grantee of specific Facilities from the telecommunications system.

(3) "Affiliate" means any Person who owns or controls, is owned by or controlled by, or is under common ownership or control with Grantee.

(4) "Cable Act" means the Cable Communications Policy Act of 1984 as amended and as may be amended from time to time during the term of this Franchise (47 U.S.C. § 521 et seq., as amended).

(5) "Cable service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(6) "City Council" means the governing body of the City.

(7) "Communications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(8) "Communications applications fees and charges" includes fees and charges connected to right-of-way management, construction permit, permit design fee, building permit, encroachment permit, inspections and pavement restoration.

(9) "Communications service" means the offering of communications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(10) "Communications system" or "system" means only those facilities necessary for Grantee to provide Communications services.

(11) "Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines.

(12) "Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

(13) "Dark fiber" means properly functioning optical cable which is not used or available for use by Grantee or the general public, but may be made available for use under lease to third parties.

(14) "Effective date" means five days following the publication of this Franchise or a summary thereof occurs in an official newspaper of the City as provided by law.

(15) "Emergency" means a condition of immediate and imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

(16) "Facilities" means, collectively, any and all telecommunications transmission systems and appurtenances owned by Grantee, now and in the future, in the Franchise Area, including, but not limited to, wire, radio, optical cable, electromagnetic or other similar types of equipment and related appurtenances in any way comprising part of the System.

(17) "FCC or Federal Communications Commission" means the agency as presently constituted by the United States Congress or any successor agency with jurisdiction over telecommunications service matters.

(18) "Fiber optic" means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying telecommunication service by means of electric light-wave impulses.

(19) "Franchise area" means the area within the jurisdictional boundaries of the City, including any annexed areas, to be served by Grantee as specified in this Franchise.

(20) "Gross Revenues" means all gross revenues received by Grantee or its affiliates from the provision of intrastate telephone business activities in the City of Des Moines, as described in Utility Tax below.

(21) "Incremental costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred.

(22) "Optical cable" means wires, lines, cables and communication and signal lines used to convey communications by fiber optics.

(23) "Open Video System" means a facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, provided that the Federal Communications Commission has certified that such system complies with 47 CFR 76.1500 et seq.

(24) "Person" means any individual, firm, partnership, association, joint stock company, trust, corporation, company, governmental entity.

(25) "Public ways or rights-of-way" includes the surface, the air space above the surface, and the area below the surface of any public street, highway, parkway, circle, lane, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation, repair, and maintenance of a Telecommunication System. No reference in this Franchise to a public right-of-way shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation, repair, and maintenance of a Telecommunication System, and the Grantee shall be deemed to gain only those rights which the City has the undisputed right and power to give. For this Franchise, public ways and rights-of-way are limited to the areas above the ordinary high water mark of Puget Sound.

(26) "Route map" means a geographic representation of the Grantee's Telecommunication System as it exists within the public right-of-way and within private easements in the Franchise area.

(27) "Subscriber" means any Person who or which purchases, leases, rents, obtains or subscribes to Telecommunications Service provided by Grantee by means of or in connection with the Grantee's Telecommunications System.

(28) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's

choosing, without change in the form or content of the information as sent and received.

(29) "Telecommunications applications fees and charges" includes fees and charges connected to right-of-way management, construction permit, permit design fee, building permit, encroachment permit, inspections and pavement restoration.

(30) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Telecommunications service shall also include offering Internet access, private line service, front- and back-haul transport and/or leasing dark fiber directly to the public or third parties.

(31) "Telecommunications system" or "system" means only those facilities necessary for Grantee to provide Telecommunications service.

(32) "Underground facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

(33) "Utility poles" means poles, and crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication.

(34) "Wireless Communications Facilities" means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

**Sec. 2. Franchise - Grant of authority.**

(1) **Use of public rights-of-way.** There is hereby granted to Grantee the right and privilege, to have, acquire, construct, reconstruct, upgrade, repair, maintain, use, and operate in the

City a Telecommunications System, and to have, acquire, construct, reconstruct, repair, maintain, use, and operate in, over, under, and along the present and future Public rights-of-way of the City all necessary Facilities, including without limitation, desirable wires, cables, electronic conductors, underground conduits, vaults, and other structures and appurtenances necessary for the construction, maintenance, and operation of Grantee's Telecommunications system in the Franchise Area. Grantee or Affiliates shall not install or construct facilities within the City's Public Rights-of-Way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

(2) **Additional services/compensation.** By granting this Franchise, the City does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered over the Telecommunication system which are not Telecommunication services. Upon request, Grantee shall inform City of any non-Telecommunication and/or Telecommunication services offered over the Telecommunication system of which Grantee or its Affiliates are aware. By accepting this Franchise, Grantee does not waive any right it has under law to challenge the City's requirement for authorization to provide non-Telecommunication Services.

(3) **Responsibility for costs.** Except as expressly provided otherwise, any act that Grantee is required to perform under this Franchise shall be performed at Grantee's cost. If Grantee fails to perform work that it is required to perform within the time provided for performance or a cure period, the City may perform the work and bill the Grantee for documented costs. The Grantee shall pay the amounts billed within thirty (30) days. The parties agree that any amounts paid pursuant to this Section are not Franchise fees and fall within one or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this section is intended to affect in any way (by expansion or contraction) Grantee's rights under applicable law governing the ability to impose any costs, including but not limited to the rates charged.

(4) **Publication costs.** Any and all costs of publication related to this Franchise which may be required by law or action of City Council shall be borne by Grantee. Any

payments made by the City under this provision are to be reimbursed to the City within thirty (30) days of Grantee's receipt of the invoice.

(5) **Franchise non-exclusive.** The rights, privileges of any franchise granted pursuant to chapter 20.04 of the Des Moines Municipal Code (DMMC) shall be nonexclusive. This Franchise shall not be construed as any limitation upon the right of the City, through its proper officers, to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways by Franchise, permit or otherwise. The City shall not authorize or permit any Person providing telecommunications services to enter into the Public rights-of-way in any part of the City on terms or conditions that, when viewed collectively, are generally more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise.

(6) Nothing in this Franchise excuses Grantee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.

(7) Nothing in this Franchise excuses Grantee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.

(8) Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Grantee of any obligation to pay lawfully imposed charges or fees. Notwithstanding any other provision of this Franchise, nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this Franchise under applicable law.

(9) Nothing in this Franchise grants authority to Grantee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.

(10) Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities or to modify public ways to accommodate Grantee's facilities.

(11) Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Grantee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.

(12) Nothing in this Franchise shall be construed to permit Grantee to unlawfully enter or construct improvements upon the property or premises of another.

(13) Nothing in this Franchise grants authority to Grantee to enter, occupy or use City property, nor to install or construct facilities within the City's Public rights-of-way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

(14) Nothing in this Franchise grants authority to Grantee to provide or offer cable service as cable service is defined in 47 U.S.C. § 522(6), Open Video System services. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City separate authorization to provide Cable or Open Video System services, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

(15) Grantee may use its facilities authorized by this Franchise to provide telecommunications service only as expressly provided in this Franchise.

**Sec. 3. Term evaluation, and renewal.**

(1) This Franchise shall run for a period of ten (10) years unless extended or terminated sooner as hereinafter provided. This Franchise shall commence after the effective date of this Franchise and in accordance with the written acceptance requirements herein.

(2) Should the Parties fail to formally renew this Franchise prior to the expiration of the ten (10) year renewal period, the Franchise shall automatically continue on a month to month period until renewed or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

(3) On the fifth (5th) anniversary of this Franchise, if either party identifies one or more specific issues that the party believes may require a reevaluation of one or more of the material terms of this Franchise, the Parties agree to discuss such issues diligently and in good faith. Notwithstanding the foregoing, either party may at any time during the term of this Franchise, request a clarification of a term, or seek an amendment to, this Franchise.

**Sec. 4. Compliance with City, state, and federal laws.**

(1) **Compliance with applicable laws.** Grantee shall at all times comply with all laws, rules, and regulations of the City, state and federal governments and any administrative agencies thereof which are applicable to all businesses in the City and/or all users of the Public rights-of-way. The express provisions of this Franchise constitute a valid and enforceable contract between the parties.

(2) **Other ordinances.** This Franchise and all rights and privileges granted hereunder are subject to, and the Grantee must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City's exercise of its police powers and applicable law, and in case of any conflict between the express terms of this Franchise and any ordinance enacted by the City, this Franchise shall govern, except where such ordinance would result in a competitor to Grantee having more favorable franchise

terms than Grantee in which case City will notify Grantee and offer Grantee the opportunity to amend this Franchise consistent with such terms. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. The Grantee reserves the right to challenge provisions of any ordinance that conflicts with its contractual rights, and does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

(3) **Police power of the City.** Construction, maintenance, and operation of Grantee's Telecommunication system and all property of Grantee subject to the provisions of this Franchise shall be subject to all lawful police powers, rules, and regulations of the City. The Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise area. The City reserves the right to use, occupy and enjoy any Public rights-of-way or other public places for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, installation of traffic signal systems, intelligent transportation systems, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The City shall have the power at any time to order and require Grantee to remove or abate any pole, line, tower, wire, cable, guy, conduit, electric conductor, or any other structure or facility that is dangerous to life or property. In the event Grantee, after written notice, and the unencumbered ability to comply, fails or refuses to act within thirty (30) days of such written notice, City shall have the power to remove or abate the same at the expense of Grantee, all without compensation or liability for damages to Grantee except in instances when the damage is caused by negligence or willful misconduct of the City or its agents. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.

(4) **Notification in the event of preemptive law.** Grantee shall use its best efforts to notify the City of any change in

law that materially affects Grantee's rights or obligations under this Franchise.

(5) **Amending franchise to conform to subsequent law.** The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or a City Ordinance enacted pursuant to such federal or state statute or regulation, upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

**Sec. 5. Conditions of public rights-of-way occupancy.**

(1) **Use permits and/or development authorization.** Grantee shall obtain use, right-of-way construction, and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in the franchise area. Grantee shall provide the following information for all facilities that it proposes to construct or install:

(a) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:

(i) The location and route of the proposed facilities;

(ii) When requested by the City, the location of all overhead and underground public utility, communication, cable, water, sewer, drainage and other facilities in the public way along the proposed route, provided the information is readily observable or obtainable from the City;

(iii) When requested by the City, the location(s), if any, for interconnection with the communication facilities of others;

(iv) The specific trees, structures, improvements, facilities and obstructions, if any, that Grantee proposes to temporarily or permanently alter, remove or relocate.

(b) If Grantee is proposing to install overhead facilities, the Grantee shall provide evidence that the proposed overhead installation is in compliance with all applicable provisions of the Des Moines Municipal Code. The Grantee shall also provide evidence of Grantee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole, and written acknowledgement by the Grantee that if the overhead facilities are subsequently relocated underground, the Grantee shall relocate underground at no cost to the City, except as otherwise provided in RCW Section 35.99.060.

(c) If Grantee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:

(i) Evidence of ownership or authorization to use such ducts or conduits;

(ii) Conditions of use imposed by the owner(s) of the ducts or conduits;

(iii) If known to Grantee or reasonably ascertainable to Grantee, the total capacity of such ducts or conduits; and

(iv) If known to Grantee or reasonably ascertainable to Grantee, the amount of the total capacity within such ducts or conduits which will be occupied by Grantee's facilities.

(d) If Grantee is proposing to install underground facilities in new ducts or conduits within the public ways:

(i) The location proposed for new ducts or conduits;

(ii) The total capacity of such ducts or conduits; and

(iii) The initial listing of co-located facilities located within Grantee constructed or installed ducts or conduits.

(e) A preliminary construction schedule and completion date together with a traffic control plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) for any construction.

(f) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.

(g) Such other documentation and information regarding the facilities requested by the City.

(h) The requirements of this section do not apply to installation of optical cable necessary to connect a customer of Grantee to a previously approved facility; provided that neither excavation nor trenching in the public right-of-way is required; that the optical cable does not cross a distance of more than eighty (80) feet from its point of connection to the approved facility and the point where it exits the public right-of-way; that the optical cable connection meets or exceeds all applicable technical standards required by law; that the optical cable connection is durable and installed in accordance with good engineering, construction, and installation practices and does not interfere with the public use of the public ways, or adversely affect public health, safety or welfare; that the optical cable connection is constructed and installed to conform to all applicable federal, state, local, and industry codes, rules, regulations, and standards; and that the optical cable connection does not damage or impair the City's public way or property.

(i) The requirements of this section do not apply to repair or maintenance of a previously approved overhead facility; provided that the location and size of the previously

approved facility is not materially changed; that no additional new facilities are constructed or installed; that the repair or maintenance activities are conducted in accordance with good engineering, repair, and maintenance practices and do not interfere with the public use of the public ways, or adversely affect public health, safety, or welfare; that maintenance or repair activities conform to all federal, state, local, and industry codes, rules, regulations, and standards; and that the repair or maintenance activities comply with the City Code.

(2) **Construction and installation requirements.**

(a) Grantee's System shall be constructed and maintained in such manner as not to interfere with in-place sewers, water pipes or any other property of City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been placed in rights-of-way by, or under, City's authority.

(b) All facilities shall be constructed and installed in such manner and at such points so as not to inconvenience City or public use of the public ways or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.

(c) Interference with use of streets. When installing, locating, constructing or maintaining Facilities, the Grantee shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface and subsurface of any such street in as good condition as it was prior to performance by the Grantee of such work, to the satisfaction of the City.

(d) The Grantee shall apply for, obtain, and comply with the terms of all permits required under Des Moines Municipal Code sections regulating construction and maintenance within the right-of-way for any work done upon Grantee Facilities. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner. Grantee shall have the sole responsibility for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or

authorization necessary to construct, operate, maintain or repair or expand the System, and to construct, maintain and repair any part thereof.

(e) The Telecommunications system constructed, maintained and operated by virtue of this Franchise, shall be so constructed, maintained and operated in accordance with all applicable engineering codes adopted or approved by the City, State of Washington, federal government and/or engineering profession and in accordance with any applicable Statutes of the State of Washington, rules and regulations of the applicable Washington regulatory authority, Ordinances of the City or of any other governmental regulatory commission, board or agency having jurisdiction over Grantee.

(f) The construction plans and Grantee's operations shall conform to all federal, state, local, and industry codes, rules, regulations, standards and laws. Grantee must cease work immediately if the City determines that Grantee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the City determines that Grantee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

(g) Neither approval of plans by the City nor any action or inaction by the City shall relieve Grantee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Grantee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors or agents.

(h) Except as to emergency repairs, Grantee shall, prior to excavating within any street, alley or other public place, and installing any conduit, overhead cable or equipment therein, file with the City Manager or designee plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, and a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. The Grantee shall conform to all applicable requirements of the City Code, as it currently exists or as it may be amended.

(i) All construction and/or maintenance work as provided herein shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.

(j) Excavation work requiring a permit from the City shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the Facilities, City property or other persons or property, Grantee may proceed without first obtaining the normally required permits. In such event Grantee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities, or any part thereof; City property; or other persons or property, and to protect the public welfare, health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

(k) In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City Manager or designee in writing as promptly as possible, before such repair or emergency work commences, or as soon thereafter as possible, if advance notice is not practical. The City may act, at any time, without prior written notice in the case of emergency, but shall notify the Grantee in writing as promptly as possible under the circumstances.

(l) Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property including, by way of example and not limitation, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and rights-of-way improvements, private facilities and public safety.

(m) New facilities shall be constructed in accordance with the following terms and conditions:

(i) Facilities shall be installed within the Grantee's existing underground duct or conduit whenever excess capacity exists.

(ii) Overhead facilities shall be installed on pole attachments to existing utility poles only, and then only if space is available.

(iii) Whenever all existing telephone and electric utilities are located underground within public ways, the Grantee must also locate its facilities underground.

(iv) Whenever all new or existing telephone and electric utilities are located or relocated underground within public ways, the Grantee that currently occupies the same public ways shall concurrently relocate its Facilities underground at its own expense, except as otherwise provided in RCW Section 35.99.060.

(n) Display of right-of-way permit. The Grantee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or designee at all times when construction work is occurring.

(o) Construction schedule. The Grantee shall submit a written construction schedule to the City Manager or designee prior to commencing any work in or about the public ways in accordance with City regulations.

(p) Locator service compliance. The Grantee, before commencing any construction in the public ways, shall call for location in accordance with RCW 19.122.

(q) Placement. All facilities, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners. All facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as

are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way. Exact placement within the right-of-way shall be coordinated with the City and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The City reserves the reasonable right as to final placement.

(r) Completion of construction. The Grantee shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within public ways, including restoration, must be completed within 90 calendar days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

(s) Non-complying work. Upon order of the City Manager or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

(t) The City reserves the right to install, and permit to be installed, sewer, electric, phone, gas, water and other pipelines, cables, conduits and related appurtenances and to do, or permit to be done, any underground or overhead work in, across, along, over or under a public way or other public place occupied by Grantee. The City also reserves the right to construct new streets and public utilities and to alter the design of existing streets and public utilities. In performing such work, the City shall not be liable to Grantee for any damage, except in the event of the contributory negligence or willful misconduct of the City or its contractors, but nothing herein shall relieve any other person or entity from the responsibility for damages to Grantee's Facilities. The City will use its best efforts to provide Grantee with reasonable advance notice of plans by other persons to open the public ways.

**(3) Coordination of construction and installation activities.**

(a) Grantee shall coordinate its construction and installation activities and other work with the City and all other

users of the public ways, including utilities located within the franchise area.

(b) All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.

(c) At least forty-eight (48) hours prior to entering a public way to perform construction and installation activities or other work, Grantee shall give notice, at its cost, to owners and occupiers of property adjacent to such public ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger. Grantee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.

(d) The City shall give reasonable advance notice to Grantee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice, except in the event of the contributory negligence or willful misconduct of the City or its contractors. When such notice has been given, Grantee shall provide information requested by the City regarding Grantee's future plans for use of the public way to be opened. When notice has been given, Grantee may only construct or install facilities during such period that the City has opened the public way for construction or installation.

(4) **Relocation.** Grantee shall relocate its facilities as ordered by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060, when there is construction, alteration, repair or improvement of a public way. Grantee shall complete the relocation by the date specified by the City. Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change or relocation. Grantee shall relocate its facilities at its own expense except where the Grantee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Grantee's share of the cost of

relocation will be paid by the City if it requested the subsequent relocation or as otherwise provided in RCW Section 35.99.060.

**(5) Temporary removal, adjustment or alteration of facilities.**

(a) Grantee shall temporarily remove, adjust or alter the position of its facilities at its cost, except as otherwise provided in RCW Section 35.99.060, at the request of the City for public projects, events, or other public operations or purposes.

(b) Grantee shall locate the precise horizontal and vertical location of its underground facilities by excavating upon request of the City. If the City's request is in support of a City project, the Grantee shall complete this service within 14 days at no cost to the City, except as otherwise provided in RCW Section 35.99.060. If the City's request is in support of a third party's project, the Grantee shall be entitled to recover its cost from the project sponsor as set forth in RCW Section 35.99.060.

(c) If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Grantee for the temporary removal, adjustment or alteration of Grantee's facilities to accommodate the moving or removal of said building or other object. In such event, Grantee shall, at the cost of the person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:

(i) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Grantee's business, consistent with the maintenance of proper service to Grantee's customers;

(ii) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route

which causes the least interference with the operations of Grantee, in the sole discretion of the City;

(iii) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and save Grantee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence or willful misconduct of the person moving or removing such building or other object or the negligence or willful misconduct of the agents or employees of the person moving or removing such building or other object; and

(iv) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.

(d) The City may require Grantee to temporarily remove, adjust or alter the position of Grantee's facilities as the City may reasonably determine to be necessary at no cost to the City, except as otherwise provided in RCW Section 35.99.060, for work deemed needed by the City in the Rights-of-Way. The City shall not be liable to Grantee or any other party for any direct (except as a result of the negligence or willful misconduct of the City or its contractors), indirect, consequential, punitive, special or other damages suffered as a direct or indirect result of the City's actions.

(e) The temporary removal, adjustment or alteration of the position of Grantee's facilities shall not be considered relocation for any purpose whatsoever, except as otherwise provided in RCW Section 35.99.060.

(6) **Tree trimming.** The Grantee shall have the authority to trim trees or other natural growth on public property or which overhang streets, alleys, sidewalks and public ways of the City so as to prevent the branches of such trees from coming in contact with the Grantee's wires, cables or other equipment that may be damaged due to continued contact. Grantee takes full responsibility for removing debris when the work is complete. All

trimming is to be done at the sole expense and responsibility of Grantee.

Trimming of trees and shrubbery within or overhanging the public ways to prevent contact with Grantee's Facilities shall be done in such a manner to cause the minimum amount of damage to trees and shrubs. If in the City's determination, trees are excessively damaged as a result of the work undertaken by or on behalf of Grantee, Grantee shall pay the City, within 30 days of submission of a statement by the City, the reasonable cost of any treatment required to preserve a tree or shrub or the cost for removal and replacement of the tree or shrub with landscaping of equal value or the value of the tree or shrub prior to the damage or removal, as determined by the City Manager or designee.

Any trimming or removal of trees or shrubs shall be done in full compliance with the City's Ordinances and all other laws or regulations of the City.

**(7) Underground installation.**

(a) The parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities, provided such requirement is applied on a non-discriminatory basis as required under applicable state or federal law.

(b) Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Grantee shall underground the Grantee Facilities in the manner specified by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060. Where other utilities are present and involved in the undergrounding project, Grantee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trench excavation, backfill, and restoration, and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

(c) Grantee shall abide by chapter 19.122 RCW (Washington State's "Underground Utilities" statutes) and will

further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

(8) **Ducts and conduits.**

(a) If the Grantee is constructing underground conduit for its own use, the City may require the Grantee construct excess conduit, ducts, and related access structures in the public ways for the City, provided that the City enters into a contract with the Grantee consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Grantee, calculated as the difference between what the Grantee would have paid for the construction of its facilities and the additional cost only of construction of the City's excess conduit, ducts, and related access structures. If the City makes the additional conduit available to any other entity for the purposes of providing telecommunications service or cable service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the Grantee shall recover at least the fully allocated costs of the Grantee. The Grantee shall state both contract rates in the contract. The City shall inform the Grantee of the use, and any change in use, of the requested conduit, ducts, and related access structures, if any, to determine the applicable rate to be paid by the City.

(b) The City shall not require that the additional conduit space be connected to the access structure and vaults of the Grantee.

(c) Except as expressly provided in this section, Grantee shall not charge the City for any costs, of any kind whatsoever, for facilities provided by Grantee in accordance with this section.

(d) The provisions of this section shall conform to the requirements of RCW 35.99.070.

(9) **Location of Grantee facilities.**

(a) From time to time, the City, or its representatives, may request identification of the specific location of Grantee System facilities installed in the City's rights of way during the term of this Franchise. The Grantee agrees to respond to such request within forty-eight (48) hours of the receipt of the request, excluding delays due to weather or other conditions. In the event that Grantee cannot locate such information within forty-eight (48) hours, Grantee shall notify the City. If Grantee fails to notify the City of its facilities locations within forty eight (48) hours, and damage is caused to Grantee's facilities as a direct result, the Grantee shall hold the City harmless from all liability, damage, cost or expense resulting from the City's actions in this regard unless such damage was caused by the negligence or willful misconduct of the City or its agents.

(b) Report of underground facilities. From time to time the City may require to design or construct right-of-way improvements in a specific area, the City or its designee may require the Grantee to submit a report of existing underground system facilities for a specific area of the City that will be impacted as a result of a planned right-of-way improvement. Within thirty (30) days after receipt by the Grantee of a request from the City or its designee, the Grantee shall submit a report of underground system facilities that shall comply with the following provisions:

(i) Certification by an engineer licensed in the State of Washington employed by the Grantee that the report accurately depicts the location of all system facilities, including drop service lines to individual subscribers, if any. The accuracy of this report shall be noted based upon the capability of the locating equipment used.

(ii) The accurate depth of the underground facility, as may be available based upon the capability of the locating device used. The accuracy of this information shall be noted.

(iii) Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

(iv) The City and Grantee recognize the importance of making best efforts to communicate during the planning and construction phases of right-of-way improvement projects. To that end, the City and Grantee agree to work cooperatively and to be reasonable and timely in requesting and providing necessary information. In the event the City reasonably determines that more precise information is needed for a specific aspect of a right-of-way project, the Grantee agrees to take the necessary steps to provide such precise information within thirty (30) days of receipt of request. If it is necessary for the Grantee to pot-hole or excavate and restore portions of the right-of-way to respond to the City's information request, the Grantee agrees to take such steps at its expense, , except as otherwise provided in RCW Section 35.99.060, and the City agrees to waive all permitting and inspection fees therefore.

(c) Within sixty (60) days of the effective date of this Franchise, Grantee shall provide the City with a current route map of the Telecommunication System located within the City. Upon City request, but no more often than once each year during the term of this Franchise, the Grantee shall provide the City with an updated route map showing the changes that have occurred in the Telecommunication System.

(d) Grantee agrees to obtain facilities location information from other users of the Public rights-of-way prior to Grantee's construction, reconstruction, maintenance, operations and repair of the Grantee's System facilities.

(10) **Removal and abandonment of facilities.** In the event that the use of any part of the Grantee's system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system equipment or facilities have been installed in any public ways or rights-of-way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired, upon receiving ten (10) business days prior written demand from the City, the Grantee shall promptly remove, at its expense, such affected equipment or Facilities, other than any which the City may permit

to be abandoned in place, from the public ways of rights-of-way. Said removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Grantee shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition satisfactory to the City. Any affected equipment or facilities of the Grantee remaining in place one-hundred eighty-one (181) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days with prior written request from the Grantee, and such request shall not be unreasonably withheld. Any equipment or facilities of the Grantee that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the equipment or facilities of the Grantee in place, the equipment or Facilities shall become that of the City, and the Grantee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such equipment or facilities. None of the foregoing affects or limits the Grantee's rights to compensation for an involuntary abandonment of its equipment or facilities under state or federal law.

(11) **Safety and maintenance requirements.**

(a) All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner.

(b) Grantee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Grantee, establish a reasonable time for Grantee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself at the cost of the Grantee or have them made at the cost of Grantee.

(c) If Grantee fails to commence, pursue or complete any work required by law, this Franchise or any applicable permit to be done in any public way within the time prescribed and to the satisfaction of the City, the City may at its discretion cause the work to be done. Grantee shall pay to the City the reasonable costs of the work in an itemized report provided by the City to Grantee within 30 days after receipt of such report.

(d) Grantee, and any person acting on its behalf, shall provide a traffic control plan that conforms to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property. Grantee shall implement and comply with its approved traffic control plan during execution of its work. The traffic control plan shall be developed and kept on site in Grantee's possession for all work impacting vehicular and pedestrian traffic. Traffic control plans may be modified as necessary by the Grantee to achieve effective and safe traffic control. All road closures requested by Grantee require a detour plan submitted at least 48 hours in advance and prior City approval unless there is an emergency.

(e) Grantee shall maintain its facilities in proper working order. Grantee shall restore its facilities to proper working order upon receipt of notice from the City that facilities are not in proper working order. The City may, after discussions with Grantee, establish a reasonable time for Grantee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established time frame, the City may restore the facilities to proper working order or have them restored at the cost of Grantee.

(f) The City shall have the right to inspect all construction and installation work performed by Grantee pursuant to this Franchise to the extent necessary to ensure compliance by Grantee. On an ongoing basis, Grantee shall certify to the City that Grantee's work is being performed and completed in a satisfactory manner.

(g) On notice from the City that any work is being performed contrary to the provisions herein, or in an unsafe or dangerous manner or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the City may issue a stop work order and Grantee shall stop the work immediately. The City shall issue a stop work order in writing, unless given verbally in the case of an emergency, and provide the order to the individual doing work or post it on the work site. A copy of the order shall be sent to Grantee, and the order must indicate the nature of the alleged violation or unsafe condition and the conditions under which Grantee may resume work.

(12) **Removal of unauthorized facilities.** Within thirty (30) days following written notice from the City, Grantee shall, at its expense, remove unauthorized facilities and restore public rights-of-way and other property to as good a condition as existed prior to construction or installation of its facilities. Any plan for removal of said facilities must be approved by the City prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

(a) Upon expiration, termination, or cancellation of this Franchise;

(b) Upon abandonment of the facilities. Facilities shall be deemed abandoned if they are unused by Grantee as described in Section 5(10);

(c) If the facilities were constructed or installed prior to the effective date of this Franchise; unless such facilities were constructed or installed upon the condition of subsequent approval of this Franchise with the consent of the City; or unless Grantee acquired such facilities from a pre-existing user of the City's rights of way, and no notice of unauthorized facilities was received by the assignor from City prior to the date the facilities were acquired by Grantee.

(d) If the facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits;

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(e) If the facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Franchise; or

(f) If the facilities are unauthorized for any reason whatsoever.

(13) **Restoration of public ways and other property.**

(a) Whenever necessary, after construction or maintaining any of Grantee's Facilities within the Rights-of-Way, the Grantee shall, without delay, and at Grantee's sole expense, except as otherwise provided in RCW Section 35.99.060, remove all debris and restore the surface and subsurface disturbed by Grantee as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during Grantee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable. Grantee agrees to pay all costs and expenditures required on the rights-of-way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Grantee for necessary trench patch maintenance, for a period of ten years from the date such maintenance was performed, normal wear and tear excepted. Favorable weather conditions permitting, Grantee agrees to repair rights-of-way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by the Grantee upon 30 days notice, unless there is an emergency, in which case such work shall be completed upon forty-eight (48) hours' notice excluding weekends and holidays. If Grantee fails to undertake such repairs as herein provided, the City may perform the repairs at Grantee's expense.

(b) Landscape restoration. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of the Grantee's facilities, shall be replaced or restored, at the Grantee's expense to the condition existing prior to performance of the work, except as otherwise provided in RCW Section 35.99.06.

(14) **Poles, structures, and property owned by others.** If and when the Grantee is authorized to install communication facilities aerially in accordance with chapter 12.48 of the Des Moines Municipal Code (DMMC), Grantee must obtain written approval from the owners of utility poles, structures and property not owned by Grantee prior to attaching to or otherwise using such poles, structures or property, and provide proof of such approval to the

City. The City makes no representation and assumes no responsibility for the availability of utility poles, structures, and property owned by third parties for the installation of Grantee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by the City or third parties for any reason whatsoever. The installation of facilities by Grantee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, the authority of Grantee to construct, install, operate, maintain, and repair Grantee's facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

**Sec. 6. Indemnification and liability and assumption of risk.**

(1) Indemnification / Hold Harmless. The Grantee shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with activities or operations performed by the Grantee or on the Grantee's behalf under this Franchise agreement, except for injuries and damages caused by the contributory negligence or willful misconduct of the City.

(2) The City shall give the Grantee written notice of any claim or of the commencement of any action, suit or other proceeding covered by this section. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. However, the failure of the City to provide such notice in writing to Grantee shall not relieve Grantee of its duties and obligations under this Section, provided that Grantee is given sufficient advance notice to perform its duties under this Section. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver

of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

(3) Should a court of competent jurisdiction determine that this Franchise 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 Grantee and the City, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

(4) **Damages and penalties.** By acceptance of this Franchise, Grantee specifically agrees that it will pay, all damages or penalties which the City, its officers, agents, employees, or contractors may legally be required to pay as a result of damages arising out of copyright infringements and all other damages arising out of Grantee's or Grantee's agents' installation, maintenance, or operation of the telecommunications System, except as specifically referenced elsewhere in this Franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, subject to Section 635A of the Cable Act and applicable law.

(5) **Expenses.** If any action or proceeding is brought against the City or any of its officers, agents, or employees for claims for damages or penalties described in this Section, the Grantee, upon written notice from the City, shall assume the investigation of defense and fully control any resolution or compromise thereof, including the employment of counsel and the payment of all expenses including the reasonable value of any services rendered by any officers, agents, employees or contractors of the City which are not unreasonably duplicative of services provided by Grantee and its representatives. The City shall fully cooperate with the Grantee.

(6) **Separate counsel.** The City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and the Grantee shall pay the reasonable fees and expenses of such separate

counsel if representation of both the Grantee and the City by the same attorney would be inconsistent with accepted canons of professional ethics and if separate counsel is employed with the approval and consent of the Grantee, which shall not be unreasonably withheld.

(7) **Assumption of risk.** Grantee assumes the risk of damage to its facilities located in the City's public ways from activities conducted by third parties or the City, its elected officials, officers, employees, agents, or representatives, except in the event of the negligence or willful misconduct of any one or more of the above persons. Grantee releases and waives any and all claims against the City, its elected officials, officers, employees, agents, and representatives for damage to or destruction of the Grantee's facilities except to the extent any such damage or destruction is caused by or arises from the negligence or willful misconduct of the City. Grantee bears sole responsibility to insure its property.

**Sec. 7. Insurance.**

(1) Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to Persons or damage to property which may arise from or in connection with this Franchise by the Grantee, their agents, representatives, employees or subcontractors.

(a) **Amounts of Insurance.** In accordance with applicable law, the Grantee shall maintain throughout the term of this Franchise the following insurance limits:

(i) Automobile Liability. Commercial automobile liability insurance policy in the amount of Five Million Dollars (\$5,000,000) combined single limit each accident for bodily injury and property damage covering all owned, hired, and non-owned vehicles).

(ii) Commercial General Liability. A commercial general liability insurance policy issued by a company duly authorized to do business in the State of Washington insuring the Grantee with respect to the installation, maintenance, and operation of Grantee's Telecommunication System in the amount of Five Million Dollars (\$5,000,000) per occurrence for bodily injury

and property damage and Five Million Dollars (\$5,000,000) general aggregate. The City shall be included as an additional insured as their interest may appear under this Agreement under Grantee's Commercial General Liability insurance policy.

(iii) Excess General Liability. Excess or Umbrella Liability coverage at limits of One Million Dollars (\$1,000,000) per occurrence and annual aggregate providing coverage above the primary Commercial General, Commercial automobile liability and employer's liability insurance.

(iv) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. This requirement may be satisfied instead through the Grantee's primary Commercial General and Automobile Liability coverage, or any combination thereof.

(b) Other Insurance Provisions. The insurance policies are to contain the following provisions for Automobile Liability and Commercial General Liability insurance:

(i) The Grantee's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Grantee's insurance and shall not contribute with it.

(ii) Upon receipt of notice from its insurer(s), Grantee shall endeavor to provide Grantor with thirty (30) days prior written notice of cancellation of any coverage that isn't replaced.

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

(d) Verification of Coverage. Upon acceptance of the Franchise, Grantee shall furnish the City with original certificates and blanket additional insured endorsement, evidencing the insurance requirements of the Grantee.

(e) Subcontractors. Grantee shall require any contractor or subcontractor to obtain and maintain substantially

the same insurance with substantially the same limits as required of Grantee.

(f) **Self-Insurance.** Grantee shall have the right to self-insure its property insurance coverage.

(2) **Endorsements.** Grantee agrees that with respect to the insurance requirements contained above, excluding Workers Compensation, all insurance certificates will contain the following required provisions:

(a) Include the City and its officers, employees, and elected representatives as an additional insured as their interest may appear under this Agreement.

(b) Shall be on an occurrence basis and shall be primary coverage of all losses resulting from Grantee's operations covered by the policies.

(3) **Insurance term.** The insurance required above shall be kept in full force and effect by Grantee during this Franchise and thereafter until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of Grantee's Telecommunication System, should such removal be required by City Council or undertaken by Grantee.

(4) **Issuing companies.** Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

(5) **No limit on liability.** Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

**Sec. 8. Performance bond and security fund.**

(1) **Amount.** The Grantee shall provide the City with a financial guarantee in the amount of One Hundred Thousand Dollars (\$100,000) running for, or renewable for, the duration of the construction of Grantee's facilities in the City, in a form and substance acceptable to the City. This Franchise performance bond shall be separate and distinct from any other bond or deposit required.

(2) **Damages.** In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise, then there shall be recovered jointly and severally from the principal and any surety of such financial guarantee any damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described.

(a) Before any draws are made on the Franchise performance bond, the City Manager or designee shall give written notice to the Grantee:

(i) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the Grantee's act or default;

(ii) Providing a reasonable opportunity for the Grantee to first remedy the existing or ongoing default or failure, if applicable, but in no event less than thirty (30) days;

(iii) Providing a reasonable opportunity for the Grantee to pay any moneys due the City, but in no event less than thirty (30) days, before the City draws on the Franchise performance bond, if applicable;

(iv) That the Grantee will be given an opportunity to review the act, default or failure described in the notice with the City Manager or designee.

(b) The Grantee shall replace the Franchise performance bond within thirty (30) days after written notice from

the City Manager or designee that there is a deficiency in the amount of the Franchise performance bond.

(3) **Security fund.** In addition to the performance bond, Grantee shall establish and maintain a security fund in the amount of twenty-five thousand dollars (\$25,000), at its cost, with the City by depositing such monies, letters of credit, or other instruments in such form and amount acceptable to the City within 30 calendar days of the effective date of this Franchise. No sums may be withdrawn from the fund by Grantee without consent of the City. The security fund shall be maintained at the sole expense of Grantee so long as any of the Grantee's facilities occupy a public way.

(a) The fund shall serve as security for the performance of this Franchise, including any claims, costs, damages, judgments, awards, attorneys' fees or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.

(b) Before any sums are withdrawn from the security fund, the City shall give written notice to Grantee:

(i) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, attorneys' fees or liability which the City has incurred or may pay by reason of Grantee's act or default;

(ii) Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure, if applicable, but in no event less than thirty (30) days;

(iii) Providing a reasonable opportunity for Grantee to pay any monies due the City, but in no event less than thirty (30) days, before the City withdraws the amount thereof from the security fund, if applicable; and

(iv) Grantee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

(c) Grantee shall replenish the security fund within thirty (30) days after written notice from the City that there is a deficiency in the amount of the fund.

(d) Insufficiency of the security fund shall not release or relieve Grantee of any obligation or financial responsibility.

**Sec. 9. Taxes, charges, and fees.**

(1) **Franchise fee.** RCW 35.21.860 currently prohibits a municipal franchise fee for permission to use the right of way to provide internet access services. Based on the representations of Grantee, it is the City's understanding that Grantee will use the right of way to provide internet access services. If this prohibition is removed or does not apply to future services, Grantee understands the City may assess a reasonable franchise fee in accordance with the City Code, so long as local, State or federal law does not otherwise prohibit such fee.

(2) **Utility tax.** The parties further understand that RCW 35.21.870 currently limits the rate of City tax upon telephone business activities to six percent (6%) of Gross Receipts, unless a higher rate is approved by vote of the people. The parties agree, however, that nothing in this Franchise shall limit or expand the City's power of taxation, as now or may hereafter exist. Grantee understands that some of its business activities in the City of Des Moines as identified herein may be taxable activities subject to the six percent (6%) gross receipts tax rate, as imposed under the City's telephone business tax, adopted in Des Moines Municipal Code Chapter 3.68, subject to such activities being deemed taxable under applicable state and federal laws. This provision does not limit the City's power to amend Des Moines Municipal Code Chapter 3.68 as may be permitted by law, including increases to the tax rate. Notwithstanding any other provision of this Franchise, nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this Franchise under applicable law.

(3) **Permit and administrative fees.** Grantee shall also pay and be responsible for all charges and fees (authorized under applicable law) imposed to recover actual administrative expenses

incurred by the City that are directly related to receiving and approving this Franchise, any use and/or development authorizations which may be required, or any permit which may be required, to inspecting plans and construction, or to the preparation of a detailed statement. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City but shall not excuse Grantee from paying and being responsible for other actual administrative expenses incurred by the City.

(a) Grantee shall pay a franchise processing fee of \$5,000 within 30 calendar days of the effective date of this Franchise.

(b) Grantee shall pay fees according to applicable sections of the City Code.

(4) Grantee shall pay and be responsible for taxes permitted by law.

(5) In addition to penalties and other remedies for which Grantee may be subjected, the City reserves the right to impose site-specific charges (authorized under applicable law) for placement of structures used to provide telecommunications services.

**Sec. 10. Access to facilities and universal service.**

(1) Grantee shall provide access to its facilities by hire, sale, or resale on a nondiscriminatory basis. Grantee shall make its telecommunications services available to any customer within its franchise area who shall request such service whenever feasible, without discrimination as to the terms, conditions, rates or charges for the Grantee's services; provided, however, that nothing in this section shall prohibit Grantee from making any reasonable classifications among differently situated customers.

(2) Grantee may provide Internet access to users of City property, at locations requested by the City, if it is practicable, upon Grantee's then-current market rates for such service and pursuant to a separate services agreement. Grantee and the City may enter into a separate agreement or agreements regarding the

allocation of costs to construct, install, operate, maintain, repair, and remove facilities needed to provide such access; provided, however, that nothing herein shall require the City to accept construction or installation of facilities on City property.

**Sec. 11. Acquisition of facilities.** Upon Grantee's acquisition of any facilities in the public way, or upon any addition or annexation to the City of any area in which Grantee has facilities, such facilities shall immediately be subject to the terms of this Franchise without further action of the City or Grantee.

**Sec. 12. Vacation of public ways.** The City reserves the right to vacate any public way which is subject to rights, privileges, and authority granted by this Franchise. If Grantee has facilities in such public way, the City shall reserve an easement for Grantee, if requested by Grantee.

**Sec. 13. Duty to provide information.** Grantee's obligations under this section are in addition to those provided elsewhere in this Franchise. Within thirty (30) days of a written request from the City, Grantee shall furnish the City with all requested information sufficient to demonstrate:

(1) That Grantee has complied with all requirements of this Franchise;

(2) That taxes, fees, charges, or other costs owed or payable by Grantee have been properly collected and paid.

**Sec. 14. Records.**

(1) Grantee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Grantee and its affiliates that are reasonably necessary for the enforcement of this Franchise or to verify Grantee's compliance with terms or conditions of this Franchise. Grantee will not deny the City access to any of Grantee's records on the basis that Grantee's documents or records are under the control of any affiliate or a third party.

(2) All documents and records maintained by Grantee shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Grantee to violate state or federal law regarding subscriber privacy and/or the privacy of Grantee's Indefeasible Right of Use ("IRU") holders, lessees, or customers, nor shall this section be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

(3) One copy of documents and records requested by the City will be furnished to the City at the cost of Grantee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Grantee may request, in writing within thirty (30) days of the City's request, that the City inspect them at Grantee's local office. If any documents or records of Grantee are not kept in a local office and/or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Franchise, or to verify Grantee's compliance with terms or conditions of this Franchise, then all reasonable travel and related costs incurred in making such examination shall be paid by Grantee.

(4) At the request of the city, Grantee shall provide the City with an annual report on the number of feet of right-of-way Grantee occupies in the City and the services Grantee is providing in the City. Grantee may request all or a portion of such information be protected from disclosure under the Washington Public Records Act (RCW 42.56).

**Sec. 15. Assignment or transfer.** Grantee's rights, privileges, and authority under this Franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Grantee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Any transfer, assignment or disposal of Grantee's rights, privileges, and authority under this Franchise may be subject to reasonable conditions as may be prescribed by the City.

(1) No rights, privileges, or authority under this Franchise shall be assigned, transferred, or disposed of in any manner within twelve (12) months after the effective date of this Franchise.

(2) Absent extraordinary and unforeseeable circumstances, no Grantee facility, for which separate City permits for construction have been obtained, shall be assigned, transferred, or disposed of by Grantee before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.

(3) Grantee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of assignment, transfer, or disposal:

(a) Complete information setting forth the nature, terms and conditions of the proposed assignment, transfer, or disposal;

(b) Any other information reasonably required by the City; and

(c) A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal.

(3) No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.

(4) Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise may be conditioned on such transferee or assignee obtaining its own Franchise agreement with City.

(5) Notwithstanding anything to the contrary contained in this Franchise, any transaction which singularly or collectively

result in a change of fifty percent (50%) or more of the ownership or working control (regardless of the percentage) of the Grantee or affiliated entities having fifty percent (50%) or more of the ownership or actual working control (regardless of the percentage) of Grantee, or of control of the telecommunications capacity or bandwidth of Grantee, shall not be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are exempt from City approval; provided that, Grantee shall promptly notify the City within a reasonable period of time after any change in, or transfer of, or acquisition by any other party of control of Grantee. Every change, transfer, or acquisition of control of Grantee shall cause a review of the proposed transfer. City approval shall not be required for mortgaging purposes or if said transfer is from Grantee to another person controlled by Grantee.

(6) All terms and conditions of this Franchise shall be binding upon all permitted successors and assigns of Grantee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

**Sec. 16. Violations, noncompliance, and other grounds for termination or cancellation.**

(1) This Franchise, and any right, privilege or authority of Grantee to enter, occupy or use public ways may be terminated or cancelled by the City for the following reasons:

(a) Violation of or noncompliance with any term or condition of this Franchise by Grantee;

(b) Violation of or noncompliance with the material terms of any use and/or development authorization or required permit by Grantee;

(c) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Grantee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;

(d) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;

(e) Misrepresentation or lack of candor by or on behalf of Grantee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Grantee;

(f) Abandonment of facilities;

(g) Failure of Grantee to pay taxes, fees, charges or costs when and as due, unless subject to a proper and timely legal protest; or

(h) Insolvency or bankruptcy of Grantee.

(2) In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Grantee to enter, occupy or use public ways, Grantee shall be given written notice and a reasonable period of time, not less than thirty (30) days, to furnish evidence:

(a) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;

(b) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or

(c) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.

(3) In the event that Grantee fails to provide evidence reasonably satisfactory to the City as provided in subsection (2) of this section, the City shall refer the apparent violation, noncompliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

(4) If the City Council determines that the violation, noncompliance, or other grounds above for termination or cancellation exist, then, Grantee shall, at the election of the

City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the foregoing and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Grantee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Grantee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Grantee:

- (a) Whether the misconduct was egregious;
- (b) Whether substantial harm resulted;
- (c) Whether the violation was intentional;
- (d) Whether there is a history of prior violations of the same or other requirements;
- (e) Whether there is a history of overall compliance; and
- (f) Whether the violation was voluntarily disclosed, admitted or cured.

(5) The City Council's choice of remedy shall not excuse Grantee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit. Grantee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for termination or cancellation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, or the Grantee may have at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Grantee.

**Sec. 17. Notices.**

DRAFT Ordinance No.  
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(1) Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY:

City Manager  
City of Des Moines  
21630 11<sup>th</sup> Ave. S., Ave A  
Des Moines, WA 98198

GRANTEE:

Forged Fiber 37, LLC c/o AT&T  
Attn.: Legal Dept - Network Operations  
Re: Des Moines / Franchise Agreement (WA)  
208 S. Akard Street  
Dallas, TX 75202-4206

with a copy (except for invoices) to:

E-mail: FF\_Right\_Of\_Way@att.com

(2) Grantee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Grantee shall cooperate with the City and make its best efforts to immediately respond to minimize damage, protect the welfare, health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Grantee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

**Sec. 18. Non-waiver.** The failure of either party to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the party and shall not prevent the party from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

**Sec. 19. Eminent domain.** This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

**Sec. 20. Limitation of liability.** Except as otherwise set forth in this Franchise, administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, agents, and representatives for any injury or damage; or by reason of any schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the City; or for the accuracy of plans submitted to the City.

**Sec. 21. Damage to facilities.** Except as otherwise set forth herein, unless caused by or arising out of the active sole negligence, gross negligence, or intentional conduct of the City, the City shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.

**Sec. 22. Resolution of disputes and governing law.**

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

its own counsel, experts, witnesses, and preparation and presentation of evidence.

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

**Sec. 23. Severability.** If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise or its application to any other person or entity.

**Sec. 24. Miscellaneous.**

(1) **Equal employment and nondiscrimination.** Throughout the term of this Franchise, Grantee will fully comply with all applicable equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.

(2) **Local employment efforts.** Grantee will use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever the Grantee employs contractors to perform work under this Franchise.

(3) **Descriptive headings.** The headings and titles of the sections and subsections of this Franchise are for reference

purposes only and do not affect the meaning or interpretation of the text herein.

(4) **Force majeure.** Grantee shall not be required to perform any covenant or obligation in this Franchise, or be liable in damages to the City, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God or force majeure. An "act of God" or "force majeure" is defined for purposes of this Franchise as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Grantee.

(5) **No joint venture.** Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

(6) **Actions of the City or Grantee.** In performing their respective obligations under this Franchise, the City and Grantee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

(7) **Counterparts.** This Franchise may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Franchise shall be deemed to possess the full force and effect of the original.

(8) **Entire agreement.** This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.

DRAFT Ordinance No.  
Page 51 of 53

(9) **Modification.** The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

(10) **Rights granted.** This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and terms stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title.

(10) **Contractors and subcontractors.** Grantee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee.

**Sec. 26. Publication.** The City Clerk is authorized and directed to publish a summary hereof.

**Sec. 27. Effective date.** This Ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law, but if, and only if, the Grantee has endorsed this Ordinance and accepted the terms and conditions thereof.

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

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

DRAFT Ordinance No.  
Page 52 of 53

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City Clerk

Published:

DRAFT Ordinance No.  
Page 53 of 53

**ACCEPTANCE:**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening, to the extent that the City is legally entitled to do so, in any legal or regulatory proceeding affecting the Telecommunication System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_



July 16, 2025

Tim George  
City Attorney  
City of Des Moines  
21640 11<sup>th</sup> Avenue. S.  
Des Moines, WA 98198

VIA Email Delivery: [TGeorge@desmoineswa.gov](mailto:TGeorge@desmoineswa.gov)

**RE: Forged Fiber 37, LLC Franchise Application for City of Des Moines**

Dear Mr. George,

Our client, AT&T, has signed a purchase agreement to purchase a portion of the fiber business of Lumen Technologies, Inc. and its affiliates ("Lumen"), which includes fiber assets and associated facilities that are located within the rights-of-way of the City of Des Moines. The proposed transaction was announced on May 21, 2025, and is proceeding with the relevant federal regulatory approvals. In advance of transfer of any assets, AT&T seeks to obtain all necessary rights to own and construct facilities within the rights-of-way in the county under the legal entity, Forged Fiber 37, LLC, which will take possession of the fiber assets once transferred from Lumen.

This is a request for a new Franchise Agreement. Lumen will maintain any existing Franchises for those assets it is retaining (including copper and enterprise fiber). The applicant is requesting a city-wide Franchise to install, operate, maintain, repair, replace, and upgrade conduit, fiber optic cables, mule tape, buffer tubes, vaults, splice cases (aerial and buried), poles, and related facilities in the rights of way. To assist in your review, the following documents will be included with this application:

- Franchise Application
- Letter of Authorization
- Application fee of \$2,500

Thank you very much for your time and consideration. Our goal is to have the franchise agreement in place at the time the sale between Forged Fiber 37, LLC/AT&T and Lumen closes at the end of the year so that the authorization for ownership of the fiber assets is properly in place.

July 17, 2025

Page 2

If you have any additional questions, please contact me at (206) 446-0448 or [sunny.ausink@wirelesspolicy.com](mailto:sunny.ausink@wirelesspolicy.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Sunny Ausink".

Sunny Ausink  
Director, Land Use Entitlements  
(206)446-0448  
[sunny.ausink@wirelesspolicy.com](mailto:sunny.ausink@wirelesspolicy.com)

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: 2026 Vehicle Purchase

FOR AGENDA OF: October 9, 2025

ATTACHMENTS:

- 1. 2026 Vehicle Purchase

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: October 1,2025

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Finance *MM 28*
- Human Resources \_\_\_\_\_
- Legal */s/TG*
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works *WPS*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

The purpose of this agenda item is for City Council to purchase one (1) Ford F-150 for the Detective division of the Police Department and the accompanying light and electronics set up of said vehicle. The purchase orders for these purchases are included as Attachment 1. The following motion will appear on the consent calendar:

**Suggested Motion**

**Motion:** "I move to approve the purchase of vehicle identified in Attachment 1 for a total estimated amount of \$55,000 and to authorize the City Manager or the City Manager's designee to sign the purchase orders at the time they are created."

**Background**

The anticipated 2026 Budget includes the replacement of seven (7) Police Vehicles including three (3) Patrol Vehicles and four (4) Detective/Admin vehicles.

The City benefits from being a member of cooperative purchasing programs like Sourcewell and participating in state contracts provided by the Washington State Department of Enterprise Services. These programs allow the City to procure motor vehicles and equipment at discounted rates, offering significant savings compared to retail pricing. By leveraging bulk purchasing power and pre-negotiated contracts, the City can access competitive pricing, reduce administrative costs, and streamline procurement processes, ensuring efficient use of public funds.

**Discussion**

The anticipated 2026 Budget includes seven (7) new Police Department fleet vehicles. Police Administration has located a used 2024 Ford- F150 in like “new condition” at an estimated cost savings of \$8,000 off State contract pricing. The Police Department would also be able to get this vehicle into service approximately 8 months sooner than an order vehicle. 2026 Ford F-150’s are not available for order yet through the State contract. Staff would come back to Council in the new year for the approval to purchase the remaining six vehicle replacements for 2026.

**Alternatives**

Council could not approve the purchase of the vehicle and equipment identified in Attachment 1 and direct staff to revisit the fleet replacements in the anticipated 2026 Budget.

**Financial Impact**

The Vehicle Replacement Fund (Fund 501) has full revenue to support estimated expenditures.

**Recommendation**

Staff recommends the adoption of the motion.

## 2026 Vehicle/Equipment Purchase List

Description	Estimated Cost	Department	Replaces
2024 Ford F-150- Detective	\$55,000	Police	Fleet # 515
<b>Total Estimated Cost Including Tax</b>	<b>\$55,000</b>		

**CITY OF DES MOINES**

Finance Division  
 21630 11<sup>TH</sup> Avenue South  
 Des Moines WA 98198-6317  
 Phone 206.870.6511 Fax 206.870.6540



**PURCHASE ORDER**

THE FOLLOWING NUMBER MUST APPEAR ON ALL RELATED CORRESPONDENCE, SHIPPING PAPERS, AND INVOICES:

**P.O. NUMBER: PBPW 10/01/2025 #134**

**TO:**  
 Sunset Ford  
 6616 166<sup>th</sup> Ave E  
 Sumner, WA 98390  
**(253)863-2211**

**SOLD TO/SHIP TO:**  
 City of Des Moines  
 Des Moines Police Department  
 21900 11<sup>th</sup> Ave S  
 Des Moines, WA 98198-6317  
 Kevin Penney (206)870-7616

P.O. DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
10/01/2025	Adam O'Donnell		Des Moines	30 Days

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
1	2024 F-150	VIN #1FTEW2LP3RKE45908		\$40,299.00
1		Dealer Fees		\$ 902.50
See attached deal #: 88083				

Authority: At the direction of the Des Moines City Council, taken at an Open Public Meeting on 10/09/2025. If approved, this will be used to reserve the purchase of the vehicle for DMPD.

SUBTOTAL	\$41,201.50
SALES TAX	\$ 3,949.30
DOC FEE	\$ 200.00
OTHER	
<b>TOTAL</b>	<b>\$45,350.80</b>

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to: Address above

**INTERNAL INSTRUCTIONS:**  
 CHARGE TO DM CITY CODE: 50106002.564300

Ordered by:  
 Adam O'Donnell

Date  
 10.01.2025

Authorized by:  
 Michael P. Slevin III, PW Director

Date 10.01.2025

**CITY OF DES MOINES**

Finance Division  
 21630 11<sup>TH</sup> Avenue South  
 Des Moines WA 98198-6317  
 Phone 206.870.6511 Fax 206.870.6540



**PURCHASE ORDER**

THE FOLLOWING NUMBER MUST APPEAR ON ALL RELATED CORRESPONDENCE, SHIPPING PAPERS, AND INVOICES:

**P.O. NUMBER: PBPW 10/01/2025 #136**

**TO:**  
 Puget Sound Upfitters LLC  
 2710 104<sup>th</sup> St Ct S  
 Lakewood, WA 98499-6770  
**(206)841-4925**  
**tim@pugetsoundupfitters.com**

**SOLD TO/SHIP TO:**  
 City of Des Moines  
 Des Moines Police Department  
 21900 11<sup>th</sup> Ave S  
 Des Moines, WA 98198-6317  
 Contact: Eddie Ochart [EOchart@desmoineswa.gov](mailto:EOchart@desmoineswa.gov)  
 (206)870-7636

P.O. DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
10/01/2025	Adam O'Donnell		Des Moines	30 Days

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
1		Police Vehicle Package		\$ 7,744.00
		See attached estimate #1060		

Authority: At the direction of the Des Moines City Council, taken at an Open Public Meeting on 10/09/2025. If approved, this will be used to reserve the purchase of the vehicle for DMPD.

SUBTOTAL	\$ 7,744.00
SALES TAX	\$ 782.14
OTHER	
<b>TOTAL</b>	<b>\$ 8,526.14</b>

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to: Address above

**INTERNAL INSTRUCTIONS:**  
 CHARGE TO DM CITY CODE: 50106002.564300

Ordered by:  
 Adam O'Donnell

Date  
 10.01.2025

Authorized by:  
 Michael P. Slevin III, PW Director

Date 10.01.2025

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Public Hearing: 2026 Property Tax Levy

FOR AGENDA OF: October 23, 2025

DEPT. OF ORIGIN: Finance

ATTACHMENTS:

DATE SUBMITTED: October 13, 2025

- 1. Draft Ordinance 25-101
- 2. Draft Ordinance 25-102
- 3. 2026 Preliminary Property Tax Worksheet

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Emergency Management \_\_\_\_\_
- Finance *11/21*
- Human Resources \_\_\_\_\_
- Legal */s/TG*
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

RCW 84.52.020 requires taxing districts to certify the amount to be raised through property taxation to the county legislative authority. The certification should include the regular levy amount, and if applicable, any lid-lifts approved by the voters, plus amounts for new construction, improvements to property and so forth. Draft Ordinance No. 25-101 satisfies the requirement of RCW 84.52.020.

RCW 84.55.120 requires all taxing districts to adopt a resolution or ordinance in order to realize any increase in their regular property tax levy other than increases due to new construction, improvements to property, increased value of state-assessed property annexations, and refunds. Draft Ordinance No. 25-102 satisfies the requirements of RCW 84.55.120.

**Suggested Motion**

**Motion 1:** “I move to enact Draft Ordinance No. 25-101, determining the amount of funds to be raised by ad valorem taxes for the year 2026 for general City expenditures.”

AND

**Motion 2:** “I move to enact Draft Ordinance No. 25-102 authorizing the increase in ad valorem taxes for the year 2026 for general City expenditures.”

**Background**

General Property Tax Levies must be adopted by the City Council on or before November 30, 2025. (RCW 84.52.020 and RCW 84.52.070).

**General Property Taxes**

The property tax levy rate is estimated to be \$.86180 per \$1,000 of assessed value; up from \$.85149 in 2025. The levy rate is less than the City's statutory maximum rate limit of \$2.35 per \$1,000 of assessed value. The total citywide preliminary assessed valuation used for the 2026 Tax Roll is \$6,869,655,912 as compared to \$6,578,494,834 for 2025's Tax Roll, which is an increase of 4.43%. The County's 2026-limit factor of a 1% increase is \$57,878 and is included in the 2025/2026 Mid-Biennial Budget Adjustments. Also included in the 2025/2026 Mid-Biennial Budget Adjustments is the levy on new construction of \$31,714, and a re-levy of \$42,859 for prior year refunds. The actual increase for 2026 will vary depending on any increase in utility value.

The total levy amount is \$5,920,297. The final levy amount approved by King County may be slightly less than this amount as adjustments are made when the County finalizes values towards the end of the year.

**Recommendation**

It is recommended that the City Council pass the motions as stated above.

**CITY ATTORNEY'S FIRST DRAFT 10/13/2025**

**DRAFT ORDINANCE NO. 25-101**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** determining and fixing the amount of taxes levied, and certifying the estimated amounts of funds to be raised by taxes on the assessed valuation of property within the City for the year 2026, the second year of the City of Des Moines' 2025-2026 fiscal biennium, for general City budget expenditures.

**WHEREAS**, by law, the King County Assessor is responsible for determining the assessed valuation of all taxable property situated within the boundaries of the City of Des Moines for the year 2026, and

**WHEREAS**, the City Council and the City Manager have considered the anticipated budget requirements of the City of Des Moines for the 2025-2026 fiscal biennium, and

**WHEREAS**, notice of public hearing was provided as required by law, and

**WHEREAS**, RCW 84.52.010 allows the City to use any unused capacity from the authorized levy amounts of the King County Library district and South King Fire and Rescue, and

**WHEREAS**, the City Council, after hearing and after duly considering all relevant evidence and testimony presented, determined that the City of Des Moines requires a total levy in an amount not greater than \$5,920,297, in order to discharge the expected expenses and obligations of the City and in its best interest, and

**WHEREAS**, pursuant to chapter 84.52 RCW, the City Council is required to determine and fix by ordinance the amount of taxes levied, and to certify the estimated amounts of funds to be raised by taxes on the assessed valuation of property within the City; now therefore,

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

**Sec. 1. Findings.** The recitals set forth above are adopted in full as findings of the City Council in support of enactment of this Ordinance.

**Sec. 2.** The following amount is determined and fixed as the amount of funds to be raised by taxes on the assessed valuation of property within the City for the year 2026 for general City budget expenditures:

The sum of not greater than \$5,920,297, which represents the relevy of the prior year tax levy and \$132,451 increase for 2026, including \$31,714 for new construction, and \$42,859 as relevy for prior year refunds and \$0 amounts authorized by the voters for excess or special levies, for the fiscal year 2026 in the City of Des Moines.

**Sec. 3.** The actual amounts levied pursuant to section 1 of this Ordinance shall be calculated after the value of state-assessed property (increase in utility value) is provided by King County.

**Sec. 4.** Upon adoption, the City Clerk shall certify and forward a copy of this Ordinance to the Metropolitan King County Council and County Assessor for King County, Washington.

**Sec. 5. Severability - Construction.**

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

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

**Sec. 6. Effective date.** This Ordinance shall take effect in full force five (5) days after its passage, approval and publication according to law.

Ordinance No. \_\_\_\_\_  
Page 3 of 3

**PASSED BY** a majority of the City Council of the City of Des Moines this \_\_\_ day of \_\_\_\_\_, 2025 and signed in authentication thereof this \_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published: \_\_\_\_\_

**CITY ATTORNEY'S FIRST DRAFT 10/13/2025**

**DRAFT ORDINANCE NO. 25-102**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** authorizing an increase in the regular property tax levy for the year 2026 for general City expenditures.

**WHEREAS**, the City Council and the City Manager of the City of Des Moines has met and considered its budget for the calendar year 2026, and

**WHEREAS**, the City Council, of the City of Des Moines after hearing and after duly considering all relevant evidence and testimony presented, determined that the City of Des Moines requires a regular levy in the amount of \$5,920,297 which includes a \$132,451 increase in property tax revenue from the previous year, and amounts resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property, and amounts authorized by law as a result of any annexations that have occurred and refunds made, in order to discharge the expected expense and obligations of the City and in its best interest, and

**WHEREAS**, pursuant to RCW 84.55.120 the City Council is required to adopt a separate ordinance specifically authorizing an increase in the regular property tax levy in terms of both dollars and percentage increase from the previous year's levy; now therefore,

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

**Sec. 1.** Consistent with RCW 84.55.120, the City Council of the City of Des Moines finds that an increase in the regular property tax levy is hereby authorized for the 2026 levy in the amount of \$132,451 which is a percentage increase of 1.02288% from the previous year. This increase is exclusive of additional revenue resulting from the addition of new construction and improvements to property and any increase in the value of state assessed property, and any additional amounts resulting from any annexations that have occurred and refunds made.

**Sec. 2.** The actual amounts levied pursuant to the 1.02288% increase set forth in section 1 of the Ordinance shall be calculated after the value of state-assessed property (increase in utility value) is provided by King County.

Ordinance No. \_\_\_\_\_  
Page 2 of 2

**Sec. 3.** Upon adoption, the City Clerk shall certify and forward a copy of this Ordinance to the Metropolitan King County Council and County Assessor for King County, Washington.

**Sec. 4. Severability - Construction.**

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

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

**Sec. 5. Effective date.** This Ordinance shall take effect in full force five (5) days after its passage, approval and publication according to law.

**PASSED BY** a majority of the City Council of the City of Des Moines this \_\_\_ day of \_\_\_\_\_, 2025 and signed in authentication thereof this \_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published: \_\_\_\_\_

Preliminary Worksheet 10.02.2025

Attachment #3

TAXING DISTRICT **City of Des Moines** 2025 Levy for 2026 Taxes IPD: 1.02440

A. Highest regular tax which could have been lawfully levied beginning with the 1985 levy (refund levy not included).				
Year	2025	5,704,772	x	1.01000 = 5,761,820
		Highest Lawful Levy Since 1985		Limit Factor/Max Increase 101%
B. Current year's assessed value of new construction, improvements, and wind turbines, solar, biomass, and geothermal facilities in original districts before annexation occurred times last year's levy rate (if an error occurred or an error correction was made in the previous year, use the rate that would have been levied had no error occurred).				
	37,228,989	*	0.85187	÷ 1,000 = 31,714
	A.V.		Last Year's Levy Rate	
C. Tax Increment finance area increment AV increase (RCW 84.55.010(1)€) (value included in B & D cannot be included in C)				
	0	*	0.85187	÷ 1,000 = 0
	A.V.		Last Year's Levy Rate	
D. Current year's state assessed property value less last year's state assessed property value. The remainder is to be multiplied by last year's regular levy rate (or the rate that should have been levied).				
	0	-	48,130,934	= 0
	Current Year's A.V.		Previous Year's A.V.	
	0	*	0.85187	÷ 1,000 = 0
	Remainder from Line D		Last Year's Levy Rate	
E. 1 <sup>st</sup> Year Lid Lift & Limit Factor>1%				
F. Regular property tax limit:				A+B+C+D+E = 5,793,534
Parts G through I are used in calculating the additional levy limit due to annexation.				
G. To find the rate to be used in H, take the levy limit as shown in Line F above and divide it by the current assessed value of the district, excluding the annexed area.				
	5,793,534	÷	6,869,655,912	* 1,000 = 0.84335
	Total in Line F		Assessed Value Less Annexed AV	
H. Annexed area's current assessed value including new construction and improvements, times the rate in Line G.				
	0	*	0.84335	÷ 1,000 = 0
	Annexed Area's A.V.		Annexation Rate	
I. Regular property tax limit including annexation				F+H = 5,793,534
J. <b>Statutory maximum calculation</b>				
Only enter fire/RFA rate, library rate, & firefighter pension fund rate for cities annexed to a fire/RFA or library or has a firefighter pension fund.				
	3.60000	-	1.00000	-
	District base levy rate		Fire #39 Rate	
			0.23905	+
			Library Rate	
			0.00000	=
			Firefighter Pension Fund	Statutory Rate Limit
	6,869,655,912	*	2.36095	÷ 1,000 = 16,218,914
	Regular Levy AV		Reg Statutory Rate Limit	Statutory Amount
K. Highest Lawful Levy For This Tax Year (Lesser of I and J)				= 5,793,534
L. New highest lawful levy since 1985 (Lesser of I minus C and J, unless A (before limit factor increase) is greater, then A)				5,793,534
M. Lesser of J and K				5,793,534
N. Refunds				42,859
O. Total: M+N (unless stat max)				5,836,393
P. Levy Corrections Year of Error: _____ Did the district cause the error?				
1. Minus amount over levied (if applicable)				0
2. Plus amount under levied (if applicable)				0
Q. Total Allowable Levy				5,836,393
R. Tax Base For Regular Levy				
1. Total district taxable value (including state-assessed property, and excluding boats, timber assessed value, and the senior citizen exemption for the regular levy)				6,869,655,912
S. Tax Base for Excess, Voted Bond Levies and Sr Exempt Lid Lifts				
2. Excess AV				6,746,544,128
3. Plus Timber Assessed Value (TAV)				0
4. Tax base for excess and voted bond levies (2+3)				6,746,544,128
T. Increase Information				
1. Levy rate based on allowable levy				0.84959
2. Last year's ACTUAL regular levy				5,787,846
3. Dollar Increase over last year other than New Construction (-) Annexation				-26,026
4. Percent Increase over last year other than New Construction (-) Annexation				-0.44967%

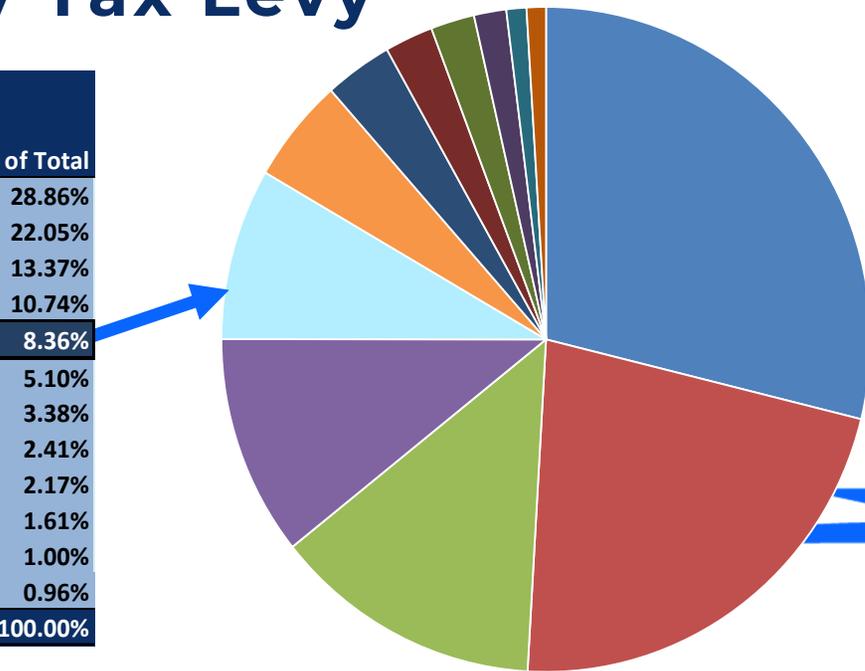


# 2026 Property Tax Levy

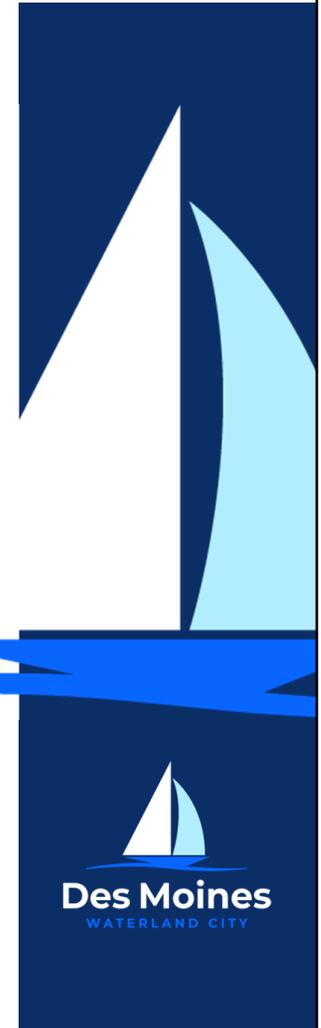
# 2025 Property Tax Levy

Assessed Property Value = \$901,000

Taxing Authority	2025 Levy	% of Total
School District	\$ 2,648.51	28.86%
WA State Schools	\$ 2,024.12	22.05%
King County	\$ 1,227.00	13.37%
Fire District	\$ 985.88	10.74%
<b>City of Des Moines</b>	<b>\$ 767.19</b>	<b>8.36%</b>
Fees and Charges	\$ 467.91	5.10%
Des Moines Pool Metro Park	\$ 310.08	3.38%
Library	\$ 220.93	2.41%
EMS (voted)	\$ 199.53	2.17%
Sound Transit	\$ 147.60	1.61%
Port	\$ 91.87	1.00%
County Flood Zone	\$ 87.91	0.96%
<b>Total</b>	<b>\$ 9,178.53</b>	<b>100.00%</b>



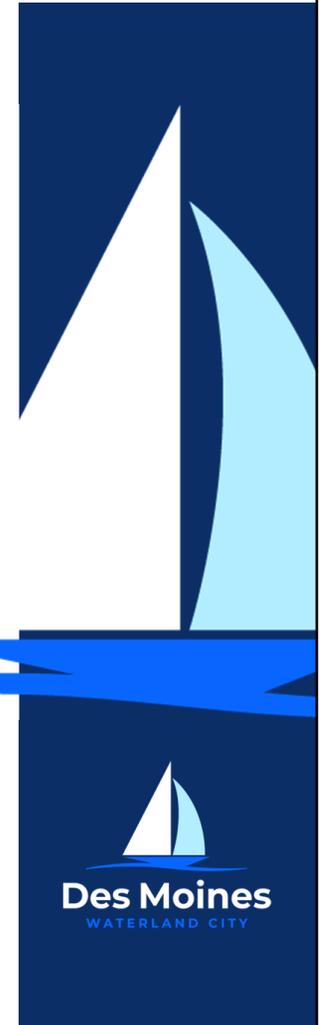
- School District
- WA State Schools
- King County
- Fire District
- City of Des Moines
- Fees and Charges
- Des Moines Pool Metro Park
- Library
- EMS (voted)
- Sound Transit
- Port
- County Flood Zone



## New for 2026

- Proposed Property Tax Levy amount of **\$5,920,297**.
- The proposed levy includes a 1% allowable increase of **\$57,875**.
- Overall Assessed Valuation within the City of Des Moines increased by about **\$291 million** to **\$6,869,655,912\***; an increase of 5.9%.
- The City had an additional \$37 million in new construction, adding **\$31,714** to the overall property tax base.
- The proposed tax rate for 2026 is an estimated **\$.86180**, an increase of 1.2% from the current levy for 2025 (\$.85149).

\*Estimate of the King County Assessor, as of 10/2/2025

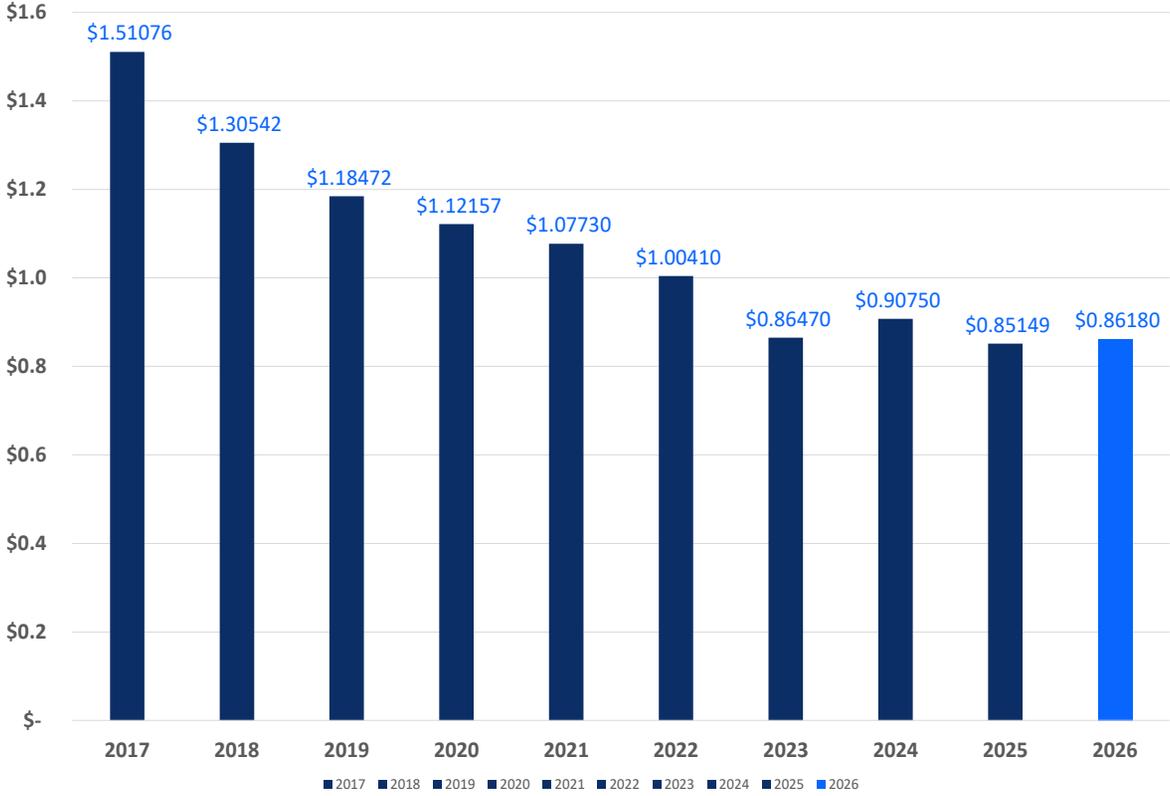


## New for 2026 (cont.)

- Total increase of **\$132,451**
  - an average of **\$12.80** per parcel.



# History of Des Moines Property Tax Levy

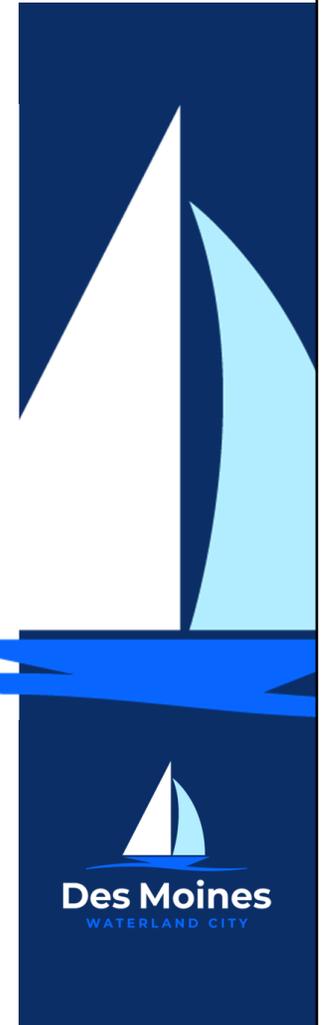


## Suggested Motions

- **Motion 1:** “I move to forward Draft Ordinance No. 25-101, determining the amount of funds to be raised by ad valorem taxes for the year 2026 for general City expenditures, to a second reading.”

AND

- **Motion 2:** “I move to forward Draft Ordinance No. 25-102, authorizing the increase in ad valorem taxes for the year 2026 for general City expenditures, to a second reading.”





# AGENDA ITEM

## BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Marina Steps Project – Public Works  
Construction Contract Award and  
Consultant Services Agreements for  
Construction Administration,  
Inspection and Engineer of Record  
Services

FOR AGENDA OF: October 23, 2025

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: October 10, 2025

ATTACHMENTS:

1. CIP Budget Worksheet
2. Public Works Contract
3. Psomas Inc. Consultant Services Contract  
for Construction Administration and  
Inspection Services
4. 2024-2025 On-Call General Civil  
Engineering Services, KPFF, Inc. Task  
Assignment 2025-01
5. 24-96647-073 Des Moines Marina Steps  
2023-25 State Capital Budget  
Appropriation
6. 26-96647-080 Des Moines Marina Steps  
2025-27 State Capital Budget  
Appropriation
7. Stormwater Ecology Grant

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

The purpose of this agenda item is for City Council to direct Administration to bring forward an amendment to the 2025-2030 Capital Budget (Attachment 1), seek approval of the Public Works Contract with Bayshore Construction (Attachment 2), seek approval of the Consultant Services Contract with Psomas, Inc. for Construction Administration and Inspection Services (Attachment 3), seek approval of the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2025-01 with KPFF, Inc. (Attachment 4) to provide Engineer of Record Services, seek approval to accept the 2023-25 Washington State Legislative appropriation in the amount of \$970,000 (Attachment 5), seek approval to accept the 2025-27 Washington State Legislature appropriation in the amount of \$999,100 (Attachment 6), and seek approval to accept the Stormwater Ecology Grant in the amount of \$560,407.00 (Attachment 7).

### Suggested Motions

**Motion 1:** “I move to direct Administration to bring forward a budget amendment to the 2025-2030 Capital Improvement Plan and the 2025 Capital Budget to include the amended Marina Steps Project as described herein, and include such amendment in the next available budget amendment ordinance.”

**Motion 2:** “I move to approve the Public Works Contract with Bayshore Construction (Contractor) for the Marina Steps Project in the amount of \$8,537,713.64, and authorize a project construction contingency in the amount of \$1,375,000.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.”

**Motion 3:** “I move to approve the Consultant Services Contract with Psomas, Inc. to provide Construction Administration and Inspection Services for the Marina Steps Project in the amount of \$924,000.00, and further authorize the City Manager to sign said Consultant Services Contract substantially in the form as submitted.”

**Motion 4:** “I move to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2025-01 with KPFF, Inc. to provide Engineer of Record services for the Marina Steps Project in the amount not to exceed \$426,787 and authorize the City Manager to sign said Task Assignment substantially in the form as submitted.”

**Motion 5:** “I move to authorize the acceptance of the 2023-25 Washington State Department of Commerce Direct Appropriation in the amount of \$970,000.00, and further authorize the City Manager, or her designee, to sign the State funding agreement(s) when they are available.”

**Motion 6:** “I move to authorize the acceptance of the 2025-27 Washington State Department of Commerce Direct Appropriation in the amount of \$999,100.00, and further authorize the City Manager, or her designee, to sign the State funding agreement(s) when they are available.”

**Motion 7:** “I move to authorize the acceptance of the Stormwater Ecology Grant in the amount of \$560,407.00, and further authorize the City Manager, or her designee, to sign the State funding agreement(s) when they are available.”

### Background

The Des Moines Marina Steps Project aims to create a pedestrian connection between the Downtown and Marina floor, as part of the holistic Marina Redevelopment Projects. The focus is to enhance the pedestrian experience for residents and visitors. The current project team has worked on the project since 2023 and has incorporated public feedback collected from the fall 2023 survey, February 2024 public open house, and other public forums.

On October 9, 2024, staff advertised the Des Moines Marina Steps Project for solicitation of bids. Only two bids were received for the project and they were significantly above the expected bid estimate. City staff and KPFF performed a bid review and concluded that the bids were higher due specialty pricing and lump sum risk. Ultimately, at the December 12, 2024, City Council meeting, the City Council rejected the submitted bids.

At the February 6, 2025, City Council meeting, the Council approved a task assignment with KPFF for value engineering and scope reduction of the project. As a result of this value engineering effort, the

project utilized a mixed unit price and lump sum bid approach to reduce risk for potential contractors and aspects of the project were also evaluated for cost reduction while preserving the project’s unique design features. Larger elements that were scaled back through this process included the cantilevered overlooks and the removal of decorative logs. The updated bid also included alternates to provide additional cost flexibility: Alternate A – no spray park option, Alternate B – no play area, and Alternate C – no weir wall.

Staff re-advertised the project on September 9, 2025, and September 16, 2025, and opened bids on October 9, 2025.

Pending approval of the public works contract, the project is scheduled to begin in January 2026 and is expected to be completed by January 2027.

**Discussion**

**Budget Amendment (Motion #1)**

The proposed CIP Project Worksheet (Attachment 1) for the Marina Steps Project shows the reallocation of funds replacing the \$1.1 million in ARPA funding moved to the general fund, along with an updated list of funding sources including new secured grants. To bridge the funding gap, staff utilized internal funds from one-time tax reserves and real estate excise tax.

**Construction Contract (Motion #2)**

The Marina Steps Project was advertised for bids in accordance with state law, and requirements for competitive bidding of public works contracts. There were 8 bids received for the project. The bid was publicly opened and read out loud on October 9, 2025 by the City Clerk and summarized below.

**BID RESULTS**

Engineer’s Estimate (including tax) \$10,000,000.00

<u>Contractor Name</u>	<u>Bid Proposal</u>
<b>Bayshore Construction (Responsive Low Bid)</b>	<b>\$ 8,537,713.64</b>
Active Construction Inc.	\$ 9,233,233.00
C.A. Carey	\$ 9,482,641.11
Midmountain Contractors	\$ 9,854,240.65
OMA Construction	\$ 10,002,402.50
Scarsella Bros. Inc.	\$ 10,070,070.70
Skanska	\$ 11,903,399.51
Ryatt Construction	\$ 12,663,125.69

The bid proposal and contractor qualifications have been reviewed and staff finds that the low bid is responsive and recommends award of the contract to Bayshore Construction.

**Consultant Services Contract for Construction Administration and Inspection Services (Motion #3)**

Engineering consultants are needed in order to supplement and expand the capability of City staff for Construction Administration and Inspection of the Project. In October of 2024, City staff prepared and advertised a Request for Proposal (RFP) for construction administration and inspection of the project. The City received 5 proposals from consulting firms that were reviewed and scored by a committee of City

staff. Staff determined through this review process that Psomas Inc. was best qualified to provide Construction Administration and Inspection Services and requested their services.

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

On-Call General Civil Engineering Task Assignment with KPFF (Motion #4)

Engineering consultants are needed in order to supplement and expand the capability of City staff for Engineer of Record Services for the Project. These services are proposed to be provided by KPFF, Inc. (Attachment 4). KPFF will be able to maintain valuable overall project history and consistency with the design phase of work. The scope of work for KPFF includes the following services: design clarifications, schedule review, material submittal review, change order review, and response to information requests.

Des Moines Marina Steps 2023-25 State Capital Budget Appropriation (Motion #5)

The 2023-25 State Capital Budget includes the appropriation of \$1 million to the Marina Steps Project. The Department of Commerce will retain three percent to cover their administrative cost which leaves a net grant of \$970,000.

Des Moines Marina Steps 2025-27 State Capital Budget Appropriation (Motion #6)

The 2025-27 State Capital Budget includes the appropriation of \$1.03 million to the Marina Steps Project. The Department of Commerce will retain three percent to cover their administrative cost which leaves a net grant of \$999,100.

Stormwater Ecology Grant (Motion #7)

The Stormwater Ecology Grant will provide funding for the project's water quality facility. The total grant award of \$560,407 includes allocations for construction activities as well as future testing requirements.

**Alternatives**

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

The City Council could elect not to act on the motion, thereby deferring the project and rejecting all Bid Proposals. This is not recommended given the strategic partnerships with funding partners, the associated \$2,529,507.00 in grant funding, busy current bidding climate, and expected future cost inflation.

(Motion #1) – Consider Bid Alternatives

Deductive bids were received for vertical playground elements and splash pad in the amounts of \$ 976,425 & \$396,000 plus tax respectively. The playground elements and splash pad are included in the bid of \$8,537,713.64 which is within the City's budget for this project. Given the overall competitiveness of the bids, staff recommends building the full project to include the playground elements and splash pad.

(Motion #2) - Reject Bid

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

(Motion #3) - Not Approve Consultant Services Contract with Psomas

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

(Motion #4) – Not Approve On-Call Task Assignment with KPFF

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

(Motion #5) – Not Accept the Washington State Appropriation

City Council can elect not to accept the Washington State Appropriation in the amount of \$970,000. This would require additional future resources to complete the CIP project as well and it could place future legislative direct appropriation requests at risk.

(Motion #6) – Not Accept the Washington State Appropriation

City Council can elect not to accept the Washington State Appropriation in the amount of \$999,100. This would require additional future resources to complete the CIP project as well and it could place future legislative direct appropriation requests at risk.

(Motion #7) – Not Accept the Stormwater Ecology Grant

City Council can elect not to accept the Stormwater Ecology Grant in the amount of \$560,407. This would require additional future resources to complete the CIP project as well and it could place future Ecology grant awards at risk.

**Financial Impact**

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

**Recommendation**

Staff recommends adoption of the motions as written above.

**Council Committee Review**

The Transportation Committee and Municipal Facilities Committee has been routinely updated on the status of this project as well as the Council as a whole.

**CITY OF DES MOINES  
2026-2031 CAPITAL IMPROVEMENT PLAN  
(Amount in Thousands)**

Marina Steps & Promenade	Project #	MCCIP0030
-	Previous Project #	-

CIP Category: Waterfront Facility Projects

Managing Department: Plan, Build & PW Admin

Justification/Benefits: -

Summary Project Description:
This project is the first phase of the larger Marina District Master Plan that includes improvements to S. 223rd St. and other improvements described in SkyLab's Final Presentation to City Council on 1/26/2023. The project will include public access to the Marina Floor from Overlook Park and provide a pedestrian transitional public plaza to the waterfront.

PROJECT SCOPE			
Expenditures	Current Budget	Requested Change	Total Budget
Design	859	568	1,427
Land & Right of Way	2	1	3
Construction	9,302	781	10,083
Contingency	68	1,307	1,375
<b>Total Expenditures</b>	<b>10,231</b>	<b>2,657</b>	<b>12,888</b>

ANNUAL ALLOCATION									
Project to Date	Actuals Year	Scheduled Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year
12/31/24	2025	2025	2026	2027	2028	2029	2030	2031	2031
1,267	129	160	-	-	-	-	-	-	-
3	-	-	-	-	-	-	-	-	-
-	-	-	10,083	-	-	-	-	-	-
-	-	-	1,375	-	-	-	-	-	-
<b>1,270</b>	<b>129</b>	<b>160</b>	<b>11,458</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

Funding Sources	Current Budget	Requested Change	Total Budget
DEBT PROCEEDS	7,869	241	8,110
REET 1	-	1,750	1,750
ONE TIME TAX	-	500	500
ARPA FUNDING	1,370	(1,103)	267
LEGAL SETTLEMENT	12	1	13
WA STATE DOE (SECURED)	-	278	278
WA STATE DOC #1 (SECURED)	-	970	970
WA STATE DOC #2 (SECURED)	-	1,000	1,000
<b>Total Funding</b>	<b>10,231</b>	<b>2,657</b>	<b>12,888</b>
Funding Shortfall/Excess	-	-	-

Project to Date	Actuals Year	Scheduled Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year	Plan Year
12/31/24	2025	2025	2026	2027	2028	2029	2030	2031
7,869	-	241	-	-	-	-	-	-
-	-	-	1,750	-	-	-	-	-
-	-	-	500	-	-	-	-	-
267	-	-	-	-	-	-	-	-
13	-	-	-	-	-	-	-	-
-	-	-	278	-	-	-	-	-
-	-	-	970	-	-	-	-	-
-	-	-	1,000	-	-	-	-	-
<b>8,149</b>	<b>-</b>	<b>241</b>	<b>4,498</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>



**PUBLIC WORKS CONTRACT**  
**between City of Des Moines and**  
**Bayshore Construction Inc.**

THIS CONTRACT is made and entered into this [Day] day of [Month], [Year], by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Bayshore Construction Inc. organized under the laws of the State of Washington, located and doing business at 16281 Smokey Point Blvd., #606, Arlington, WA 98223, 360-770-0850, and Spencer Cave] (hereinafter the "Contractor").

**CONTRACT**

The parties agree as follows:

**I. DESCRIPTION OF WORK.**

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

This Contract provides for the improvement of the City of Des Moines (City) Marina Steps (Marina Steps) project. The Work includes the redevelopment of the existing Overlook I Park, hillside, areas of the City's marina floor surface parking lot, improved pedestrian access, and accessible pathways. Site improvements include permanent signage and trench restoration for electrical, pedestrian pathways, playground area, spray park, one bioretention planter, storm pipe, underdrains, cleanouts, area drains, trench drains, storm catch basins, water main and associated appurtenances, sanitary sewer and associated fittings, sanitary manholes, ADA parking, MSE wall, retaining wall, overlook weir and wall, stairs, fencing, seat walls, pedestrian barrier and pedestrian railing, asphalt pavement, concrete pavement, irrigation system, illumination system, landscaping, pavement markings, benches, bike racks and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications.

Attach as Exhibit A, a detailed Scope and Schedule of Work. All attached exhibits should be clearly referenced and identified by title and date.

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

Public Works



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

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

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

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

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

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

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

**II. TIME OF COMPLETION.** The parties agree that work on the tasks described in Section I above and more specifically detailed in Exhibit A attached hereto will begin immediately upon execution of this Contract. Upon the effective date of this Contract, the Contractor shall complete the work described in Section I within 200 Working Days. If said work is not completed within the time specified, the Contractor agrees to pay the City the sum specified in Section VI - Liquidated Damages of this contract.

**III. COMPENSATION.** The City shall pay the Contractor a total amount not to exceed \$8,537,713.64, including any applicable Washington State Sales Tax, for the work and services contemplated in this Contract. If the work and services to be performed as specified in Exhibit A "Scope and Schedule of Work" is for street, place, road, highway, etc. as defined in WAC 458-20-171, then the applicable Washington State Retail Sales Tax on

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

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

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

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

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

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

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

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

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

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

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

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

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **\$3415.09 three thousand four hundred fifteen and nine cents** shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**A. Minimum Scope of Insurance**

Contractor shall obtain insurance of the types described below:

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

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

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

**B. Minimum Amounts of Insurance**

Contractor shall maintain the following insurance limits:

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

**C. Other Insurance Provisions**

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

**D. Acceptability of Insurers**

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

**E. Verification of Coverage**

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

**F. Subcontractors**

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

**E. Notice of Cancellation**

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

**F. Failure to Maintain Insurance**

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

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

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

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

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

**XXII. MISCELLANEOUS PROVISIONS.**

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

B. Resolution of Disputes and Governing Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

<b>CONTRACTOR:</b>  By: _____	<b>CITY OF DES MOINES:</b>  By: _____
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<p style="text-align: center;"><i>(signature)</i></p> <p>Print Name: _____          Its _____          DATE: _____</p> <p style="text-align: center;"><i>(Title)</i></p>	<p style="text-align: center;"><i>(signature)</i></p> <p>Print Name: <u>Katherine Caffrey</u>          Its <u>City Manager</u>          DATE: _____</p> <p style="text-align: center;"><i>(Title)</i></p> <p>Approved as to form:</p> <p>_____          City Attorney                      Director          DATE: _____                      DATE: _____</p>
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<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONTRACTOR:</b></p> <p>Spencer Cave          Bayshore Constructino Inc.          16281 Smokey Point Blvd., #808          Arlington, WA 98223</p> <p>360-770-0850 (telephone)          spencer@bayshoreco.com (facsimile/email)</p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF DES MOINES:</b></p> <p>Allyssa Beaver          City of Des Moines          21630 11<sup>th</sup> Avenue S., Suite A          Des Moines, WA 98198          (206) 870-6725 (telephone)          abeaver@desmoineswa.gov (facsimile/email)</p>
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Public Works Department  
CITY OF DES MOINES  
ENGINEERING BLDG.  
21650 11<sup>th</sup> AVE. SOUTH  
DES MOINES WA 98198

ENCLOSED FOR:  
MOINES MARINA STEPS PROJECT

RECEIVED

OCT 9 2025

BY: G. Nagel

10:54 a.m.

## Proposal

### Des Moines Marina Steps Project

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

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

The undersigned bidder hereby agrees to start construction the day after the date stated in the Notice to Proceed, and to complete the contract within 200 working days thereafter if Base Bid and Undergrounding Improvements is awarded. This period shall be known as the "Contract Time" for the purposes of the project.

The Bid Proposal includes the following:

1. Base Bid

The Base Bid shall include constructing all items included in the plans and specifications except those construction drawings sheets ending in A, B, or C. The bid items for the Base Bid are listed in Schedule 1 and Schedule 2.

2. Alternates

- a. Alternate A shall include all costs, positive and negative, that result from removing the Spray Park and other associated changes as shown on the construction drawings that end in "A". The bid items for Alternate A are listed in Schedule 1-A and Schedule 2-A.
- b. Alternate B shall include all costs, positive and negative, that result from removing the Play Area and other associated changes as shown on the construction drawings that end in "B". The bid items for Alternate B are listed in Schedule 1-B and Schedule 2-B.
- c. Alternate C shall include all costs, positive and negative, that result from removing the Weir Wall and other associated changes as shown on the construction drawings that end in "C". The bid items for Alternate C are listed in Schedule 1-C and Schedule 2-C.

Part of the project is subject to retail sales tax on the bottom line (commonly known as Rule 170), and part of the project is subject to use tax (commonly known as Rule 171). Schedules 1, 1-A, 1-B, and 1-C represent the bid items that fall under Rule 170, and Schedules 2, 2-A, 2-B, and 2-C represent the bid items that fall under Rule 171. For Rule 170 items, the Contractor shall collect from the Contracting Agency retail sales tax on the full contract price. The Contracting Agency will automatically add this sales tax to each payment to the Contractor.

All schedules on the Bid Proposal must be completed, or the bid shall be considered non-responsive.

The successful Bidder will be the Bidder submitting the lowest responsible Bid for the

**Addendum 2**  
**10/06/2025**

highest order Preference that is within the amount of available funds for the project. The following are listed in order from highest to lowest Preference:

- Preference 1: Lowest total for Base Bid.
- Preference 2: Lowest total for Base Bid plus one Alternate.
- Preference 3: Lowest total for Base Bid plus two Alternates.
- Preference 4: Lowest total for Base Bid plus three Alternates.

The Owner may elect to award, at their discretion, a Contract for the Base Bid with no Alternates or with any combination of Alternates.

The Owner will correct obvious mathematical errors in bid proposals.

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

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

**Bid Item Descriptions**

**Item No. 1 Minor Changes**

**Measurement**

No unit of measure shall apply to the lump sum price for "Minor Changes".

**Payment**

"Minor Changes" shall include all costs associated with those minor changes. to the The cost of the minor changes shall be applied to the force account as determined by the owner in accordance with specification section 01-04.4(1).

**Item No. 2 Record Drawings**

**Measurement**

No unit of measure shall apply to the lump sum price for "Record Drawings".

**Payment**

"Record Drawings" shall include all costs associated with production of Record Drawings as defined in specification section 1-05.18.

**Item No. 9 Erosion and Sedimentation Control**

**Measurement**

No unit of measure shall apply to the lump sum price for "Erosion and Sedimentation Control".

**Payment**

"Erosion and Sedimentation Control" shall include all costs associated with conformance to the National Pollutant Discharge Elimination System permit requirements, specification section 31 25 00, and sheets C2.00-C2.11

**Item No. 11 Site and Subsurface Demolition**

**Measurement**

No unit of measure shall apply to the lump sum price for "Site and Subsurface Demolition".

**Payment**

"Site and Subsurface Demolition" shall include all costs in connection with demolition of surface and subsurface features, including but not limited to noted salvage requirements and removal of pavement, base course, curbs, concrete structures, and utilities, as described in specification section 02 41 00 and sheets C3.00 and C3.01.

**Item No. 11-C Site and Subsurface Demolition (Alternate C)**

**Measurement**

No unit of measure shall apply to the lump sum price for "Site and Subsurface Demolition (Alternate C)".

**Payment**

"Site and Subsurface Demolition (Alternate C)" shall include all costs in connection with demolition of subsurface features for the ~~delta-difference~~ (ADD 02) between the Base Bid and the Alternate C design. The total amount of this item is expected to be negative.

**Item No. 12 Over Excavation**

**Measurement**

"Over Excavation" shall be per cubic yard as measured in place in the field, from bottom of existing subgrade to bottom of excavation.

**Payment**

"Over Excavation" shall include all costs in connection with removal and replacement of

material where over excavation is required as determined by the geotechnical engineer during construction including, but not limited to, earth moving, haul, structural fill import, and placement.

Item No. 13 Structural Fill

**Measurement**

"Structural Fill" shall be per cubic yard, measured in place in the field.

**Payment**

"Structural Fill" shall include all costs in connection with furnishing and installing structural fill, including but not limited to import, haul, placement, grading, and compaction for the embankment fill and fill within seat walls. This item does not include the reinforced backfill for the Welded Wire MSE Wall or Slope Restoration.

Item No. 13-B Structural Fill (Alternate B)

**Measurement**

"Structural Fill (Alternate B)" shall be per cubic yard, as measured by the difference in fill represented on sheets C8.01 and C8.02 as compared to C8.01B and C8.02B.

**Payment**

"Structural Fill" shall include all costs in connection with furnishing and installing structural fill, including but not limited to import, haul, placement, grading, and compaction for the embankment fill and fill within seat walls. This item does not include the reinforced backfill for the Welded Wire MSE Wall or Slope Restoration. The total amount of this item is expected to be negative positive. (ADD 02)

Item No. 14 Welded Wire MSE Wall Face

**Measurement**

"Welded Wire MSE Wall Face" shall be per square yard, measured at the face of the wall, including the buried face per design.

**Payment**

"Welded Wire MSE Wall Face" shall include all costs in connection with furnishing and installing the Welded Wire MSE Wall System, including but not limited to the facing rock, filter fabric, cap mat, backing mat, and vertical component of the welded wire mat. This item does not include the MSE backfill, intermediate mat, and the horizontal component of the welded wire mat.

Item No. 15 Welded Wire MSE Wall Backfill and Mats

**Measurement**

"Welded Wire MSE Wall Backfill and Mats" shall be per cubic yard, measured in place in the field between the embankment structural fill and the facing rock as shown in the design. The horizontal limits of the per cubic yard measurement will be from the face of the WW wall to the extent of the buried reinforcement and vertical limits will be from the bottom of the wall elevation as shown on the plans to top of the MSE Wall backfill.

**Payment**

"Welded Wire MSE Wall Backfill and Mats" shall include all costs in connection with furnishing and installing the MSE backfill, prongless, cap, and intermediate mats and all horizontal component of the welded wire mats including but not be limited to all cost associated with wall penetrations.

Item No. 16 Shotcrete Slope Restoration

**Measurement**

"Shotcrete Slope Restoration" shall be per square yard, as measured from the horizontal

plane of the slope.

**Payment**

"Shotcrete Slope Restoration" shall include all costs in connection with furnishing and installing the restored slope to the south of the eastern end of the new MSE Wall, including but not limited to shotcrete, masonry tied block, wall drain, geocomposite drain, gravel backfill for drain, filter fabric and backing mat.

Item No. 17 Shotcrete Slope Restoration Backfill and Mats

**Measurement**

"Shotcrete Slope Restoration Backfill and Mats" shall be per cubic yard, measured in place in the field between the shotcrete and extent of excavation as shown in the design. The horizontal limits of the per cubic yard measurement will be from the face of the shotcrete slope restoration to the extent of the buried reinforcement and vertical limits will be from the bottom of the wall elevation as shown on the plans to top of the shotcrete slope restoration.

**Payment**

"Slope Restoration at Welded Wire MSE Wall" shall include all costs in connection with furnishing and installing the MSE backfill, intermediate mat, and horizontal component of the welded wire mat.

Item No. 18 Site Furnishings

**Measurement**

No unit of measure shall apply to the lump sum price for "Site Furnishings"

**Payment**

"Site Furnishings" shall include all costs in connection with furnishing and installing the site furnishings and metal fabrications as described in 12 93 00 and 05 50 13 that are not incidental to other bid items.

Item No. 18-B Site Furnishings (Alternate B)

**Measurement**

No unit of measure shall apply to the lump sum price for "Site Furnishings (Alternate B)"

**Payment**

"Site Furnishings (Alternate B)" shall include all costs in connection with furnishing and installing the site furnishings as described in 12 93 00 that are different between the base bid and the Alternate B design. The total amount of this item is expected to be **negative positive. (ADD 02)**

Item No. 18-C Site Furnishings (Alternate C)

**Measurement**

No unit of measure shall apply to the lump sum price for "Site Furnishings (Alternate C)"

**Payment**

"Site Furnishings (Alternate C)" shall include all costs in connection with furnishing and installing the weir wall and steel plate water system as described in specification section 05 50 13. The total amount of this item is expected to be negative.

Item No. 19 Water System

**Measurement**

No unit of measure shall apply to the lump sum price for "Water System".

**Payment**

"Water System" shall include all costs in connection with furnishing and installing the water system and services, including but not limited to water pipes, fittings, thrust restraint,

meter, vaults, trenching, bedding, and backfill. This item does not include the water system for the spray park, beginning at the 2.5" service line to the water feature cabinet, or the irrigation system, beginning at the backflow preventer for irrigation.

Item No. 20 Sanitary Sewer System

**Measurement**

No unit of measure shall apply to the lump sum price for "Sanitary Sewer".

**Payment**

"Sanitary Sewer" shall include all costs in connection with furnishing and installing the sanitary sewer system, including but not limited to pipes, maintenance holes, trenching, bedding, and backfill.

Item No. 21 Subdrain System

**Measurement**

No unit of measure shall apply to the lump sum price for "Subdrain System".

**Payment**

"Subdrain System" shall include all costs in connection with furnishing and installing the subdrain system, including but not limited to perforated pipes, cleanouts, connections to solid pipe storm drainage system, trenching, bedding, and backfill. This item does not include backfill for walls, or components of the Non-Infiltrating Bioretention Planter System.

Item No. 21-B Subdrain System (Alternate B)

**Measurement**

No unit of measure shall apply to the lump sum price for "Subdrain System (Alternate B)".

**Payment**

"Subdrain System (Alternate B)" shall include all costs in connection with furnishing and installing the subdrain system, including but not limited to perforated pipes, cleanouts, connections to solid pipe storm drainage system, trenching, bedding, and backfill, that is different between the base bid and the Alternate B design. The total amount of this item is expected to be negative.

Item No. 22 Non-Infiltrating Bioretention Planter System

**Measurement**

No unit of measure shall apply to the lump sum price for "Storm Drainage System".

**Payment**

"Storm Drainage System" shall include all costs in connection with furnishing and installing the bioretention system, including but not limited to the bioretention planter walls, reinforcing bars, bioretention soil mix aggregate, upwell, and all components of the storm drainage system between structure B-4 and A-2. This item includes the installation, but not furnishing, of the bioretention soil, which will be provided by the owner.

Item No. 23 Spray Park

**Measurement**

No unit of measure shall apply to the lump sum price for "Spray Park".

**Payment**

"Spray Park" shall include all costs in connection with furnishing and installing the spray park described on sheets L501-L503, including but not limited to the water pipes starting at the 2.5" service line to the water feature, nozzle, drain, electrical components, control cabinet, actuator buttons, and concrete paving and finishing within the spray park basin.

Item No. 23-A Spray Park (Alternate A)

**Measurement**

No unit of measure fall apply to the lump sum price for "Spray Park (Alternate A)".

**Payment**

"Spray Park (Alternate A)" shall include all costs in connection with furnishing and installing the spray park described on sheets L501-L503, including but not limited to the water pipes starting at the 2.5" service line to the water feature, nozzle, drain, electrical components, control cabinet, actuator buttons, and concrete paving and finishing within the spray park basin. The unit price of this item should be equal to Schedule 1 Bid Item No. 23. The total amount of this bid item is expected to be negative.

Item No. 23-B Spray Park (Alternate B)

**Measurement**

No unit of measure fall apply to the lump sum price for "Spray Park (Alternate B)".

**Payment**

"Spray Park (Alternate B)" shall include all costs in connection with furnishing and installing the spray park that are different between sheets L501-L503 and L501B-L503B, including but not limited to water pipe, nozzle, drain, electrical components, control cabinet, actuator buttons, and concrete paving and finishing within the spray park basin. The total amount of this item is expected to be negative.

Item No. 24 Play Area

**Measurement**

No unit of measure shall apply to the lump sum price for "Play Area".

**Payment**

"Play Area" shall include all costs in connection with furnishing and installing the play area as described on sheets L601-L603, including but not limited to play area equipment, artificial lawn, cast-in-place concrete slide, and fine grading.

Item No. 24-B Play Area (Alternate B)

**Measurement**

No unit of measure shall apply to the lump sum price for "Play Area (Alternate B)".

**Payment**

"Play Area (Alternate B)" shall include all costs in connection with furnishing and installing the play area as described on sheets L601-L603, including but not limited to play area equipment, artificial lawn, cast-in-place concrete slide, and fine grading. The total amount of this bid item is expected to be negative.

Item No. 25 Pedestrian Guardrail – Play Area

**Measurement**

"Pedestrian Guardrail – Play Area" shall be per linear foot, as measured from the horizontal plane.

**Payment**

"Pedestrian Guardrail – Play Area" shall include all costs in connection with furnishing and installing the pedestrian guardrail along the north edge of the play area and identified by E4 on sheet L101.

Item No. 25-B Pedestrian Guardrail – Play Area (Alternate B)

**Measurement**

"Pedestrian Guardrail – Play Area (Alternate B)" shall be per linear foot, as measured from

the horizontal plane for the ~~delta-difference~~ (ADD 02) between the Base Bid and the Alternate B design.

**Payment**

"Pedestrian Guardrail – Play Area (Alternate B)" shall include all costs in connection with furnishing and installing the pedestrian guardrail along the north edge of the play area and identified by E4 on sheet L101. The unit price for this bid item should match unit price for Item No. 25. The total amount of this bid item is expected to be negative.

Item No. 26 Irrigation System

**Measurement**

No unit of measure shall apply to the lump sum price for "Irrigation System".

**Payment**

"Irrigation System" shall include all costs in connection with furnishing and installing the irrigation system, beginning at the irrigation backflow preventer, as described on sheet L302, including testing.

Item No. 26-B Irrigation System (Alternate B)

**Measurement**

No unit of measure shall apply to the lump sum price for "Irrigation System (Alternate B)".

**Payment**

"Irrigation System (Alternate B)" shall include all costs in connection with furnishing and installing the irrigation system, beginning at the irrigation backflow preventer, as described on sheet L302B (ADD 02), including testing, for the ~~delta-difference~~ (ADD 02) between the Base Bid and the Alternate B design. The total amount of this bid item is expected to be positive.

Item No. 27 Electrical Services and Distribution

**Measurement**

No unit of measure shall apply to the lump price for "Electrical Services and Distribution".

**Payment**

"Electrical Services and Distribution" shall include all costs in connection with furnishing and installing the electrical system as described on sheet E1.02. This item does not include the site lighting features that are included in the bid item "Site Lighting".

Item No. 28 Empty Conduit and Vaults for Future Electric Ferry

**Measurement**

No unit of measure shall apply to the lump sum price for "Empty Conduit and Vaults for Future Electric Ferry".

**Payment**

"Empty Conduit and Vaults for Future Electric Ferry" shall include all costs in connection with furnishing and installing the conduits and vaults described on sheet C600, including trenching and backfill.

Item 29 Clearing and Grubbing

**Measurement**

No unit of measure shall apply to the lump sum price for "Clearing and Grubbing".

**Payment**

"Clearing and Grubbing" shall include all costs in connection with clearing and grubbing as described in specification section 31 11 00 and sheet C3.01.

Item No. 30 Retaining Wall

**Measurement**

"Retaining Wall" shall be per cubic yard, as measured by volume of concrete in wall, including footings.

**Payment**

"Retaining Wall" shall include all costs in connection with furnishing and installing the site's reinforced concrete retaining walls, including but not limited to the formwork, concrete material and placement, and backfill for walls for the Type 1 Retaining Wall, Type 2 Retaining Wall, Cant Retaining Wall, and Overlook Wall. This item does not include the reinforcing bars, Welded Wire MSE Wall, Slope Restoration system, seat walls, or bioretention planter walls.

Item No. 30-B Retaining Wall (Alternate B)

**Measurement**

"Retaining Wall (Alternate B)" shall be per cubic yard, as measured by volume of concrete in wall, including footings.

**Payment**

"Retaining Wall (Alternate B)" shall include all costs in connection with furnishing and installing the reinforced concrete retaining walls for the ~~delta-difference~~ (ADD 02) between the Base Bid and the Alternate B design, including but not limited to the formwork, concrete material and placement, and backfill for walls for the Type 1 Retaining Wall, Type 2 Retaining Wall, Cant Retaining Wall, and Overlook Wall. This item does not include the reinforcing bars, Welded Wire MSE Wall, Slope Restoration system, seat walls, or bioretention planter walls. The unit price for this bid item should match unit price for Item No. 30. The total amount of this bid item is expected to be positive.

Item No. 31 Retaining Wall Rebar

**Measurement**

"Retaining Wall Rebar" shall be per pound.

**Payment**

"Retaining Wall Rebar" shall include all costs in connection with furnishing and installing the reinforcing bars for the site's reinforced concrete retaining walls. This item does not include the reinforcing bars for the reinforced concrete steps, vehicular concrete pavement, seat walls, concrete slide, or bioretention planter walls.

Item No. 31-B Retaining Wall Rebar (Alternate B)

**Measurement**

"Retaining Wall Rebar (Alternate B)" shall be per pound.

**Payment**

"Retaining Wall Rebar (Alternate B)" shall include all costs in connection with furnishing and installing the reinforcing bars for the reinforced concrete retaining walls for the ~~delta difference~~ (ADD 02) between the Base Bid and the Alternate B design. This item does not include the reinforcing bars for the reinforced concrete steps, vehicular concrete pavement, seat walls, slide, or bioretention planter walls. The unit price for this bid item should match unit price for Item No. 31. The total amount of this bid item is expected to be ~~negative~~ positive. (ADD 02).

Item No. 32 Seat Wall

**Measurement**

No unit of measure shall apply to the lump sum price for "Seat Wall".

**Payment**

"Seat Wall" shall include all costs in connection with furnishing and installing the project's

seat walls, including but not limited to concrete, including footings, and reinforcing bars.

Item No. 32-B Seat Wall (Alternate B)

**Measurement**

No unit of measure shall apply to the lump sum price for "Seat Wall (Alternate B)".

**Payment**

"Seat Wall (Alternate B)" shall include all costs in connection with furnishing and installing the project's seat walls for the ~~delta difference~~ (ADD 02) between the Base Bid and the Alternate B design, including but not limited to concrete, including footings, and reinforcing bars. The total amount of this bid item is expected to be positive.

Item 33 Cement Concrete Finish – Seeded Aggregate

**Measurement**

"Site Concrete Finishes – Seeded Aggregate" will be measured by the square yard.

**Payment**

The unit contract price for "Site Concrete Finishes – Seeded Aggregate" shall include all costs and installing the site concrete finish.

Item No. 34 Cement Concrete Steps and Landings

**Measurement**

"Cement Concrete Steps and Landings" shall be per square yard, as measured from the horizontal plane.

**Payment**

"Cement Concrete Steps and Landings" shall include all costs in connection with furnishing and installing the concrete steps and landings, including but not limited to the formwork, stepped footing, concrete, and reinforcing bars.

Item No. 35 Pedestrian Guardrail – Stairs and Landings

**Measurement**

"Pedestrian Guardrail – Stairs and Landings" shall be per linear foot, as measured from the horizontal plane.

**Payment**

"Pedestrian Guardrail – Stairs and Landings" shall include all costs in connection with furnishing and installing the pedestrian guardrail along all stairs and landings as identified as E1, E2, or E3 on sheet L101.

Item No. 36 Cement Concrete Vertical Curb

**Measurement**

"Cement Concrete Vertical Curb" shall be per linear foot.

**Payment**

"Cement Concrete Vertical Curb" shall include all costs in connection with furnishing and installing the cement concrete pavement, including at curb ramps.

Item No. 37 Cement Concrete Flush Curb

**Measurement**

"Cement Concrete Flush Curb" shall be per linear foot.

**Payment**

"Cement Concrete Flush Curb" shall include all costs in connection with furnishing and installing the cement concrete pavement, including at curb ramps.

Item No. 38 Pedestrian Concrete Pavement

**Measurement**

"Pedestrian Concrete Pavement" shall be per square yard.

**Payment**

"Pedestrian Concrete Pavement" shall include all costs in connection with furnishing and installing the pedestrian concrete pavement, including base course, jointing and thickened edges where identified on sheet C9.00 and Detail 4/C9.11.

Item No. 38-B Pedestrian Concrete Pavement (Alternate B)

**Measurement**

"Pedestrian Concrete Pavement (Alternate B)" shall be per square yard.

**Payment**

"Pedestrian Concrete Pavement (Alternate B)" shall include all costs in connection with furnishing and installing the pedestrian concrete pavement, including base course and jointing, for the difference between the Base Bid and the Alternate B design. The unit price for this bid item should match unit price for Item No. 38. The total amount of this bid item is expected to be positive.

Item No. 39 Cement Concrete Curb Ramp

**Measurement**

"Cement Concrete Curb Ramp" shall be per square foot, as measured from inside edge of curb.

**Payment**

"Cement Concrete Curb Ramp" shall include all costs in connection with furnishing and installing the cement concrete pavement, including base course, ramp wings, and detectable warning.

Item No. 40 Cement Concrete Vehicular Pavement

**Measurement**

"Cement Concrete Vehicular Pavement" shall be per square yard.

**Payment**

"Cement Concrete Vehicular Pavement" shall include all costs in connection with furnishing and installing the cement concrete pavement, including base course, reinforcement, and jointing.

Item No. 40-A Cement Concrete Vehicular Pavement (Alternate A)

**Measurement**

"Cement Concrete Vehicular Pavement (Alternate A)" shall be per square yard for the difference in paving represented on sheets C9.1A and C9.3A as compared to C9.1 and C9.3.

**Payment**

"Cement Concrete Vehicular Pavement (Alternate A)" shall include all costs in connection with furnishing and installing the cement concrete pavement, including base course, reinforcement, and jointing. Unit price for this bid item should match unit price for Item No. 40. The total amount of this bid item is expected to be positive.

Item No. 41 Cement Concrete Finish – Wood Accent

**Measurement**

"Site Concrete Finish – Wood Accent" will be measured by the square yard.

**Payment**

"Site Concrete Finish – Wood Accent" shall include all costs in connection with furnishing and installing the wood accent concrete finish as identified by A3 on sheet L101 and described in specification section 32 13 16.

Item No. 42 Cement Concrete Finish – Exposed Aggregate Finish

**Measurement**

"Site Concrete Finish – Exposed Aggregate Finish" will be measured by the square yard.

**Payment**

"Site Concrete Finish – Exposed Aggregate Finish" shall include all costs in connection with furnishing and installing the exposed aggregate as described in specification section 32 13 16.

Item No. 42-A Cement Concrete Finish – Exposed Aggregate Finish (Alternate A)

**Measurement**

"Site Concrete Finish – Exposed Aggregate Finish (Alternate A)" will be measured by the square yard for the difference in paving represented on sheets C9.1A and C9.3A as compared to C9.1 and C9.3.

**Payment**

"Site Concrete Finish – Exposed Aggregate Finish (Alternate A)" shall include all costs in connection with furnishing and installing the exposed aggregate as described in specification section 32 13 16. Unit price for this bid item should match unit price for Item No. 42. The total amount of this bid item is expected to be positive.

Item No. 42-B Cement Concrete Finish – Exposed Aggregate Finish (Alternate B)

**Measurement**

"Site Concrete Finish – Exposed Aggregate Finish (Alternate B)" will be measured by the square yard.

**Payment**

"Site Concrete Finish – Exposed Aggregate Finish (Alternate B)" shall include all costs in connection with furnishing and installing the exposed aggregate as described in specification section 32 13 16 for the ~~delta-difference~~ (ADD 02) between the Base Bid and the Alternate B design. The unit price for this bid item should match unit price for Item No. 42. The total amount of this bid item is expected to be positive.

Item No. 43 Asphalt Concrete Pavement

**Measurement**

"Asphalt Concrete Pavement" shall be per square yard.

**Payment**

"Asphalt Concrete Pavement" shall include all costs in connection with furnishing and installing the asphalt concrete pavement, including base course.

Item No. 44 Wheel Stop

**Measurement**

"Wheel Stop" shall be per each.

**Payment**

"Wheel Stop" shall include all costs in connection with furnishing and installing the wheel stops.

Item No. 45 Wood Fence with Gate

**Measurement**

"Wood Fence with Gate" shall be per linear foot, as measured on the horizontal plane.

**Payment**

"Wood Fence" include all costs in connection with furnishing and installing the wood fence, including the single wood gate, along the north property line and electrical cabinets as identified by F1 on sheet L101.

Item No. 46 Gates

**Measurement**

No unit of measure shall apply to the lump sum price for "Gates".

**Payment**

"Gates" shall include all costs in connection with furnishing and installing the two gates identified by G1 on sheet L101.

Item No. 47 Pavement Markings and Signage

**Measurement**

No unit of measure shall apply to the lump sum price for "Pavement Markings and Signage".

**Payment**

"Pavement Markings and Signage" shall include all costs in connection with pavement markings and signage.

Item No. 48 Storm Drainage System

**Measurement**

No unit of measure shall apply to the lump sum price for "Storm Drainage System".

**Payment**

"Storm Drainage System" shall include all costs in connection with furnishing and installing the storm drainage system, including but not limited to pipes, maintenance holes, trenching, bedding, and backfill. This item does not include components of the Non-Infiltrating Bioretention Planter System.

Item No. 48-A Storm Drainage System (Alternate A)

**Measurement**

No unit of measure shall apply to the lump sum price for "Storm Drainage System (Alternate A)".

**Payment**

"Storm Drainage System (Alternate A)" shall include all costs in connection with furnishing and installing the storm drainage system for the ~~delta-difference~~ **(ADD 02)** between the Base Bid and the Alternate A design, including but not limited to pipes, maintenance holes, trenching, bedding, and backfill. This item does not include components of the Non-Infiltrating Bioretention Planter System. This total amount of this bid item is expected to be negative.

Item No. 48-C Storm Drainage System (Alternate C)

**Measurement**

No unit of measure shall apply to the lump sum price for "Storm Drainage System (Alternate C)".

**Payment**

"Storm Drainage System (Alternate C)" shall include all costs in connection with furnishing

and installing the storm drainage system for the ~~delta-difference~~ (ADD 02) between the Base Bid and the Alternate C design, including but not limited to pipes, maintenance holes, trenching, bedding, and backfill. The total amount of this bid item is expected to be negative.

Item No. 49 Planting and Seeding

**Measurement**

No unit of measure shall apply the lump sum price for "Planting and Seeding".

**Payment**

"Planting and Seeding" shall include all costs in connection with furnishing and installing plantings including soil preparation, seeding, plants, plant establishment and landscape maintenance, and planting accessories.

Item No. 49-B Planting and Seeding (Alternate B)

**Measurement**

No unit of measure shall apply the lump sum price for "Planting and Seeding (Alternate B)".

**Payment**

"Planting and Seeding (Alternate B)" shall include all costs in connection with furnishing and installing plantings for the ~~delta-difference~~ (ADD 02) between the Base Bid and the Alternate B design, including soil preparation, seeding, plants, plant establishment and landscape maintenance, and planting accessories. The total amount of this bid item is expected to be positive.

Item No. 50 Grasscrete

**Measurement**

"Grasscrete" shall be per square yard.

**Payment**

"Grasscrete" shall include all costs in connection with furnishing and installing the grasscrete system.

Item No. 51 Site Lighting

**Measurement**

No unit of measure shall apply to the lump price for "Site Lighting".

**Payment**

"Site Lighting" shall include all costs in connection with furnishing and installing the site lighting system, including but not limited to light poles, luminaires, LED drivers, lamps, control cabinets, and light pole foundations.

PROPOSAL FORM (Continued)

<b>SCHEDULE 1 - BASE BID (WITH SALES TAX) PROPOSAL FORM</b>						
<b>Item No.</b>	<b>Spec. Section</b>	<b>Item Description</b>	<b>Est. Qty</b>	<b>Units</b>	<b>Unit Price</b>	<b>Amount</b>
1	1-04.4(1)	Minor Changes	1	F.A.	\$50,000	\$50,000
2	1-05.18	Record Drawings	1	L.S.	\$5,000 (minimum)	\$ 5,000.00
3	1-07.9(3)	Apprenticeship Incentive	1	L.S.	\$5,000 (maximum)	\$5,000
4	1-07.9(3)	Apprenticeship Penalties	1	L.S.	-\$5,000 (maximum)	-\$5,000
5	1-07.15	Spill Prevention, Control, and Countermeasures Plan	1	L.S.	\$ 5,000.00	\$ 5,000.00
6	1-07.16(4)	Archaeological and Historical Salvage	1	F.A.	\$50,000	\$50,000
7	1-09.7	Mobilization	1	L.S.	\$ 235,000.00	\$ 235,000.00
8	1-10	Project Temporary Traffic Control	1	L.S.	\$25,000.00	\$ 25,000.00
9	31 25 00	Erosion and Sedimentation Control	1	L.S.	\$ 137,000.00	\$ 137,000.00
10	2-09 & 31 00 00	Shoring or Extra Excavation Cl. B	1	L.S.	\$ 12,000.00	\$ 12,000.00
11	02 41 00	Site and Subsurface Demolition	1	L.S.	\$ 132,000.00	\$ 132,000.00
12	31 00 00 3.1.B	Over Excavation	265	C.Y.	\$ 130.00	\$ 34,450.00
13	31 00 00	Structural Fill	18,800	C.Y.	\$ 58.00	\$ 1,090,400.00
14	31 36 11	Welded Wire MSE Wall Face (ADD 02)	<del>2690</del> 330	<del>S.F.</del> S.Y.	\$ 405.00	\$ 133,650.00
15	31 36 11	Welded Wire MSE Wall Backfill and Mats	2650	C.Y.	\$ 82.00	\$ 217,300.00

PROPOSAL FORM (Continued)

16	31 32 36	Shotcrete Slope Restoration	32	S.Y.	\$ 500.00	\$ 16,000.00	
17	31 32 36	Shotcrete Slope Restoration Backfill and Mats	75	C.Y.	\$ 300.00	\$ 22,500.00	
18	12 93 00	Site Furnishings	1	L.S.	\$ 105,000.00	\$ 105,000.00	
19	33 11 00	Water System	1	L.S.	\$ 140,000.00	\$ 140,000.00	
20	33 30 00	Sanitary Sewer System	1	L.S.	\$ 190,000.00	\$ 190,000.00	
21	33 46 16	Subdrain System	1	L.S.	\$ 51,000.00	\$ 51,000.00	
22	33 40 00	Non-Infiltrating Bioretention Planter System	1	L.S.	\$ 157,000.00	\$ 157,000.00	
23	13 15 00	Spray Park	1	L.S.	\$ 396,000.00	\$ 396,000.00	
24	11 68 13 & 32 18 13	Play Area	1	L.S.	\$ 766,000.00	\$ 766,000.00	
25	Division 5	Pedestrian Guardrail – Play Area (ADD 02)	240 305	L.F.	\$ 664.00	\$ 202,520.00	
26	32 84 00	Irrigation System	1	L.S.	\$ 107,000.00	\$ 107,000.00	
27	Div 26	Electrical Service and Distribution System	1	L.S.	\$ 120,000.00	\$ 120,000.00	SKC
28	26 05 43	Empty Conduit and Vaults for Future Electric Ferry	1	L.S.	\$ 66,000.00	\$ 66,000.00	SKC

Total SCHEDULE 1 Bid Price (in figures) \$ 4,465,820.00 SKC  
 Total SCHEDULE 1 Bid Price (in words) four million, four hundred sixty five thousand eight hundred twenty dollars SKC  
 10.2% Washington State Sales Tax \$ 455,513.64 SKC  
 TOTAL SCHEDULE 1 \$ 4,921,333.64 SKC

PROPOSAL FORM (Continued)

<b>SCHEDULE 2 - BASE BID PROPOSAL FORM</b>						
<b>Item No.</b>	<b>Spec. Section</b>	<b>Item Description</b>	<b>Est. Qty</b>	<b>Units</b>	<b>Unit Price</b>	<b>Amount</b>
29	31 11 00	Clearing and Grubbing	1	L.S.	\$ 10,000.00	\$ 10,000.00
30	03 30 00	Retaining Wall	315	C.Y.	\$ 2,300.00	\$ 724,500.00
31	03 30 00	Retaining Wall Rebar	16,550	LB	\$ 3.50	\$ 57,925.00
32	03 30 00	Seat wall	1	L.S.	\$ 156,000.00	\$ 156,000.00
33	32 13 16	Cement Concrete Finish – Seeded Aggregate Finish (ADD 02)	30	C.Y. S.Y.	\$ 600.00	\$ 18,000.00
34	03 30 00	Cement Concrete Steps and Landings	415	S.Y.	\$ 1,000.00	\$ 415,000.00
35	Division 5	Pedestrian Guardrail – Stairs and Landings	295	L.F.	\$ 595.00	\$ 175,525.00
36	32 16 13	Cement Concrete Vertical Curb	1300	L.F.	\$ 63.00	\$ 81,900.00
37	32 16 13	Cement Concrete Flush Curb	190	L.F.	\$ 63.00	\$ 11,970.00
38	32 11 16 & 32 16 13	Pedestrian Concrete Pavement	1535	S.Y.	\$ 192.00	\$ 294,720.00
39	32 11 16 & 32 16 13	Cement Concrete Curb Ramp	795	S.F.	\$ 23.00	\$ 18,285.00
40	32 11 16 & 32 16 13	Cement Concrete Vehicular Pavement	515	S.Y.	\$ 198.00	\$ 101,970.00
41	32 13 16	Cement Concrete Finish – Wood Accent	95	S.Y.	\$ 875.00	\$ 83,125.00
42	32 13 16	Cement Concrete Finish – Exposed Aggregate Finish	2760	S.Y.	\$ 35.00	\$ 96,600.00
43	32 11 16 & 32 12 16	Asphalt Concrete Pavement	1212	S.Y.	\$ 54.00	\$ 65,448.00
44	32 16 13	Wheel Stop	14	EA	\$ 215.00	\$ 3,010.00

PROPOSAL FORM (Continued)

45	32 31 19	Wood Fence with Gate	122	L.F.	\$ 221.00	\$ 26,962.00
46	32 31 19	Gates	1	L.S.	\$ 22,000.00	\$ 22,000.00
47	32 17 23	Pavement Markings and Signage	1	L.S.	\$ 13,000.00	\$ 13,000.00
48	33 40 00	Storm Drainage System	1	L.S.	\$ 287,000.00	\$ 287,000.00
49	32 91 13, 32 92 19, 32 93 00, 32 93 53, & 32 94 00	Planting and Seeding	1	L.S.	\$ 330,000.00	\$ 330,000.00
50	31 00 00	Grasscrete	146	S.Y.	\$ 140.00	\$ 20,440.00
51	26 51 00	Site Lighting	1	L.S.	\$ 603,000.00	\$ 603,000.00

SKC

Total SCHEDULE 2 Bid Price (in figures) \$ 3,616,380.00 SKC

Total SCHEDULE 2 Bid Price (in words) three Million, Six hundred sixteen thousand three hundred eighty dollars SKC

TOTAL SCHEDULE 1 + TOTAL SCHEDULE 2 (BASE BID) \$ 8,537,713.64 SKC

PROPOSAL FORM (Continued)

<b>SCHEDULE 1-A (ALTERNATE A – NO SPRAY PARK) BID PROPOSAL FORM</b>						
Item No.	Spec. Section	Item Description	Est. Qty	Units	Unit Price	Amount
23-A	13 15 00	Spray Park (Alternate A)	-1	L.S.	\$ 396,000.00	\$ -396,000.00

Total **SCHEDULE 1-A** Bid Price (in figures) \$ -396,000.00

Total **SCHEDULE 1-A** Bid Price (in words) minus three hundred ninty six thousand dollars

10.2% Washington State Sales Tax \$ -40,392.00

TOTAL SCHEDULE 1-A \$ -436,392.00

<b>SCHEDULE 2-A (ALTERNATE A – NO SPRAY PARK) BID PROPOSAL FORM</b>						
Item No.	Spec. Section	Item Description	Est. Qty	Units	Unit Price	Amount
40-A	32 11 16 & 32 16 13	Cement Concrete Vehicular Pavement (Alternate A)	110	S.Y.	\$ 198.00	\$ 21,780.00
42-A	32 13 16	Cement Concrete Finish – Exposed Aggregate Finish (Alternate A)	110	S.Y.	\$ 35.00	\$ 3,850.00
48-A	33 40 00	Storm Drainage System (Alternate A)	-1	L.S.	\$ 4,058.00	\$ -4,058.00

Total **SCHEDULE 2-A** Bid Price (in figures) \$ 21,572.00

Total **SCHEDULE 2-A** Bid Price (in words) twenty one thousand five hundred seventy two dollars

TOTAL SCHEDULE 1-A + TOTAL SCHEDULE 2-A (ALTERNATE A) \$ -414,820.00

PROPOSAL FORM (Continued)

<b>SCHEDULE 1-B (ALTERNATE B – NO PLAY AREA) BID PROPOSAL FORM</b>						
Item No.	Spec. Section	Item Description	Est. Qty	Units	Unit Price	Amount
13-B	31 00 00	Structural Fill (Alternate B) <b>(ADD 02)</b>	<del>18,770</del> -30	C.Y.	\$ 58.00	\$ -1,740.00
18-B	12 93 00	Site Furnishings (Alternate B) <b>(ADD 02)</b>	-1	L.S.	\$ 22,000.00	\$ -22,000.00
21-B	33 46 16	Subdrain System (Alternate B)	-1	L.S.	\$ 18,575.00	\$ -18,575.00
23-B	13 15 00	Spray Park (Alternate B)	-1	L.S.	\$ 28,750.00	\$ -28,750.00
24-B	11 68 13 & 32 18 13	Play Area (Alternate B)	-1	L.S.	\$ 766,000.00	\$ -766,000.00
25-B	Division 5	Pedestrian Guardrail – Play Area (Alternate B)	-240	L.F.	\$ 664.00	\$ -159,360.00
26-B	32 84 00	Irrigation System (Alternate B)	1	L.S.	\$ 20,000.00	\$ 20,000.00

Total **SCHEDULE 1-B** Bid Price (in figures) \$ -976,425.00  
 minus nine hundred seventy six thousand four  
 Total **SCHEDULE 1-B** Bid Price (in words) hundred twenty five dollars  
 10.2% Washington State Sales Tax \$ -99595.35  
 TOTAL SCHEDULE 1-B \$ -1,076,020.35

PROPOSAL FORM (Continued)

<b>SCHEDULE 2-B (ALTERNATE B – NO PLAY AREA) BID PROPOSAL FORM</b>						
<b>Item No.</b>	<b>Spec. Section</b>	<b>Item Description</b>	<b>Est. Qty</b>	<b>Units</b>	<b>Unit Price</b>	<b>Amount</b>
30-B	03 30 00	Retaining Wall (Alternate B) (ADD 02)	<del>285</del> -29	C.Y.	\$ 2,300.00	\$ -66,700.00
31-B	03 30 00	Retaining Wall Rebar (Alternate B) (ADD 02)	<del>15,505</del> -2,050	LB	\$ 3.50	\$ -7,175.00
32-B	03 30 00	Seat wall (Alternate B)	1	L.S.	\$ 10,000.00	\$ 10,000.00
38-B	32 11 16 & 32 16 13	Pedestrian Concrete Pavement (Alternate B) (ADD 02)	<del>1650</del> +250	S.Y.	\$ 187.00	\$ 46,750.00
42-B	32 13 16	Cement Concrete Finish – Exposed Aggregate Finish (Alternate B) (ADD 02)	<del>2510</del> +250	S.Y.	\$ 35.00	\$ 8,750.00
49-B	32 91 13, 32 92 19, 32 93 00, 32 93 53, & 32 94 00	Planting and Seeding (Alternate B)	1	L.S.	\$ 20,000.00	\$ 20,000.00

Total SCHEDULE 2-B Bid Price (in figures) \$ 11,625.00

Total SCHEDULE 2-B Bid Price (in words) eleven thousand six hundred twenty five dollars

TOTAL SCHEDULE 1-B + TOTAL SCHEDULE 2-B (ALTERNATE B) \$ -1,064,395.35

PROPOSAL FORM (Continued)

<b>SCHEDULE 1-C (ALTERNATE C – NO WEIR WALL) BID PROPOSAL FORM</b>						
Item No.	Spec. Section	Item Description	Est. Qty	Units	Unit Price	Amount
11-C	02 41 00	Site and Subsurface Demolition (Alternate C)	-1	L.S.	\$ 2,700.00	\$ -2,700.00
18-C	12 93 00	Site Furnishings (Alternate C)	-1	L.S.	\$ 70,000.00	\$ -70,000.00

Total **SCHEDULE 1-C** Bid Price (in figures) \$ -72,700.00

Total **SCHEDULE 1-C** Bid Price (in words) minus seventy two thousand seven hundred dollars

10.2% Washington State Sales Tax \$ -7,415.40

TOTAL SCHEDULE 1-C \$ -80,115.40

<b>SCHEDULE 2-C (ALTERNATE C – NO WEIR WALL) BID PROPOSAL FORM</b>						
Item No.	Spec. Section	Item Description	Est. Qty	Units	Unit Price	Amount
48-C	33 40 00	Storm Drainage System (Alternate C)	-1	L.S.	\$63,000.00	\$ -63,000.00

Total **SCHEDULE 2-C** Bid Price (in figures) \$ -63,000.00

Total **SCHEDULE 2-C** Bid Price (in words) minus sixty three thousand dollars

TOTAL SCHEDULE 1-C + SCHEDULE 2-C (ALTERNATE C) \$ -143,115.40

### PROPOSAL FORM (Continued)

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

Signed

  
\_\_\_\_\_

Title

Member  
\_\_\_\_\_

#### Name of Bidder

Registration or license, Division of Professional Licensing:

1. License Number BAYSHCC818PG

2. Date 10-9-25

3. Contractor's Signature 

4. Title Member

5. Address of Bidder: 16821 Smokey Point Blvd., #808, Arlington, WA 98223

Street City Zip

6. Telephone Number of Bidder 360-770-0850 425-308-9017  
Office Home

Email Contacts trever@bayshoreco.com

spencer@bayshoreco.com

Addendum 2  
10/06/2025

### PROPOSAL FORM (Continued)

Date of Bid 10-9-25

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

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

Bidder's Signature:  \_\_\_\_\_

Date: 10-9-25

Addendum 2  
10/06/2025

Receipt is hereby acknowledged for the following Addenda:

<u>Addendum No.</u>	<u>Date Received</u>	<u>Signature</u>
1	9-26-25	
2	10-6-25	
3	10-8-25	

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

Bid proposal to be submitted in a sealed envelope marked "Bid Enclosed" for Des Moines Marina Steps Project.

**Form of a Bid Bond**

**BID BOND DEPOSIT**

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

for the amount of \_\_\_\_\_ Five Percent (5%) of Bid Amount \_\_\_\_\_, which amount is not less than five percent (5%) of the total bid, including sales tax.

Signature \_\_\_\_\_

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_ Bayshore Construction Company \_\_\_\_\_, as Principal, and \_\_\_\_\_ Philadelphia Indemnity Insurance Company \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Des Moines, as Oblige, in the penal sum of \*\*\*Five Percent of Bid Amount\*\*\* dollars (\$ \_\_\_\_\_ 5% of Bid \_\_\_\_\_) for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

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

SIGNED, SEALED AND DATED THIS \_\_\_\_\_ 9th \_\_\_\_\_ DAY OF \_\_\_\_\_ October \_\_\_\_\_, 20 25 \_\_\_\_\_.

Bayshore Construction Company BY: \_\_\_\_\_  
Principal

Philadelphia Indemnity Insurance Company BY: Shawn M. Wilson  
Surety (Shawn M. Wilson, Attorney-in-Fact)

Received return of deposit in the sum of \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_



PHILADELPHIA INDEMNITY INSURANCE COMPANY

One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint Nicholas W. Paget, Shawn M. Wilson, Peggy A. Firth and George Schroeder of Alliant Insurance Services Inc., its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14<sup>th</sup> of November 2016.

**RESOLVED:** That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

**FURTHER RESOLVED:** That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 5TH DAY OF OCTOBER 2024.

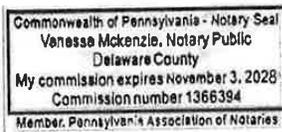


(Seal)

John Glomb, President & CEO  
Philadelphia Indemnity Insurance Company

On this 5<sup>th</sup> day of October, 2024 before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

Notary Public:



residing at:

Linwood, PA

My commission expires:

November 3, 2028

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 5<sup>th</sup> day October 2024 are true and correct and are still in full force and effect. I do further certify that John Glomb, who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 11th day of September, 2025.



Edward Sayago, Corporate Secretary  
PHILADELPHIA INDEMNITY INSURANCE COMPANY

**Non-Collusion Affidavit**

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**City of Des Moines**

STATE OF WASHINGTON)

) ss.

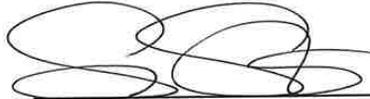
County of King )

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

Signature 

Subscribed and sworn to before me this 9<sup>th</sup> day

of October, 2025.



Notary Public in and for the State of Washington

Stanwood WA

Residing at

My commission expires 04-25-2026



## Statement of Bidder's Qualifications

---

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

1. Name of bidder:  
Bayshore Construction Company
  
2. Business address and telephone number:  
16821 Smokey Point Blvd., #808, Arlington, WA 98223 360-770-0850
  
3. How many years has said bidder been engaged in the contracting business under present firm name:  
20
  
4. Contracts now in hand (gross amount):  
\$ \$51,505,738.00
  
5. General character of work performed by said company:  
Erosion control, demolition, clearing, earthwork, underground utilities,  
structural concrete and flatwork concrete
  
6. List of more important projects constructed by said company, including approximate costs and dates:  
See Attached
  
7. List of company's major equipment:  
See Attached

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8. Bank references:**

Ed Stinson, Coastal Community Bank 425-948-5646  
\_\_\_\_\_  
\_\_\_\_\_

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

104,174-01  
\_\_\_\_\_

**10. Dept. of Revenue registration number:**

602 570 874  
\_\_\_\_\_

Name of Bidder Bayshore Construction Company  
\_\_\_\_\_

By Spencer Cave  
\_\_\_\_\_

Title Member  
\_\_\_\_\_

Date 10-9-25  
\_\_\_\_\_

**Statement of Proposed Subcontractors and Material Suppliers**

Subcontractors Name, Address, and Telephone Number	Description of Work
<u>BES Electrical Service, LLC. PO BOX 129, East Olympia</u> <u>WA 98540. (360)819-4519</u>	<u>Electrical</u> <u>SKC</u>
<u>Andres Landscape, PO Box 1131, Oregon City OR 97045</u> <u>503-632-3366</u>	<u>Landscape</u>
<u>Turnstone Construction, Inc. 16820 Smokey Point Blvd #808</u> <u>Arlington, WA 98223 206-634-1521</u>	<u>Mechanical</u>
<u>Bayshore Construction (Self perform)</u>	<u>Rebar</u>
<u>Tacoma Iron Work, 3206 232nd St. E., Spanaway, WA</u> <u>360-481-8499</u>	<u>Steel</u>
<u>Associated Paving LLC PO Box 543 Arlington WA 360-391-1881 Asphalt</u>	
Material Suppliers	Material (major items only)
<u>Shope Concrete Products 253-848-1551</u> <u>1618 East Main Street, Puyallup WA</u>	<u>Precast</u>
<u>Ferguson Waterworks 253-538-8275</u> <u>12522 Canyon Road E., Puyallup WA</u>	<u>Pipe</u>
<u> </u>	
<u> </u>	

## Subcontractor List

*Prepared in compliance with RCW 39.30.060 as amended*

### To Be Submitted with the Bid Proposal

Project Name Des Moines Marina Steps

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

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

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

Subcontractor Name BES Electrical Service, LLC *SKC*  
(and License Number if required)  
Work to be performed Electrical

Subcontractor Name Turnstone Construction Inc  
(and License Number if required)  
Work to be performed Mechanical

Subcontractor Name Tacoma Iron Works  
(and License Number if required)  
Work to be performed Steel

Subcontractor Name Bayshore Construction (self perform)  
(and License Number if required)  
Work to be performed Rebar

Subcontractor Name NO HVAC ON THIS PROJECT  
(and License Number if required)  
Work to be performed

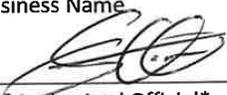
\* Bidder's are notified that it is the opinion of the enforcement agency that PVC or metal conduit, junction boxes, etc, are considered electrical equipment and therefore considered part of electrical work, even if the installation is for future use and no wiring or electrical current is connected during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

## Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date of October 8, 2024, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

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

Bayshore Construction Company  
Bidder's Business Name

  
Signature of Authorized Official\*

Spencer Cave  
Printed Name

Member  
Title

10-9-25                      Arlington                      WA  
Date                              City                              State

Check One:  
Sole Proprietorship       Partnership       Joint Venture       Corporation

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

Washington

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

\_\_\_\_\_

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

DES MOINES MARINA STEPS  
CERTIFICATION OF COMPLIANCE  
AND WAGE PAYMENT STATUTES

A8 - 1  
EXHIBIT A

September 2025  
BID DOCUMENTS

Statement of Bidder Responsibility Criteria

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

1. That the undersigned persons(s), firm, association, or corporation meet all the bidder responsibility criteria for public works contracts under RCW39.04.350.
2. That the undersigned persons(s), firm, association, or corporation meet all the bidder responsibility as identified in the Contract Documents.
3. That by signing the proposal and this form, I am deemed to have signed and to have agreed to the provisions of this statement.
4. That by signing the proposal and this form, if omissions are found the bidder will be deemed an unresponsive bidder or if awarded a public works project, the contract will be immediately terminated by the Contracting Agency.

**Contract Title:** Des Moines Marina Steps

**Bidder's Business Name:** Bayshore Construction Company

**Bidder's Name:** Spencer Cave

**Bidder's Signature:**  \_\_\_\_\_

**Bidders Title:** Member

**Date:** 10-9-2025

**DES MOINES MARINA STEPS  
STATEMENT OF BIDDER  
RESPONSIBILITY CRITERIA**

**A9 - 1  
EXHIBIT A**

**September 2025  
BID DOCUMENTS**

Project Name	Owner	Owner Address	Owner Rep	Phone	Description	Completion	Contract Value
South Henderson Street	City of Seattle	700 5th Ave, Seattle, WA 98124	Chris Barnes	206-234-1004	Cleaning, excavation, grading, new concrete stairway, driveway, curb and gutter, handrails, storm, electrical trenching, handholes, light poles, luminaires, fencing, and asphalt paving	April 2023	\$ 1,501,036.00
Judkins Park	City of Seattle	700 5th Ave, Seattle, WA 98124	Zainir Aldahlaki	206-618-4286	Site preparation, clearing, electrical trenching, conduits, installation of trail lighting, concrete walks and stairs, storm, pavement removal and restoration, fabrication and installation of handrails, restoration of landscaping including irrigation.	February 2024	\$ 2,864,726.00
Burke Gilman Park Playground	Seattle Parks & Recreation	700 5th Ave, Seattle, WA 98124	Romah Shah	206-684-9286	Renovation of the East portion of the Burke Gilman Playground Park, approximately 70,000 square feet of the park was improved. Excavation, grading, storm, lighting, comfort station renovation, concrete paths, playground equipment, turf, landscaping, irrigation, signage, wet and dry utilities.	June 2024	\$ 4,686,345.00
Hunts Point Lane Culvert Replacement	Town of Hunts Point	3000 Hunts Point Road, Hunts Point, WA	Roger Kuykendall	360-454-5490	Removal and replacement of an existing corrugated metal culvert pipe with a 4-sided concrete box culvert. Work also includes construction of a temporary water main and services, permanent water main and services, replacement of existing sewer main with new main, encased in steel pipe. Other work included clearing and grading, traffic control, excavation, dewatering, erosion control, stream and storm runoff bypass, sewer bypass, utility coordination, stream restoration, and roadway restoration.	October 2024	\$ 1,832,566.00
Marine Terminal Stormwater Improvements	Port of Everett	1205 Craftsman Way, Everett, WA	Elise Gronewald	425-386-0630	Interim Cleanup Action No. 2 of the former Weyerhaeuser Mill-A site, completed under Washington Dept. of Ecology agreed order No. DE 22405, improvements to the stormwater conveyance and treatment system at the South Terminal of the Port of Everett's Marine Terminals. This work includes decommissioning of one existing stormwater outfall, installing new stormwater conveyance infrastructure within the South terminal yard, and construction of three enhanced bio-retention stormwater treatment cells within an existing bioswale. The project area is located within the Port's International Seaport.	November 2024	\$ 2,168,080.00

# Equipment Worksheet - Equipment List

Name	Description	Type	Location	Job	Foreman	Status	Enabled	Budget	ent Hour	Reat	Odometer	Fime	Hour	Rece	Odometer	F
A01	2025 Ford F350	Pickup				In Service		0.0000	0	0	0	0	0	0	0	0
A02	2023 Ford F350	Pickup				In Service		0.0000	0	43	0	0	0	0	43	0
AP001	LEEBOY ASPHALT PAVER 8520	All:Mini Tra				In Service		0.0000	1,668	1,668	1,668	1,668	1,668	1,668	1,668	0
AU001	2022 AUGER JD50/60	Miscellaneous				Out of Servi		0.0000	0	0	0	0	0	0	0	0
AU002	2022 24" AUGER BIT	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
AU003	2022 36" AUGER BIT	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
AU004	2022 24" HEX AUGER EXTENSION	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
AU02	2025 AUGER JD 50/60	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
AZ001	Asphalt Zipper 360X	Miscellaneous				In Service		0.0000	19	0	0	19	0	0	0	0
B110	2020 DIGGING BUCKET 24"	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B112	2021 36"Digging Bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B113	2019 36" Digging Bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B114	2019 48" Digging Bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B115	2022 36" Digging Bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B116	2024 Digging bucket 24"	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B117	2024 Digging Bucket 24"	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B118	2025 Digging Bucket 24"	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B119	2024 24" Digging bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B120	2024 Digging Bucket 24"	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B123	2025 DIGGING BUCKET 9"	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B124	2025 24" DIGGING BUCKET	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B210	2020 48" cleanout	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
B212	2021 59" Cleanout Bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0

Filter: [Enabled] = True  
 Wednesday, August 6, 2025

Name	Description	Type	Location	Job	Foreman	Status	Enabled	Budget	ent	Hour	Rest	Odometer	Fine	Hour	Rest	Odometer	Fine
B213	2019 66" Cleanout Bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B214	2019 72" Cleanout bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B215	2022 66" Cleanout Bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B216	2024 Cleanout 48"	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B217	2024 CLEANOUT 48"	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B218	2025 Cleanout 48"	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B219	2024 48" Cleanout bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B220	2024 48" Cleanout bucket	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B223	2025 30" CLEANOUT BUCKET	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B224	2025 42" CLEANOUT BUCKET	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
B320	2018 12" Digging Bucket 35P	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0	0
BS28	2017 Ford F150	Pickup				In Service		0.0000	0	131,238	0	131,238	0	0	0	131,238	0
BS38	2019 Ford F450	Pickup				In Service		0.0000	0	94,912	0	94,912	0	0	0	94,912	0
BS39	2019 Ford F450	All:Heavy T				In Service		0.0000	0	102,852	0	102,852	0	0	0	102,852	0
BS43	2019 Ford F150	Pickup				In Service		0.0000	0	86,600	0	86,600	0	0	0	86,600	0
BS46	2020 Ford F350	Pickup				Sold		0.0000	0	1	0	1	0	0	0	1	0
BS47	2020 Ford f350	Pickup				Sold		0.0000	0	0	0	0	0	0	0	0	0
BS52	2020 Ford F350	Pickup				In Service		0.0000	0	103,913	0	103,913	0	0	0	103,913	0
BS53	2021 Ford F350	Pickup				In Service		0.0000	0	57,778	0	57,778	0	0	0	57,778	0
BS54	2021 Ford F350	Pickup				In Service		0.0000	0	63,910	0	63,910	0	0	0	63,910	0
BS55	2021 Ford F350	Pickup				In Service		0.0000	0	36,636	0	36,636	0	0	0	36,636	0
BS57	2021 Ford F150	Pickup				In Service		0.0000	0	102,424	0	102,424	0	0	0	102,424	0
BS60	2021 Ford F550	All:Heavy T				In Service		0.0000	0	88,449	0	88,449	0	0	0	88,449	0
BS61	2021 Ford F550	All:Heavy T				In Service		0.0000	0	75,186	0	75,186	0	0	0	75,186	0
BS62	2022 Ford F250	Pickup				In Service		0.0000	0	47,588	0	47,588	0	0	0	47,588	0
BS63	2022 Ford F250	Pickup				In Service		0.0000	0	0	0	0	0	0	0	0	0

Filter: [Enabled] = True  
Wednesday, August 6, 2025

Name	Description	Type	Location	Job	Foreman	Status	Enabled	Budget	ent: Hour	Rest: Odometer	Fine Hour	Reze Odometer	F
BS64	2022 Ford F250	Pickup				In Service		0.0000	0	32,750	0	0	32,750
BS65	2022 Ford F250	Pickup				In Service		0.0000	0	37,910	0	0	37,910
BS66	2022 Ford F350	Pickup				In Service		0.0000	0	24,206	0	0	24,206
BS67	2022 Ford F250	Pickup				In Service		0.0000	0	0	0	0	0
BS68	2023 Ford F350	Pickup				In Service		0.0000	0	16,535	0	0	16,535
BS69	2023 Ford F350	Pickup				In Service		0.0000	0	47,168	0	0	47,168
BS70	2023 Ford F350	Pickup				In Service		0.0000	0	28,121	0	0	28,121
BS71	2023 Ford F350	Pickup				In Service		0.0000	0	0	0	0	0
BS72	2023 Ford F150	Pickup				In Service		0.0000	0	0	0	0	0
BS73	2023 Ford F150	Pickup				In Service		0.0000	0	0	0	0	0
BS74	2023 Ford F150	Pickup				In Service		0.0000	0	0	0	0	0
BS75	2023 Ford F150	Pickup				In Service		0.0000	0	16,692	0	0	16,692
BS76	2023 Ford F350	Pickup				In Service		0.0000	0	38,654	0	0	38,654
BS77	2023 Ford F350	Pickup				In Service		0.0000	0	0	0	0	0
BS78	2024 Ford F350	Pickup				In Service		0.0000	0	0	0	0	0
BS79	2024 Ford F350	Pickup				In Service		0.0000	0	0	0	0	0
BS80	2024 Ford F150	Pickup				In Service		0.0000	0	6,810	0	0	6,810
BS81	2024 Ford F350	Pickup				In Service		0.0000	0	25	0	0	25
BS82	2024 Ford F350	Pickup				In Service		0.0000	0	0	0	0	0
BS83	2024 Ford F150	Pickup				In Service		0.0000	0	0	0	0	0
BS84	2024 Ford F150	Pickup				In Service		0.0000	0	0	0	0	0
BS85	2024 Ford F150	Pickup				In Service		0.0000	0	0	0	0	0
BS86	2024 Ford F350	Pickup				In Service		0.0000	0	5,611	0	0	5,611
BS87	2024 Ford F350	Pickup				In Service		0.0000	0	0	0	0	0
BS88	2024 Ford F150	Pickup				In Service		0.0000	0	0	0	0	0
CP001	Multiquip Reversible Plate	All-Small Ga				Imported		0.0000	0	0	0	0	0

Filter: [Enabled] = True  
Wednesday, August 6, 2025

Name	Description	Type	Location	Job	Foreman	Status	Enabled	Budget	ent Hour	Rest	Odometer	Time	Hour	Rese	Odometer	F
CP002	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP003	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP004	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP005	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP006	Bomag 6065 Slide Plate	All:Small Ga			Clayton Joh	Imported		0.0000	0	0	0	0	0	0	0	0
CP007	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP008	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP009	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP010	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP011	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP012	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP013	Multiquip Plate	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
CP014	Multiquip Plate Compactor	All:Small Ga				In Service		0.0000	0	0	0	0	0	0	0	0
CP015	Multiquip Plate Compactor	All:Small Ga				In Service		0.0000	0	0	0	0	0	0	0	0
CP016	Multiquip Plate Compactor	All:Small Ga				In Service		0.0000	0	0	0	0	0	0	0	0
CP017	Multiquip Plate Compactor	All:Small Ga				In Service		0.0000	0	0	0	0	0	0	0	0
DDR01	2022 HAMM HD10VV	All			Braulio Mon	In Service		0.0000	342	0	0	342	0	0	0	0
DPR02	2010 Wacker Neuson RD16	Miscellaneous			Clayton Joh	In Service		0.0000	103	0	0	103	0	0	0	0
DZ002	2017 Deere 650K dozer	All:Dozer			Joel Clark	In Service		0.0000	2,300	0	0	2,300	0	0	0	0
DZ003	2022 JD 650K LGP DOZER	All:Dozer				In Service		0.0000	385	0	0	385	0	0	0	0
EX002	2005 Cat 315 Excavator	All:Excavator			Devin Fishe	In Service		0.0000	10,902	0	0	10,902	0	0	0	0
EX004	2015 Cat 316 Excavator	All:Excavator			Richard Ole	In Service		0.0000	8,510	0	0	8,510	0	0	0	0
EX005	2017 Cat 305 Excavator	All:Excavator			Matthew La	Sold		0.0000	4,716	0	0	4,716	0	0	0	0
EX006	2018 Deere 35 Excavator	All:Excavator			Pedro Hern	Sold		0.0000	4,578	0	0	4,578	0	0	0	0
EX007	2018 Deere 50 Excavator	All:Excavator			Joel Clark	Sold		0.0000	4,659	0	0	4,659	0	0	0	0
EX008	2018 Deere 135 Excavator	All:Excavator			Braulio Mon	In Service		0.0000	5,371	0	0	5,371	0	0	0	0

Name	Description	Type	Location	Job	Foreman	Status	Enabled	Budget	ent	Hour	Rest	Odometer	Fine	Hour	Rest	Odometer	Fine	Hour	Rest	Odometer	Fine	
EX009	2020 Deere 17 Excavator	All:Excavato			Pedro Herr	In Service		0.0000		3,204		0	0	3,083		0	0	3,083		0	0	0
EX010	2020 Deere 85 Excavator	All:Excavato			Jeremiah S	In Service		0.0000		4,617		0	0	4,617		0	0	4,617		0	0	0
EX011	2021 Deere 50 Excavator	All:Excavato			Kylan Dykes	In Service		0.0000		2,918		0	0	2,918		0	0	2,918		0	0	0
EX012	2021 Deere 135 Excavator	All:Excavato			Steven Furu	In Service		0.0000		3,262		0	0	3,262		0	0	3,262		0	0	0
EX013	2019 Deere 245 Excavator	All:Excavato			Michael Cas	In Service		0.0000		3,308		0	0	3,308		0	0	3,308		0	0	0
EX014	2019 Deere 380 Excavator	All:Excavato			Jeremiah S	In Service		0.0000		3,911		0	0	3,911		0	0	3,911		0	0	0
EX015	2022 Deere 245 Excavator	All:Excavato		25PIECOU0	Jeremiah S	In Service		0.0000		2,197		0	0	2,197		0	0	2,197		0	0	0
EX016	2024 Deere 85 Excavator	All:Excavato			Steven Furu	In Service		0.0000		673		0	0	673		0	0	673		0	0	0
EX017	2024 Deere 60 Excavator	All:Excavato			Tyler Hugh	In Service		0.0000		589		0	0	589		0	0	589		0	0	0
EX018	2024 Deere 50 Excavator	All:Excavato			Joel Clark	In Service		0.0000		369		0	0	369		0	0	369		0	0	0
EX019	2024 Deere 60 Excavator	All:Excavato			Joel Clark	In Service		0.0000		597		0	0	597		0	0	597		0	0	0
EX020	2024 Deere 35 Excavator	All:Excavato			Richard Ole	In Service		0.0000		428		0	0	428		0	0	428		0	0	0
EX021	2023 DEERE 345P EXCAVATOR	All:Excavato				In Service		0.0000		872		0	0	872		0	0	872		0	0	0
EX022	2018 DEERE 85G EXCAVATOR	All:Excavato				In Service		0.0000		0		0	0	0		0	0	0		0	0	0
EX023	2025 DEERE 17P EXCAVATOR	All:Excavato				In Service		0.0000		39		0	0	39		0	0	39		0	0	0
EX024	2025 DEERE 35P EXCAVATOR	All:Excavato				In Service		0.0000		0		0	0	0		0	0	0		0	0	0
F48	2020 Ford F350	Pickup				Sold		0.0000		0		0	0	0		0	0	0		0	0	0
F49	2020 Ford F350	Pickup				Sold		0.0000		0		0	0	0		0	0	0		0	0	0
F51	2020 Ford F350	Pickup				Sold		0.0000		0		0	0	0		0	0	0		0	0	0
F58	2021 Ford F150	Pickup				Sold		0.0000		0		0	0	0		0	0	0		0	0	0
F59	2021 Ford F150	Pickup				Sold		0.0000		0		0	0	0		0	0	0		0	0	0
FL001	1998 Cat TH83 Telehandler	Miscellaneous				In Service		0.0000		5,705		0	0	5,705		0	0	5,705		0	0	0
FL002	2020 Moffet M8NX Piggyback	Miscellaneous			Steven Furu	Imported		0.0000		1,498		0	0	1,498		0	0	1,498		0	0	0
G001	Wacker/Neuson Generator	All:Small Ga				Imported		0.0000		0		0	0	0		0	0	0		0	0	0
G002	Honda 3000 Generator	All:Small Ga				Out of Servi		0.0000		0		0	0	0		0	0	0		0	0	0
G003	UST 3500	All:Small Ga				Out of Servi		0.0000		0		0	0	0		0	0	0		0	0	0

Filter: [Enabled] = True  
Wednesday, August 6, 2025

Name	Description	Type	Location	Job	Foreman	Status	Enabled	Budget	ent	Hour	Rest	Odometer	Time	Hour	Rest	Odometer
G004	Honda 3000 Generator	All:Small Ga				Out of Servi		0.0000	0	0	0	0	0	0	0	0
G005	Honda 3000 Generator	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
G006	Honda 3000 Generator	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
G007	Honda 2800 Generator	All:Small Ga			Michael Cas	Imported		0.0000	0	0	0	0	0	0	0	0
G008	Honda 5000 Generator	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
G009	Preditor 3500 Generator	All:Small Ga				In Service		0.0000	51	0	0	51	0	0	0	0
G010	Preditor 8750 Generator	All:Small Ga				In Service		0.0000	98	0	0	98	0	0	0	0
G011	Hinda EU1000 Generator	All:Small Ga				In Service		0.0000	0	0	0	0	0	0	0	0
GR01	2018 MAULDIN GRADER	All:Backhoe			Clayton Joh	In Service		0.0000	569	0	0	569	0	0	0	0
GS01	2025 GRAVEL SKIFF 7YD	Miscellaneo				In Service		0.0000	0	0	0	0	0	0	0	0
HP001	Cat 316/315 Hoe pack	Miscellaneo				In Service		0.0000	0	0	0	0	0	0	0	0
HP04	2024 BTI HOE PACK 135G	Miscellaneo				In Service		0.0000	0	0	0	0	0	0	0	0
JJ001	Multiquip Jumping Jack	All:Small Ga				Out of Servi		0.0000	0	0	0	0	0	0	0	0
JJ002	Multiquip Jumping Jack	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
JJ003	Multiquip Jumping Jack	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
JJ004	Multiquip Jumping Jack	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
JJ005	Multiquip Jumping Jack	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
JJ006	Multiquip Jumping Jack	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
JJ007	Multiquip Jumping Jack	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
JJ008	Multiquip Jumping Jack	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
JJ009	Multiquip Jumping Jack	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
JJ010	Multiquip Jumping Jack	All:Small Ga				Imported		0.0000	0	0	0	0	0	0	0	0
JJ011	Multiquip Jumping Jack	All:Small Ga				In Service		0.0000	40	0	0	40	0	0	0	0
JJ012	Multiquip Jumping Jack	All:Small Ga				In Service		0.0000	71	0	0	71	0	0	0	0
JJ013	Multiquip Jumping Jack	All:Small Ga				In Service		0.0000	47	0	0	47	0	0	0	0
LB108	2022 3YD LOADER BUCKET 544L	Miscellaneo				In Service		0.0000	0	0	0	0	0	0	0	0

Name	Description	Type	Location	Job	Foreman	Status	Enabled	Budget	ent Hour	Rest	Odometer	Fine	Hour Rate	Odometer R
LD001	Yanmar Loader	Wheel Load			Tyler Hugh	In Service		0.0000	2,906	0	0	2,906	0	0
LD002	2015 Cat 420 Backhoe	All:Backhoe			Kylan Dykes	In Service		0.0000	2,782	0	0	2,782	0	0
LD003	2018 Deere 331 CTL	All:Compact			Kylan Dykes	In Service		0.0000	2,008	0	0	2,008	0	0
LD004	2014 Vermeer S450TX Track	All:Mini Tra			Braulio Mon	In Service		0.0000	1,610	0	0	1,610	0	0
LD005	2018 Canycom Concrete Buggy	All:Mini Tra			Matthew La	In Service		0.0000	1,378	0	0	1,378	0	0
LD008	2023 DEERE 544 LOADER	Wheel Load			Michael Cas	In Service		0.0000	662	0	0	662	0	0
LD009	2025 DEERE 333P CTL	All:Compact				In Service		0.0000	0	0	0	0	0	0
LD010	2019 DEERE 544L LOADER	Wheel Load				In Service		0.0000	0	0	0	0	0	0
LD011	2019 DEERE 333G	All:Compact				In Service		0.0000	950	0	0	950	0	0
LF208	2022 PSM JD624 FORKS	Miscellaneous				In Service		0.0000	0	0	0	0	0	0
M001	2010 Allmand Light Plant	Miscellaneous				Imported		0.0000	3,842	0	0	3,842	0	0
M002	2012 Sullair	All:Compres			Richard Ole	In Service		0.0000	1,195	0	0	1,195	0	0
M005	Steam Cleaner	All:Small Ga				Imported		0.0000	0	0	0	0	0	0
M006	Lura Power screed	All:Small Ga				In Service		0.0000	2	0	0	2	0	0
PT001	Multiquip 48" Power Trowel	All:Small Ga				Imported		0.0000	0	0	0	0	0	0
PT002	Multiquip 36" Power Trowel	All:Small Ga				Imported		0.0000	0	0	0	0	0	0
PT003	Multiquip 36" Power Trowel	All:Small Ga				Imported		0.0000	0	0	0	0	0	0
PT004	Bartell Global 24" Power Trowel	All:Small Ga				Imported		0.0000	0	0	0	0	0	0
SDR01	Volvo SD45 single drum roller	Miscellaneous			Devin Fish	In Service		0.0000	590	0	0	590	0	0
SG312	SteelWrist Grapple	Miscellaneous				In Service		0.0000	0	0	0	0	0	0
SP014	Wacker Neuson 6655 Slide Plate	All:Small Ga				In Service		0.0000	0	0	0	0	0	0
SW001	2024 LEEBOY NB25 SWEEPER	Wheel Load				In Service		0.0000	19	0	0	19	0	0
T22	2017 Kenworth T880	All:Heavy T			Steven Furu	In Service		0.0000	0	413,618	0	413,618	0	413,618
T24	2006 Kenworth T800	All:Heavy T			Steven Furu	In Service		0.0000	0	613,146	0	616,835	0	616,835
T25	2018 Kenworth W900	All:Heavy T				In Service		0.0000	0	312,284	0	312,284	0	312,284
T26	2019 Kenworth T880	All:Heavy T			Steven Furu	In Service		0.0000	0	230,732	0	230,732	0	230,732

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Wednesday, August 6, 2025

Name	Description	Type	Location	Job	Foreman	Status	Enabled	Budget	ent Hour	Rest	Odometer	Fine	Hour	Rese	Odometer	F
T27	2015 Peterbilt 367 Tractor	All:Heavy T			Steven Furu	Imported		0.0000	0	0	546,165	0	0	0	546,165	0
T28	2023 Kenworth T880 Tractor	All:Heavy T			Steven Furu	In Service		0.0000	0	0	55,789	0	0	0	55,789	0
T29	2023 Kenworth T880	All:Heavy T			Steven Furu	In Service		0.0000	0	0	104,796	0	0	0	104,796	0
T30	2023 Kenworth T880	All:Heavy T			Steven Furu	In Service		0.0000	0	0	30,112	0	0	0	30,112	0
T31	2003 Sterling LT7500 VAC Truck	All:Heavy T			Matthew La	In Service		0.0000	0	0	89,464	0	0	0	89,464	0
TR001	2023 STR48 TRENCHER 30"X6" SHARK	Miscellaneous				In Service		0.0000	0	0	0	0	0	0	0	0
TT01	2015 Trailmax TD54	All:Trailer				Sold		0.0000	0	0	0	0	0	0	0	0
TT02	2019 Cross Country 373RT	All:Trailer			Jeremiah S	In Service		0.0000	0	0	0	0	0	0	0	0
TT03	2018 Trailmax TD16	All:Trailer			Steven Furu	In Service		0.0000	0	0	0	0	0	0	0	0
TT04	2009 Sturdyweld	All:Trailer				Imported		0.0000	0	0	0	0	0	0	0	0
TT05	2005 Sidump'r Tri/A Side Dump	All:Trailer				Imported		0.0000	0	0	0	0	0	0	0	0
TT06	2004 Beal Pup Trailer	All:Trailer			Jeremiah S	In Service		0.0000	0	0	0	0	0	0	0	0
TT07	2022 Tail King TKT50 LP	All:Trailer			Jeremiah S	Imported		0.0000	0	0	0	0	0	0	0	0
TT08	2022 Trail King TK60SSD	All:Trailer			Jeremiah S	In Service		0.0000	2	0	0	0	2	0	0	0
TT09	2022 Trail King TK110H	All:Trailer			Matthew La	In Service		0.0000	3	0	0	0	3	0	0	0
TT10	2002 OSW 4 axle pup	All:Trailer				In Service		0.0000	7	15	7	15	7	15	0	0
TT11	LUFKIN 45' 2 AXLE	All:Trailer			Steven Furu	In Service		0.0000	0	1	0	1	0	0	1	0
TT12	2020 Olympic OM14-2E 16	All:Trailer				In Service		0.0000	7	0	0	7	0	7	0	0
TT13	2022 Leeboy L300T Tack Trailer	All:Trailer				In Service		0.0000	0	0	0	0	0	0	0	0

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Wednesday, August 6, 2025



## **CONSULTANT SERVICES CONTRACT between the City of Des Moines and Psomas, Inc.**

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Psomas, Inc. organized under the laws of the State of Washington, located and doing business at 3131 Elliott Ave, Suite 400, Seattle, WA 98121 (hereinafter the "Consultant").

### **I. DESCRIPTION OF WORK.**

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

"Scope of Work for Construction Management" attached hereto as Exhibit "A" is incorporated herein by reference.

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

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

### **III. COMPENSATION.**

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed \$924,000.00 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit "A" for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

CONSULTANT SERVICES CONTRACT  
(Various)

- 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

CONSULTANT SERVICES CONTRACT 2  
(Various)

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

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

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

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

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

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

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

CONSULTANT SERVICES CONTRACT 3  
(Various)

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

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

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

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

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

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

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

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

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

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

CONSULTANT SERVICES CONTRACT 4  
(Various)

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

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

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

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

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

**C. Other Insurance Provisions.**

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

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

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

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(Various)

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

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

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

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

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

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

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

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

CONSULTANT SERVICES CONTRACT 6  
(Various)

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

**XVI. MISCELLANEOUS PROVISIONS.**

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

B. Resolution of Disputes and Governing Law.

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

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

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

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

CONSULTANT SERVICES CONTRACT 7  
(Various)

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

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

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

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

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

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

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

<p><b>CONSULTANT:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: _____</p> <p>Its _____  <i>(Title)</i></p> <p>DATE: _____</p>	<p><b>CITY OF DES MOINES:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: <u>Katherine Caffrey</u>  Its <u>City Manager</u>  <i>(Title)</i></p> <p>DATE: _____</p> <p>Approved as to form:</p> <p>_____  City Attorney                      Director</p> <p>DATE: _____                      DATE: _____</p>
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<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONSULTANT:</b></p> <p>Terry Wright  Psomas, Inc.  3131 Elliott Ave, Suite 400  Seattle, WA 98121  (206)267-1045 (telephone)  terry.wright@psomas.com (fax/email)</p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF DES MOINES:</b></p> <p>Allyssa Beaver  City of Des Moines  21630 11<sup>th</sup> Avenue S., Suite A  Des Moines, WA 98198  (206)870-6725 (telephone)  abeaver@desmoineswa.gov (fax/email)</p>
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CONSULTANT SERVICES CONTRACT 9  
*(Various)*

**EXHIBIT A**

**CITY OF DES MOINES**

**Marina Steps – Construction Services**

**PROJECT NO. MCCIP0030**

**SCOPE OF WORK**

**A. PROJECT DESCRIPTION/BACKGROUND**

The scope of work is to provide construction management throughout the construction phase of the Marina Steps Project in accordance with the Contract requirements. This work includes preconstruction support, construction phase services, and project closeout.

**Support Duration (December 2025 to December 2026: 12 Months)**

*Assumed Durations by Task*

- *Administration:* Task 1 starts on or about December 2025 and lasts the duration of the project, approximately 12 months, through closeout, concluding on or about December 2026.
- *Pre-Construction:* Task 2 begins after the bid opening date and ends on NTP. Project NTP is assumed to be late 2025/early 2026.
- *Construction Management:* Tasks 3 and 4 are anticipated to begin in early 2026 and conclude by the end of 2026.
- *Project Closeout:* Task 5 is expected to begin in late 2026 and last for up to 6 weeks.
- *PSIPE Period (1 Year):* Excluded from Scope – Will be performed by the City.

These services are intended to assist the CITY to administer the contract for construction performed by the CITY Contractor, confirm that the Contractor's work is in general conformance with the Contract Documents, and assist in responding to events that occur during construction. These services are based upon the understanding that the CITY will contract directly with the Contractor and will be actively involved in the construction process to make decisions, provide approvals, assist with inspections and perform other actions necessary for the completion of the construction.

**Project Description**

The project improvements for the Marina Steps redevelopment of the existing Overlook I Park, Hillside, and areas of the City's marina floor parking lot will include:

- Improved pedestrian access
- Playground area
- Water feature
- Bioretention planter
- New storm sewer utilities
- New water main
- New sanitary sewer
- Concrete seat wall
- HMA
- Concrete pavement
- Irrigation
- Illumination
- MSE wall

- Landscaping

**Contract Documents**

Contract Documents refer to the construction contract documents between the CITY and the Contractor. These documents include the project plans, specifications, change orders, addendums, bid proposal package and other documents such as the geotechnical report.

**Assumptions**

The presence or duties of Consultant personnel at the construction site, whether as onsite representatives or otherwise, does not make Psomas personnel in any way responsible for those duties that belong to franchise utilities, the CITY and/or the Contractors or other entities. Consultant presence, coordination, and schedule review does not relieve the Contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing the construction work in accordance with the construction contract documents and any health or safety precautions required by such construction work.

Consultant personnel have no authority to exercise any control over any construction Contractor or other entity or their employees in connection with their work or any health or safety precautions.

The presence of Consultant personnel at the site is for the purpose of providing the CITY a greater degree of confidence that the completed construction work will conform generally to the contract documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the Contractor(s). Consultant neither guarantees the performance of the Contractor(s) nor assume responsibility for the Contractor's failure to perform work in accordance with contract documents.

The authority of the Engineer, as described in Section 1-05 Authority of the Engineer in the contract documents, shall rest entirely with the CITY. Psomas' Resident Engineer (RE) is assigned the authority of the Project Engineer, as defined in Section 1-05.1 Authority of the Engineer except the RE shall not have authority to use non-Contractor resources to accomplish work when the Contractor fails to respond to orders, the RE may not authorize changes to the contract documents without City approval.

Review submittals compliance with the requirements of the Contract for construction. Such review will not relieve the Contractor from its responsibility for performance in accordance with the Contract for construction, nor is such review a guarantee that the work covered by the shop drawings, samples and submittals is free of errors, inconsistencies or omissions.

**Plant Establishment**

- It is assumed that the **CITY** takes over total responsibilities of all inspection and administrative duties for the plant establishment warranty period as described in Contract Provision 32 93 53 Plant Establishment and Landscape Maintenance.

**Over the 200 Working Days**

- o The Project Manager will support the project part-time, or 2 hours per week, on the average.
- o The Resident Engineer will support the project at half-time, or 20 hours per week, on the average.
- o The Documentation Specialists will support the project at half-time, or 20 hours per week, on the average.
- o The Onsite Construction Observer will support the project at full time, or 42.5 hours per week, on the average. The extra 2.5 hours/week will help to ensure adequate budget for inevitable overtime by the Contractor, onsite work that is permitted to occur during weather days granted to the Contractor, and to ensure adequate office time in assistance with assembling monthly pay estimates and maintaining updated daily reports.
- o Design Engineer (KPF) support is anticipated as needed for submittal reviews, RFI's, Change Management, and other tasks as identified in the Scope of Work. It is assumed

that budget related to Engineer of Record Construction Support is included under separate contract between KPFF and the City.

Close Out

- o From Substantial Completion to Final Completion, budget assumes
- o 80 hours for Resident Engineer over 2 months, and
- o 80 hours for Document Specialists over 2 months

**Subconsultants**

The Consultant shall subcontract with HWA Geosciences for materials testing, the frequency of such tests being performed as required by Contract requirements.

The Consultant shall subcontract with IVC for seismic monitoring during ground disturbing activities.

**Shared Tasks**

***“Bold Italics”*** such as ***CITY*** represents Task ownership. If a Task is not identified with bold italics, the task is shared between the Consultant, applicable Subconsultants, and the CITY as described herein.

**B. SCOPE OF WORK**

**TASK 1 – MANAGEMENT / COORDINATION / ADMINISTRATION**

The Consultant shall provide continuous project management for the project duration.

The Consultant shall prepare monthly progress reports identifying work completed in the previous month, work in progress, upcoming work elements, and reporting of any delays, problems, or additional information needs. These reports shall be submitted with the Consultant invoices.

The Consultant shall provide continuous management and administration of all subcontractors included in this scope of work including overseeing overall project file set-up and QA/QC of all files and documents required by the Contract.

Attend kickoff meetings with CITY PM to coordinate processes the CM team will follow to implement the project’s construction phase. The general meeting content will include project transition from design to construction, team roles and responsibilities, summary of contractor schedule responsibilities, contract documents, project documentation, field inspection, administration, submittals and material control, change management, request for information, testing, stakeholder meetings, agency permits, work on private property, construction commitments, public information, traffic control, safety and security, quality and risk management.

Establish a system and set of procedures for managing, tracking and storing project documentation between the Contractor and CM Team produced during the Construction and Closeout phases of the project. Establish procedures for the logging and tracking of project documentation and monitoring outstanding decisions, approvals or responses required from the CITY.

The following logs will be prepared:

1. Submittals
2. RFI
3. Serial Letters
4. Field Directives/Corrective Actions
5. Case Log
6. Design Changes/Clarifications
7. Change Orders
8. Sub-Contractors
9. Wage Rate Calculations

10. Materials on Hand
11. Force Account
12. Minor Changes
13. Material Testing Reports

The following templates, to include securing CITY Templates and/or CITY input will be prepared:

1. Field Note Records
2. Estimate Ledgers
3. Progress Payment Estimates
4. Materials on Hand Calculations
5. Forecasted Cost to Complete
6. Weekly Statement of Working Days
7. Change Orders

**TASK 2 – CONSTRUCTION SERVICES FROM BID UP TO CONTRACTOR NOTICE TO PROCEED (NTP)**

This task covers typical review processes for preparing for physical construction to begin. This includes the following:

- Familiarization with contract Plans, Specifications, permits and geotechnical report
- Develop Team Communications and Stakeholders List
- Compile list of submittals
- Prepare self-audit record review checklist
- Establish communication, change management and administrative processes with CITY
- Prepare Electronic Files
- Review CITY right-of-way commitment files
- Pre-construction agenda

**CITY** to compile Bid Tabulations

**CITY** shall Prepare Pre-Construction attendees list

**CITY** shall prepare Recommendation of Award Letter as part of the CITY's low bid evaluation and decision to Award. Recommendation of Award package to be prepared by the CITY includes;

- a. **CITY**-prepared Bid Tabulation sheet at opening checking that bidders included:
    1. Bidder's Name
    2. Addendum 1 acknowledged
    3. Bid bond
    4. Responsible bidder Determination Form
    5. DBE Utilization Certificate Form
    6. Total Bid
  - b. **CITY**-prepared Bid Tabulations of all Contractors and submitted unit prices
  - c. Verification of low bidder's license from the Department of Labor and Industries
  - d. Verification that the Contractor is not listed on the list of parties excluded from the federal procurement or non-procurement programs
  - e. Verification of the low bidder's qualifications (references)
- Consultant shall conduct Pre-Construction meeting to include preparing the minutes and distribution thereof
  - Establish Contractor progress payment procedure with the CITY and Contractor
  - **CITY** will assist Consultant with Utility Coordination
  - Consultant will take and create a log of pre-construction photographs
  - Review Contractor's Schedule for Contract Compliance
  - Review the Contractor's Schedule of Values for completeness

### TASK 3 – CONSTRUCTION SERVICES (CS) – NTP TO SUBSTANTIAL COMPLETION

- Provide 200 working days of CS support to include stakeholder coordination, documentation and change management in general compliance with CITY, State and Federal Requirements.
- Maintain the Logs identified in Task 100
- **CITY** to review and approve Traffic Control Plans with assistance from Consultant
- Review and respond to Contractor Serial Letters.
- Issue Field Directives/Corrective Action Memorandums
- Receive and distribute Request for Information (RFI) and issues raised by the Contractor, City, and Consultant. Receive and distribute questions and requests for clarification of contract documents that could impact construction costs, schedule, quality of the finished work, or other scenarios. Provide up to 50 written responses to RFI's.
- Confirm that submittals are in general Contract conformance. Coordinate with **CITY** on approvals as necessary.
- Transmit submittal log to the Contractor
- Set up and maintain submittal log
- The Consultant to verify that all material delivered to the site is according to approved RAMs
- Collect material testing reports from Consultant's subconsultant (HWA), and review test reports against the contract requirements and inform Contractor of any contract deficiencies
- Construction Observer to coordinate with the Contractor to rectify failed material placement issues to bring about Contract compliance.
- The Consultant shall coordinate re-testing of failed locations with Subconsultant material inspection firm.
- Collect material testing reports from Subconsultant
- Collect and review for acceptance Manufacturer's Certificates of Compliance
- Review Contractor's initial schedule and updated schedules for contract compliance. Report findings to the CITY regarding issues that affect critical path.
- Prepare weekly meeting agendas and conduct weekly meetings (one per week during 52 weeks of construction + 4 additional meetings to account for non-working days/holidays). Consultant staff shall attend weekly meetings.
- Take notes from weekly meetings, prepare and distribute minutes to attendees.
- Prepare up to 56 Weekly Statement of Working Days (accounting for weather days and holidays / WSDOT-specified nonworking days)
- Consultant shall obtain Request to Sublet review requests approve and/or reject
- Obtain Notice of Intent to Pay Prevailing Wage and Affidavit of Wages Paid forms
- Perform Change Management to include tracking case log issues, Minor Changes, Force Account, reviewing Contractor notifications of differing site conditions under 1-04.4 Changes, review letters and notices and discuss with the Contractor to understand the claim and/or dispute. Advise the City as to the appropriate action(s)
- Assist the City with Change Order negotiations
- Prepare Change Order Justifications
- Draft Change Orders for City review and approval
- Determine which sub-contractors performed work during the payment period and exclude payment for any work completed by sub-contractors for which an Intent to Pay Prevailing Wages submitted to the Washington State Department of Labor and Industries cannot be verified
- Maintain Material on Hand pay request and log

- Prepare 11 monthly progress pay estimates and submit monthly billing to CITY recommending Contractor payment
- Maintain a set of Record Drawings, independent of the Contractor's. This set of Record Drawings will be used to verify the Contractor is in general conformance with Special Provision 1-05.18 Record Drawings
- Review Contractor's weekly "Look Ahead" and monthly schedule and compare with Contractor's approved schedule.
- As outlined above, provide oversight of the Contractor to fulfill their responsibilities if they are non-compliant under Special Provision 1-05.18 Record Drawings. Receive As-Built drawings from Contractor for incorporation into **CAD drawings by the EOR (KPF)**
- Maintain a submittals list and prompt the Contractor for submittals
- Assist the City with Utility Coordination
- The Contractor is responsible for the NPDES Ecology permit. Assist the CITY in monitoring the Contractor's responsibilities of said permit
- Assist the CITY by providing a contract schedule and activities for coordination with the public. Respond to general coordination regarding items such as status, schedule and access. The **CITY** will provide a broader public involvement that may involve flyers, news releases, public meetings and information website
- Maintain electronic CM files

#### **TASK 4 – ONSITE OBSERVATION**

##### **Construction Observation:**

The Consultant will provide onsite Construction Observer(s) for 200 working days and will act as the project's "in the field" focal point of coordination and field documentation. The Construction Observer(s) will monitor the Contractor's activities, produce Observation Daily Reports, Field Note Records, if necessary, verify that material delivered to the site is in contract compliance and assist with the coordination with stakeholders to include the Contractor, materials testing, and Fire and Police Departments. The Construction Observer will provide informal in-person coordination with businesses, residents and traveling public, as they are encountered onsite. The following Tasks will be the responsibility of the Construction Observer(s), and Resident Engineer or other staff when assuming these duties:

- Provide Inspector Daily Reports
- Provide input to weekly project meeting agendas
- Attend weekly project site meetings associated with the project construction
- Observe Contractor's work and document that the project is built according to the Contract Documents
- Monitor the Contractor's traffic control procedures and implementation of the approved traffic control plans which could include notification to the Contractor on deficiencies that require immediate correction
- Monitor the Contractor's temporary erosion and sediment control procedures and systems and provide recommendations
- Monitor the Contractor's compliance with project permits
- Prepare punch list items
- Take project construction photos as work progresses and place in project file
- Stay current with the material testing and submittal logs. Coordinate material testing, as required under the contract documents, with Subconsultant HWA.

- Review the Contractor's Record Drawings weekly to verify they are in compliance with Special Provision 1-05.18 Record Drawings
- Maintaining a set of Record Drawings, independent of the Contractor's Record Drawings
- Coordinate with all Utilities
- Coordinate with local businesses, traveling public, residences and adjacent developers
- Assist with monthly progress Pay Estimate generation including measurement of quantities installed.

Assumptions:

- Psomas assumes rebar inspections can be performed by on-site observer. If a certified 3<sup>rd</sup> party is required for rebar inspections, an additional \$8,200 would be added to the cost.
- Contractor will work 40 hours/week.

**Cultural Resource Monitoring:**

***Client Coordination and Project Management***

Psomas will maintain regular communication with the City regarding progress, budget, and schedule, and will coordinate with the necessary agencies and contractors. This task includes time for client and internal team meetings. Psomas will maintain archaeological monitoring availability by attending construction team meetings, coordinate with the construction managers, and evaluate proposed work elements for archaeological monitoring.

Deliverables:

- Psomas will attend up to two in-person meetings and 10 conference calls.

Assumptions:

- The scope of monitoring is anticipated to last up to six months from Notice to Proceed to closeout.

***Development of an Archaeological Resources Monitoring Plan (ARMP)***

Psomas will prepare a project-specific Archaeological Resources Monitoring Plan (ARMP) for implementation during project construction. The ARMP will provide the procedures and protocols to follow during Project ground-disturbing activities, and outline areas of responsibility between Commerce and Ecology.

Deliverables:

- One draft ARMP (Word format) submitted by Psomas to the City.
- One revised draft ARMP (Word format) submitted by Psomas for review by Commerce, Ecology, and Tribes.
- One final ARMP (pdf format) submitted by Psomas to stakeholders/DAHP.

***Archaeological Monitoring***

Psomas will conduct Archaeological Monitoring of all ground disturbing construction east of Dock Street (see **Error! Reference source not found.**). If elements of the project are not subject to monitoring this will be determined through development of the Archaeological Resources Monitoring Plan (ARMP) (subtask 1.2) and/or consultation with Commerce, Ecology, DAHP, and Tribes. Psomas will conduct monitoring in accordance with the ARMP and abide by any requirements from DAHP and appropriate agencies, such as those found in an Archaeological Permit, if required (see subtask 1.5).

Deliverables:

- Information gathered during this task will be included in the Monitoring Summary Memorandum (Subtask 1.4).

Assumptions:

- Psomas will adhere to the ARMP (subtask 1.2) created for this Project.
- Project excavation will occur in a manner that requires only one monitor each working day.
- Psomas assumes no night or weekend work requiring archaeological monitoring will be conducted (including subtask 1.5).
- Psomas assumes no ground disturbance will occur within 30 meters of archaeological site 45K11748 (see Figure 1).
- Archaeological Monitoring is expected to require up to 30 working days; if more than 30 days of monitoring is required, an amendment may be necessary.
- Psomas assumes each working day is up to 10 hours long, including 1.5 hours round trip travel time from the Psomas office.
- Archaeological monitors will be provided a minimum of 48 hours advance notice prior to work requiring a monitor.
- Psomas assumes that if a monitor is requested but then cancelled by the contractor with less than 24 hours' notice, a minimum charge of 4 hours will apply.
- HAZWOPER-certification will not be required.
- Psomas assumes no archaeological sites, isolates, or human remains will be identified. If encountered, an amendment may be necessary.

**Monitoring Summary**

Psomas will summarize the results of monitoring in a Monitoring Summary Memorandum. Psomas will submit a Draft Memorandum (Word format) for review by the City. Once all comments are received, Psomas will prepare a Draft Memorandum for submission to Commerce and Ecology. Once all comments are received, Psomas will prepare a Final Memorandum for submission to DAHP and Tribes (PDF format).

Deliverables:

- Two draft Monitoring Summary Memoranda (Word format) for review by the City, Commerce, and Ecology.
- One final Monitoring Summary Memoranda (PDF format) for submittal to DAHP and Tribes.

Assumptions:

- DAHP will not require a revised report.

**Schedule**

Psomas will submit the draft Monitoring Summary Memorandum to the City within 30 business days of the completion of project construction.

**Cliff Ave S/S 223<sup>rd</sup> St (contingency)**

This subtask will only be initiated if there is ground disturbance at Cliff Avenue S and S 223<sup>rd</sup> Street, where archaeological site 45K1449 has been identified (see **Error! Reference source not found.** for "Contingency Area").

Archaeological site 45K1449 has been identified at the intersection of Cliff Avenue S and S 223<sup>rd</sup> Street. The work activities to be completed here fall under the jurisdiction of the Department of Commerce.

*City of Des Moines – Marina Steps Project  
Construction Services*

*Page 8 of 8  
October 02, 2025*

Therefore, any ground disturbing work to take place within the boundaries of archaeological site will require a State of Washington Archaeological Permit. This subtask includes permit preparation, coordination, and archaeological monitoring.

**Deliverables:**

- Two draft Archaeological Permits (Word format) for review by the City and Commerce.
- One final Archaeological Permit (PDF format) for submittal to DAHP and Tribes.

**Assumptions:**

- Psomas will prepare up to two draft permits and one final permit.
- DAHP will not require a revised permit.
- Permit preparation and DAHP review will take a minimum of 90 days.
- Archaeological Monitoring in the contingency area is expected to require up to 10 working days; if more than 30 days of monitoring is required, an amendment may be necessary.
- Project excavation will occur in a manner that requires only one monitor each working day over the entire project (subtasks 1.2 and 1.5).
- Psomas assumes no night or weekend work requiring archaeological monitoring will be conducted.
- Psomas assumes each working day is up to 10 hours long, including 1.5 hours round trip travel time from the Psomas office.
- Archaeological monitors will be provided a minimum of 48 hours advance notice prior to work requiring a monitor.
- Psomas assumes that if a monitor is requested but then cancelled by the contractor with less than 24 hours' notice, a minimum charge of 4 hours will apply.
- Mileage reimbursement for the project is calculated at the current GSA rate of \$ 0.70 per mile, 40 miles round trip from the Psomas office.
- HAZWOPER-certification will not be required.
- If archaeological site 45KI449 is encountered during project work, any necessary field investigations and/or reporting will require an amendment.

**TASK 5 – PROJECT CLOSEOUT**

Assist the CITY with the closeout of the project after Substantial Completion is granted. Assume the Contractor will be completed with punch list work and missing documentation within 3 months of Substantial Completion. Items of work within these 3 months include the following:

- Project issues resolution with the Contractor. Assume up to three closeout meetings negotiating closeout change order(s), missing documentation, and final quantities
- Monitor and update project punch list
- Consultant to produce final pay note documentation
- Self-audit record review checklist
- Verification of completeness of punch list work
- Prepare Physical Completion Letter. Physical completion shall constitute the whole project except the plant establishment.
- Prepare Final Completion Letter. Completion shall constitute all necessary paperwork filed by the Contractor and the City's acceptance of the project.
- Record drawings are assumed to be within the scope of the EOR (KPFF) and are excluded from this scope.

#### **TASK 6 – SUBCONTRACT ADMINISTRATION**

HWA Geosciences will perform Material Testing and Laboratory Services as a Subconsultant.

- Consultant will lead coordination of scheduling of testing as-needed to fulfill Contract requirements for acceptance. The effort required for this coordination is included in task 3.
- Consultant will review monthly invoices from Subconsultant and shall submit along with Consultant monthly invoices for payment from City.
- This scope assumes standard items of testing, such as compaction of backfill materials, proctor testing of aggregates, rebar inspection, concrete field tests and cylinders, and HMA density and associated testing.
  - o Additional scope such as contaminated material testing or special inspections are not included, and fall outside the scope of this contract. In the event such testing or inspections are deemed necessary, they may require an amendment for additional scope of services and compensation.

Environmental Science Associates

- Consultant will lead coordination of scheduling of cultural resource monitoring during excavation activities. The effort required for this coordination is included in task 3.
- Consultant will review monthly invoices from Subconsultant and shall submit along with Consultant monthly invoices for payment from City.
- This scope assumes standard items of monitoring during excavation of existing ground and submission of all necessary reports.

#### **MANAGEMENT RESERVE**

This Scope and Budget does not include management reserve. In the event the Consultant's services are needed outside of what is described in this scope, a daily rate would be used as a baseline for additional services.

These services could include other work tasks not included in the scope of work. These services may include, but are not necessarily limited to, additional construction support, additional project closeout assistance, assistance with property issues, or other services deemed necessary by the City. At the time these services are required, the Consultant shall provide the City with a detailed scope of work and an estimate of costs. The Consultant shall not proceed with the work until the City has authorized the work and issued a Notice to Proceed.

Construction Services in addition to this scope of work are estimated at approximately \$3,568/day.

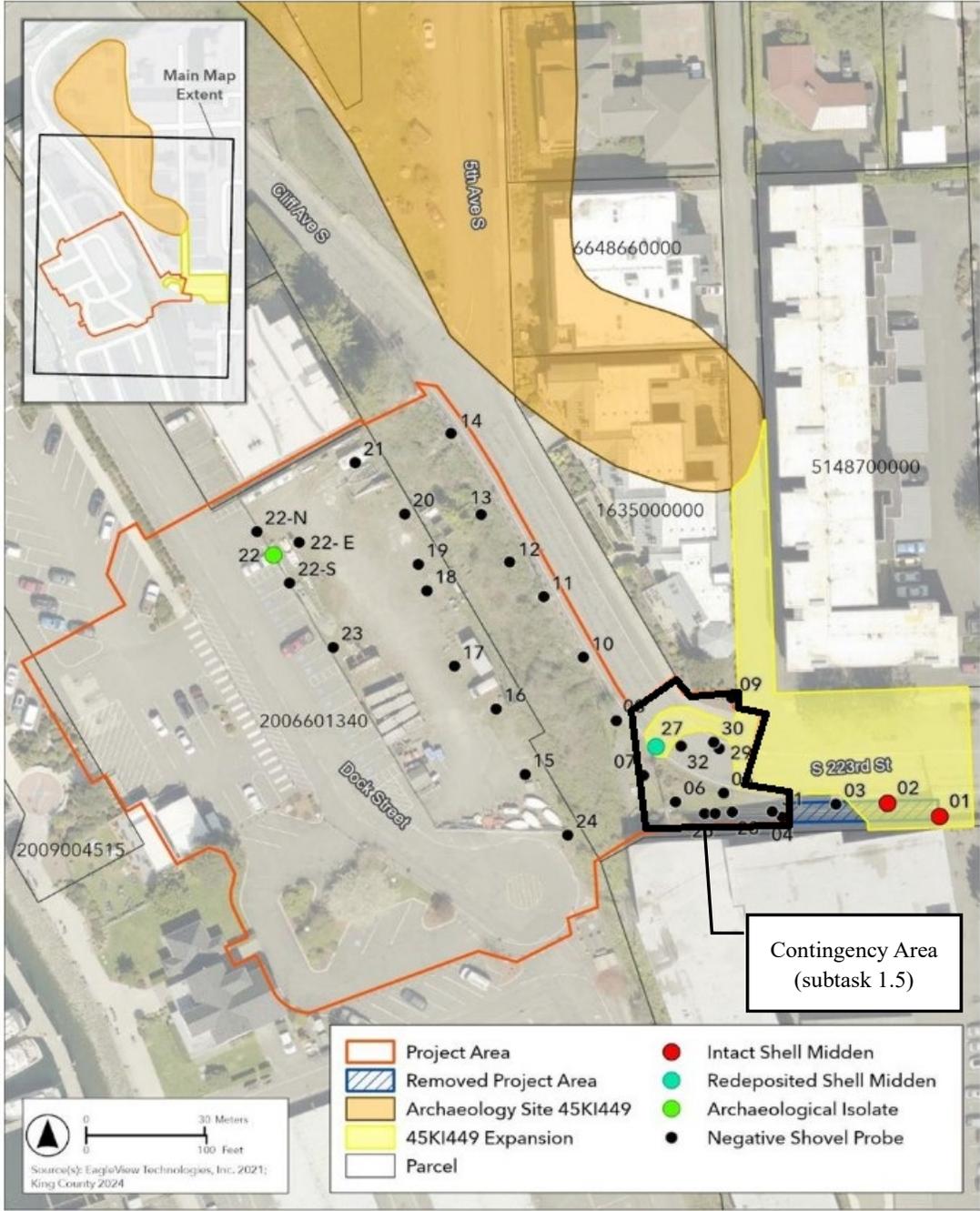


Figure 1. Project Area and Contingency Area (subtask 1.5).



**FORMAL TASK ASSIGNMENT DOCUMENT**

Task Number 2025-01

The general provisions and clauses of Agreement 19-159  
Shall be in full force and effect for this Task Assignment.

Location of Project: Des Moines, WA

Project Title: Des Moines Marina Steps Change Order Request 09

Maximum Amount Payable Per Task Assignment: Time and Materials Not-to-Exceed \$426,787

Completion Date: December 31, 2026

Description of Work: Refer to Change Order Request #09 proposal for complete description of work.

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Agency Project Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Oral Authorization Date: \_\_\_\_\_ See Attachment Dated: \_\_\_\_\_

Consultant Signature: Puja Kashyap Date: 16-Oct-2025

Agency Approving Authority: \_\_\_\_\_ Date: \_\_\_\_\_



## **CHANGE ORDER REQUEST (COR) #09**

**DATE:** October 16, 2025  
**JOB NUMBER:** 2300235  
**CLIENT:** City of Des Moines  
**PROJECT NAME:** Des Moines Marina Steps

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### **BACKGROUND**

We request fees associated with the construction phase of the Des Moines Marina Steps (DMMS) project located at 501 South 223<sup>rd</sup> Street, Des Moines, WA 98198. The additional scope and associated fees are documented herein.

### **SCOPE**

This Change Order Request includes scope related to the following changes to the project:

- Prime and civil construction support services;
- Landscaping construction support services;
- Geotechnical Engineering construction support services;
- Electrical lighting construction support services; and
- Structural engineering construction support services.

Detailed scope descriptions for each consultant can be found in the following attachments to this proposal.

- KPFF Prime & Civil: Attachment A.
- PLACE: Attachment B.
- Interface: Attachment C.
- Shannon & Wilson: Attachment D.
- KPFF Structural: Attachment E.

### **FEE**

We request the following not-to-exceed (NTE) fees be incorporated to address the scope of work described herein. A more detailed breakdown of these fees can be found in Attachment F.



**CHANGE ORDER REQUEST (COR) #09**

<b>Consultant</b>	<b>COR #09 NTE Fee</b>
KPFF Prime & Civil	\$ 259,574
PLACE	\$ 92,111
Interface	\$9,522
Shannon & Wilson	\$57,465
KPFF Structural	\$ 8,115
<b>TOTAL:</b>	<b>\$ 426,787</b>

If this proposal meets with your approval, please sign below and return one copy for our files. If you have any questions regarding this proposal, please call me at (206) 660-5297.

**Offered By KPFF, Inc.**

**Accepted by City of Des Moines**

\_\_\_\_\_  
**Puja Kashyap, PE**  
**Principal**

\_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Print Name/Title)**



## **CHANGE ORDER REQUEST (COR) #09 KPFF SCOPE**

**DATE:** October 16, 2025  
**JOB NUMBER:** 2300235  
**CLIENT:** City of Des Moines  
**PROJECT NAME:** Des Moines Marina Steps

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KPFF Civil will continue to act as the Prime Consultant for the design team for this project and will work closely with the Construction Management team (Psomas) during construction. The design team includes KPFF civil and structural; and other subconsultants including landscaping (PLACE), lighting (Interface), MSE wall design and geotechnical engineering (Shannon and Wilson). Cultural resource services during construction will be provided by Psomas, but ESA will continue to be contracted under KPFF using remaining funds for any minor coordination efforts. The subconsultant fee proposals are provided as separate attachments.

Our scope and fees assume a notice to proceed (NTP) starting October 23, 2025 with a completion date of December 31, 2026. We understand that the construction duration will be 200 working days.

### **SCOPE OF WORK**

KPFF's proposed scope consists of the following:

#### **CONSTRUCTION SUPPORT – PRIME**

- Attend up to four virtual agency meetings.
- Coordinate with the City, Psomas, design team, and contractor to support clear communication during construction.
- Prepare monthly invoices and progress reports for the design team.
- Manage design team contracts.
- Review change orders and pay applications for accuracy based on knowledge of the scope of the change order, soliciting input from design team and providing feedback to Psomas.
- Respond to King County Water District #54 and Midway Sewer District for up to one round of comments. Permits will be obtained by the contractor.
- Coordinate the transfer of coverage of the NOI from KPFF to the contractor.
- Attend weekly construction coordination meetings.
- Conduct one weekly site visit for field observation and prepare field reports.
- Support subconsultant reviews of submittals and requests for information (RFIs).



**CHANGE ORDER REQUEST (COR) #09  
KPFF SCOPE**

- Assemble and issue construction drawings and specifications in a Conformance Set following selection of the awarded scope and Contractor.
- Assemble the civil and subconsultant record drawings and submit to the City via electronic file share method. Conduct up to one round of corrections.

**CONSTRUCTION SUPPORT - CIVIL**

- Attend up to seven pre-construction conferences with various agencies and subcontractors.
- Conduct up to three site visits per month and prepare field reports. Conduct one final site walk-through and prepare a punch list.
- Review civil-related submittals and respond to requests for information (RFIs). Reissue drawings as required based on RFI-related changes.
- Revise the civil construction drawings and specifications in a Conformance Set.
- Assemble civil-related record drawings (PDF).

**ASSUMPTIONS**

- There are known archaeological artifacts near the project area. If redesign is required, KPFF will assess the impacts and evaluate if an additional service is required.
- Post permit corrections and resubmittals will not be required.
- The City does not have record drawing AutoCAD standards and will not require CAD files.
- City will provide parking passes or validation for duration of construction.

**FEES**

We propose to provide the above services for a not-to-exceed fee in accordance with the enclosed Terms and Conditions, which are made part of this proposal.

<b>Civil (KPFF)</b>	
Construction Support Services - PRIME	\$166,038
Construction Support Services - CIVIL	<u>91,692</u>
	<b>\$262,563</b>
Reimbursables	<b>\$ 1,844</b>
<b>Subtotal</b>	<b><u>\$259,574</u></b>

**Consultant Contract Fee Estimate**

City of Des Moines 2025-2026 On-Call Civil Engineering Services  
Attachment A

KPPF Civil		Principal	Project Manager	Civil Design EGR	Drafter	Admin	Subtotal
		\$ 255.03	\$ 210.82	\$ 161.09	\$ 129.60	\$ 100.80	
Task No	Description						
	<b>Construction Support Services - PRIME</b>	<b>68</b>	<b>329</b>	<b>400</b>	<b>64</b>	<b>20</b>	<b>161,448</b>
	Agency Meetings	1.0	4.0	4.0			\$ 1,742.67
	Coordination w/ Owner, Subconsultants, CM, Contractor	20.0	40.0	40.0			\$ 19,977.00
	Prepare monthly invoices and progress reports	1.0	24.0			10.0	\$ 6,322.71
	Manage and monitor subconsultant contracts, etc.	1.0	8.0			10.0	\$ 2,949.59
	Review change orders and pay applications	1.0	16.0				\$ 3,628.15
	Permit coordination	6.0	8.0	12.0	12.0		\$ 6,705.02
	DOE/NOI Transfer Coordination		1.0	8.0			\$ 1,499.54
	Construction Coordination Meetings	12.0	80.0	80.0			\$ 32,813.16
	Site Visits		80.0	160.0			\$ 42,640.00
	RFI's	20.0	40.0	40.0	40.0		\$ 25,161.00
	Submittals	4.0	20.0	40.0			\$ 11,680.12
	Conformed Construction Set	2.0	8.0	16.0	12.0		\$ 6,329.26
	<b>Construction Support Services - Civil</b>	<b>21</b>	<b>154</b>	<b>248</b>	<b>60</b>	<b>0</b>	<b>85,548</b>
	Pre-Construction Meetings	2.0	14.0	14.0			\$ 5,716.80
	Site Visits			96.0			\$ 15,464.64
	RFI's	15.0	112.0	112.0	40.0		\$ 50,663.37
	Submittals	2.0	20.0	10.0			\$ 6,337.36
	Conformed Construction Set	2.0	8.0	16.0	20.0		\$ 7,366.06
	<b>Record Drawings - PRIME</b>	<b>1</b>	<b>8</b>	<b>10</b>	<b>8</b>	<b>0</b>	<b>4,589</b>
	As-builts	1	8	10	8		\$ 4,589.29
	<b>Record Drawings - Civil</b>	<b>1</b>	<b>8</b>	<b>10</b>	<b>20</b>	<b>0</b>	<b>6,144</b>
	As-builts	1	8	10	20		\$ 6,144.49
	<b>Total Hours</b>	<b>91</b>	<b>499</b>	<b>668</b>	<b>152</b>	<b>20</b>	<b>257,730</b>

<b>Total Fee (Direct Labor X 3.12)</b>	<b>\$ 23,207.73</b>	<b>\$ 105,199.18</b>	<b>\$ 107,608.12</b>	<b>\$ 19,699.20</b>	<b>\$ 2,016.00</b>	<b>\$ 257,730.23</b>
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Other Direct Costs	Qty	Cost per Unit	Total
64 Mileage (34 mi. x 64 trips)	2176.00	\$ 0.70	\$ 1,523.20
Parking	64.00	\$ 5.00	\$ 320.00
Reprographics	0.00	\$ -	\$ -
Courier	0.00	\$ -	\$ -
Postage	0.00	\$ -	\$ -
Other	0.00	\$ -	\$ -

<b>Total Reimbursable Costs</b>			<b>\$ 1,843.20</b>
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<b>KPPF CIVIL TOTAL</b>	<b>\$ 259,573.43</b>
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10.13.2025

*Via E-mail: Maddy.Murphy@kpff.com*

Maddy Murphy

**KPFF**

1601 5<sup>th</sup> Avenue, Suite 1600

Seattle, WA, 98101

Re: Des Moines Marina Steps - Construction Observation

Hello Maddy,

We are excited to see the project advance to construction and have developed a scope and fee for construction observation phase. PLACE will assist KPFF with project tasks through the duration of construction and final physical acceptance. We understand the project construction manager will be KPG Psomas. They will serve as the primary contact and distribute information to KPFF who will in turn provide information to PLACE. The construction observation phase is understood to be 200 working days (one calendar year estimated January 2026 to December 2026).

**Construction Observation Scope:**

- 20.3 Conformed Set (1-2 weeks)
  - Plan and specification update to align awarded scope
  - Conformed scope is defined in the bid set and additional adjustments are not required
  
- 30.3 Construction Support (60 weeks)
  - Review and approve product submittals, change orders and shop drawings as needed
  - Issue clarification drawings as needed
  - Attend twenty-four (24) site visits, observe construction, and provide information
  - Attend three (3) Substantial Completion walk-throughs and provide punch list memorandum
  - Attend two (2) Final Completion walk-through
  - The future scope for 'Artist Mock-up Review' is not fully understood at this time. The fee includes attending two (2) virtual meetings during the course of construction to understand the scope of the artist(s) selection process and their work.
  
- 40.3 Record Documents
  - Compile changes made to the documents during the construction process
  - Assimilate contractor's redline as-built notes into the documents
  - Provide CAD and PDF versions of documents

**PLACE**  
www.place.la

PLACE proposes an additional NTE fee based on hourly services for the additional requested scope. Fee breakdown per subtask:

**Fee:**

20.3	Conformed Set	\$ 2,505.39
30.3	Construction Support	\$ 85,544.46
40.3	Record Documents	<u>\$ 4,094.54</u>
	subtotal	\$ 90,844.39

	Reimbursable Expenses	<u>\$ 1,266.40</u>
	<b>Total Proposed fee:</b>	<b>\$ 92,110.79</b>

We appreciate your partnership and collaboration.

Best regards,

**PLACE**



Phoebe Bogert | Principal



Mauricio Villarreal | Principal





**Interface Engineering**  
100 SW Main Street, Suite 1600  
Portland, OR 97204  
TEL 503.382.2266  
[www.interfaceengineering.com](http://www.interfaceengineering.com)

October 13, 2025

Maddy Murphy  
KPFF Consulting Engineers  
1601 5th Avenue, #1300  
Seattle, WA 98101

Re: Des Moines Marina Steps  
2023-0440  
Additional Services Proposal – Construction Support Services

Dear Maddy:

As requested, we have used your Consultant Contract Fee Estimate tool to determine anticipated fees based on our project hourly rates. We have allowed for two site visits and attendance in five virtual construction meetings.

This additional service will be invoiced for an hourly not to exceed amount of \$9,521.95. Reimbursable expenses are included in the HNTE fee.

Please indicate your authorization of these extra services by signing on the following page and emailing or mailing this letter back to us so we can set up our records and begin work.

If you have any questions, please contact this office.

Sincerely,

Cody Bargholz, PE, LEED AP, LC  
Principal

CB

COMPANY: KPFF Consulting Engineers

CONTACT: \_\_\_\_\_  
Maddy Murphy, Civil Designer      Date \_\_\_\_\_

X:\PDX\2023\2023-0440\Contracts\20240308ES - Des Moines Marina - Phased Electrical.docx

**Consultant Contract Fee Estimate**

**City of Des Moines 2024-2025 On-Call Electrical Engineering Services**  
Attachment C

<b>Interface Engineering</b>		<b>Principal</b>	<b>Project Manager</b>	<b>Design</b>	<b>Admin</b>	<b>Subtotal</b>
		\$ 225.08	\$ 188.67	\$ 168.82	\$ 102.62	
<b>Task No</b>	<b>Description</b>					
	<b>Construction Support Services</b>	<b>6</b>	<b>0</b>	<b>37</b>	<b>7</b>	<b>8,315.24</b>
	Construction Meetings (~5 virtual)			5		\$ 844.12
	Site Visits (two total including final punch)			12		\$ 2,025.88
	RFIs	4		12	4	\$ 3,336.65
	Submittals	2		8	3	\$ 2,108.59
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
	<b>Record Drawings - Electrical</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>1</b>	<b>777.91</b>
				4	1	\$ 777.91
<b>Total Hours</b>		<b>6</b>	<b>0</b>	<b>41</b>	<b>8</b>	
<b>Total Direct Labor</b>		\$ 1,350.46	\$ -	\$ 6,921.75	\$ 820.93	\$ 9,093.15
<b>Total Fee (Direct Labor X 3.12)</b>		\$ 1,350.46	\$ -	\$ 6,921.75	\$ 820.93	\$ 9,093.15
<b>Other Direct Costs</b>	<b>Qty</b>	<b>Cost per Unit</b>	<b>Total</b>			
Mileage	640.00	\$ 0.67	\$ 428.80			
Parking	0.00	\$ -	\$ -			
Reprographics	0.00	\$ -	\$ -			
Courier	0.00	\$ -	\$ -			
Postage	0.00	\$ -	\$ -			
Other	0.00	\$ -	\$ -			
<b>Total Reimbursable Costs</b>						\$ 428.80
<b>Interface Engineering Total</b>						\$ 9,521.95



October 15, 2025

Maddy Murphy  
KPF  
1601 Fifth Avenue, Suite 1600  
Seattle, Washington 98101

RE: PROPOSED CONSTRUCTION OBSERVATION SERVICES FOR DES MOINES  
MARINA STEPS

Dear Maddy:

We recommend that certain geotechnical construction activities be observed and evaluated to confirm that they are accomplished in accordance with the project plans and specifications. We will assign an experienced geotechnical engineer and field technician to attend a preconstruction meeting and to observe and evaluate the following construction activities:

- Excavations for footings, embankment and unsuitable fill removal.
- Compaction testing and evaluation of bearing subgrades.
- Periodic review of Mechanically stabilized earth (MSE) wall construction.
- Weekly review of materials compaction testing reports by others.

This work will be done on a part-time basis, as required by the construction team. Our field representative will prepare daily field reports that document our observations during each site visit. Copies of the daily reports will be sent to the City and design team. If any additional copies are required, please let us know.

While at the site, our field representative will advise the Contractor of our observations. Recommendations that may affect contract costs will be made to the design team. Our field representative will not instruct or direct the Contractor and their subcontractors, as their direction should be received from persons responsible for contract administration. In our construction observation work on this project, our duties will not include a review or responsibility for the adequacy of the safety measures at or near the project site.

A final report will be prepared after geotechnically related construction activities are complete. This final report will summarize our observations and state whether these previously mentioned activities were completed in accordance with our recommendations and project requirements.

## ESTIMATED COSTS FOR CONSTRUCTION OBSERVATION

Construction observation services will be provided on a time-and-expense basis. We have assumed that fill placement and MSE wall construction will require 200 days. The estimated cost for the construction phase of this project is approximately \$57,464, as detailed in the enclosed Consultant Contract Fee Estimate.

This estimate is based on our experience with similar types of projects; however, note that the actual cost for our construction observation work will depend on the Contractor's rate of progress and the amount of observation time required to properly evaluate conformance with geotechnical design recommendations and specifications. As a result, this cost estimate should be considered a target estimate, and the actual costs could be greater or less. In the event that additional field efforts, such as additional site visits or explorations and/or engineering studies, are necessary due to soil conditions or other unforeseen conditions, we will notify you immediately and obtain your authorization for the additional work and costs. We recommend you include a contingency in your budget of at least 20% to cover cost overruns associated with our field observation services.

## CONDITONS OF ENGAGEMENT

The terms and conditions of our engagement will be in accordance an Agreement for Subconsultant Services previously provided by KPF in our original design-phase contract.

Shannon & Wilson has prepared the enclosure, *Important Information About Your Geotechnical/Environmental Proposal*, to assist you and others in understanding the use and limitations of our proposals.

We are pleased to have the opportunity to continue to assist you with this project. Please contact Martin at (206) 695-6875 if you have any questions.

Sincerely,

SHANNON & WILSON

*Martin Page*

Martin Page, PE, LEG  
Geotechnical Engineer  
Vice President

Enc. Consultant Contract Fee Estimate  
Important Information About Your Geotechnical/Environmental Proposal

**Consultant Contract Fee Estimate**

**City of Des Moines 2025-2026 On-Call Geotechnical Engineering Services**

Attachment D

Shannon & Wilson		82.91	84.1	37.64	31.88	41.35	Subtotal
		Principal (Stan Crawford)	Project Manager (Martin Page)	Geotechnical Engineer (TBD)	Drafter	Admin	
		\$ 258.68	\$ 262.39	\$ 117.44	\$ 99.47	\$ 129.01	
<b>20.2</b>	<b>Construction Support Services - Geotechnical</b>	<b>16</b>	<b>173</b>	<b>58</b>	<b>0</b>	<b>10</b>	<b>24,973</b>
	Pre-Construction Meetings		8.0	8.0			\$ 3,038.63
	Site Visits for evaluation of embankment and MSE Wall bearing subgrade soils		20.0	40.0			\$ 9,945.31
	Weekly review of materials testing reports by HWA		80.0	10.0			
	QA Site Visits throughout construction		40.0				
	RFIs	8.0	4.0				\$ 3,119.00
	Submittals	8.0	16.0				\$ 6,267.71
							\$ -
	Prepare monthly invoices and progress reports		5			10	\$ 2,602.08

<b>Total Hours</b>	<b>16</b>	<b>173</b>	<b>58</b>	<b>0</b>	<b>20</b>	<b>24,973</b>
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<b>Total Fee (Direct Labor X 3.12)</b>	<b>\$ 4,138.87</b>	<b>\$ 45,393.82</b>	<b>\$ 6,811.33</b>	<b>\$ -</b>	<b>\$ 2,580.24</b>	<b>\$ 56,344.02</b>
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Other Direct Costs	Qty	Cost per Unit	Total
Mileage (40 mi. x 40 trips)	1600.00	\$ 0.70	\$ 1,120.00
Reprographics	0.00	\$ -	\$ -
Courier	0.00	\$ -	\$ -
Postage	0.00	\$ -	\$ -
Other	0.00	\$ -	\$ -

<b>Total Reimbursable Costs</b>			<b>\$ 1,120.00</b>
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<b>Shannon &amp; Wilson Geotechnical TOTAL</b>			<b>\$ 57,464.02</b>
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## IMPORTANT INFORMATION ABOUT YOUR GEOTECHNICAL/ENVIRONMENTAL PROPOSAL

More construction problems are caused by site subsurface conditions than any other factor. The following suggestions and observations are offered to help you manage your risks.

### HAVE REALISTIC EXPECTATIONS.

If you have never before dealt with geotechnical or environmental issues, you should recognize that site exploration identifies actual subsurface conditions at those points where samples are taken, at the time they are taken. The data derived are extrapolated by the consultant, who then applies judgment to render an opinion about overall subsurface conditions; their reaction to construction activity; appropriate design of foundations, slopes, impoundments, and recovery wells; and other construction and/or remediation elements. Even under optimal circumstances, actual conditions may differ from those inferred to exist, because no consultant, no matter how qualified, and no subsurface program, no matter how comprehensive, can reveal what is hidden by earth, rock, and time.

### DEVELOP THE SUBSURFACE EXPLORATION PLAN WITH CARE.

The nature of subsurface explorations—the types, quantities, and locations of procedures used—in large measure determines the effectiveness of the geotechnical/environmental report and the design based upon it. The more comprehensive a subsurface exploration and testing program, the more information it provides to the consultant, helping to reduce the risk of unanticipated conditions and the attendant risk of costly delays and disputes. Even the cost of subsurface construction may be lowered.

Developing a proper subsurface exploration plan is a basic element of geotechnical/environmental design that should be accomplished jointly by the consultant and the client (or designated professional representatives). This helps the parties involved recognize mutual concerns and makes the client aware of the technical options available. Clients who develop a subsurface exploration plan without the involvement and concurrence of a consultant may be required to assume responsibility and liability for the plan's adequacy.

### READ GENERAL CONDITIONS CAREFULLY.

Most consultants include standard general contract conditions in their proposals. One of the general conditions most commonly employed is to limit the consulting firm's liability. Known as a "risk allocation" or "limitation of liability," this approach helps prevent problems at the beginning and establishes a fair and reasonable framework for handling them should they arise.

Various other elements of general conditions delineate your consultant's responsibilities. These are used to help eliminate confusion and misunderstandings, thereby helping all parties recognize who is responsible for different tasks. In all cases, read your consultant's general conditions carefully and ask any questions you may have.

### HAVE YOUR CONSULTANT WORK WITH OTHER DESIGN PROFESSIONALS.

Costly problems can occur when other design professionals develop their plans based on misinterpretations of a consultant's report. To help avoid misinterpretations, retain your consultant to work with other project design professionals who are affected by the geotechnical/environmental report. This allows a consultant to explain report implications to design professionals affected by them, and to review their plans and specifications so that issues can be dealt with adequately. Although some other design professionals may be familiar with geotechnical/environmental concerns, none knows as much about them as a competent consultant.

#### OBTAIN CONSTRUCTION MONITORING SERVICES.

Most experienced clients also retain their consultant to serve during the construction phase of their projects. Involvement during the construction phase is particularly important because this permits the consultant to be on hand quickly to evaluate unanticipated conditions, conduct additional tests if required, and when necessary, recommend alternative solutions to problems. The consultant can also monitor the geotechnical/environmental work performed by contractors. It is essential to recognize that the construction recommendations included in a report are preliminary, because they must be based on the assumption that conditions revealed through selective exploratory sampling are indicative of actual conditions throughout a site.

Because actual subsurface conditions can be discerned only during earthwork and/or drilling, design consultants need to observe those conditions in order to provide their recommendations. Only the consultant who prepares the report is fully familiar with the background information needed to determine whether or not the report's recommendations are valid. The consultant submitting the report cannot assume responsibility or liability for the adequacy of preliminary recommendations if another party is retained to observe construction.

#### REALIZE THAT ENVIRONMENTAL ISSUES MAY NOT HAVE BEEN ADDRESSED.

If you have requested only a geotechnical engineering proposal, it will not include services needed to evaluate the likelihood of contamination by hazardous materials or other pollutants. Given the liabilities involved, it is prudent practice to always have a site reviewed from an environmental viewpoint. A consultant cannot be responsible for failing to detect contaminants when the services needed to perform that function are not being provided.

#### ONE OF THE OBLIGATIONS OF YOUR CONSULTANT IS TO PROTECT THE SAFETY, PROPERTY, AND WELFARE OF THE PUBLIC.

A geotechnical/environmental investigation will sometimes disclose the existence of conditions that may endanger the safety, health, property, or welfare of the public. Your consultant may be obligated under rules of professional conduct, or statutory or common law, to notify you and others of these conditions.

#### RELY ON YOUR CONSULTANT FOR ADDITIONAL ASSISTANCE.

Your consulting firm is familiar with several techniques and approaches that can be used to help reduce risk exposure for all parties to a construction project, from design through construction. Ask your consultant, not only about geotechnical and environmental issues, but others as well, to learn about approaches that may be of genuine benefit.

**The preceding paragraphs are based on information provided by the Geoprofessional Business Association (<https://www.geoprofessional.org>)**



October 16, 2025

Maddy Murphy  
KPFF  
1601 5<sup>th</sup> Ave St 1600  
Seattle, WA 98101

Subject: Des Moines Marina Steps  
Structural Construction Administration Services

Dear Maddy:

Thank you for the opportunity to provide this proposal for structural construction administration services for the Des Moines Marina Steps Project.

**SCOPE OF WORK**

This proposal is based on the October 3, 2025 drawings, which include on grade stairs, retaining walls, and site structures. KPFF will provide structural construction administration for the following:

- Attend up to (3) 1 hour OAC or construction meetings
- Review RFIs, construction questions, and submittals.
- Perform up to (1) site visit and perform structural observation.
- Compile closeout documents or as-built documents

**ASSUMPTIONS**

- Construction engineering is outside the scope of this proposal.
- Meetings will be virtual.
- BIM is outside of the scope of this proposal.
- VE or redesign services are outside the scope of this proposal.

**FEES**

We propose to provide the above services for a lump-sum fee of **\$8115** in accordance with the already agreed upon Terms and Conditions.

If this proposal meets your approval, please sign below and return one copy for our files.

We have enjoyed working with you during the design phase of this project and look forward to working with you in construction. If you have any questions concerning this proposal, please feel free to call me at (206) 622-5822.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jessica Westermeyer'.

Jessica Westermeyer, PE, SE  
Associate

10042300235

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

**Consultant Contract Fee Estimate**

**City of Des Moines 2025-2026 On-Call Structural Engineering Services**  
Attachment E

<b>KPFF Structural</b>		Principal	Project Manager	Design	Drafter	Subtotal
		232.53	\$ 192.19	\$ 117.53	\$ 150.21	
<b>Task No</b>	<b>Description</b>					
<b>20.6</b>	<b>Construction Support Services</b>	2	22	24	4	8,114.85
	4 Construction Meetings & Prep	1	6			\$ 1,385.69
	1 Site Visit		6	8		\$ 2,093.39
	RFI's	1	4	4		\$ 1,471.42
	Submittals		4	12		\$ 2,179.13
	Closeout Documents		2		4	\$ 985.22
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
<b>30.6</b>	<b>Record Drawings</b>	0	0	0	0	\$ -
						\$ -
	<b>Total Hours</b>	2	22	24	4	52
<b>Total Fee (Direct Labor X 3.12)</b>		\$ 465.07	\$ 4,228.22	\$ 2,820.72	\$ 600.84	\$ 8,114.85
<b>Other Direct Costs</b>		Qty	Cost per Unit			Total
	Mileage	0.00	\$ -			\$ -
	Parking	0.00	\$ -			\$ -
	Reprographics	0.00	\$ -			\$ -
	Courier	0.00	\$ -			\$ -
	Postage	0.00	\$ -			\$ -
	Other	0.00	\$ -			\$ -
<b>Total Reimbursable Costs</b>						\$ -
<b>KPFF Structural TOTAL</b>						\$ 8,114.85



Attachment #5

STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

July 1, 2023

Andrew Merges  
City of Des Moines  
21650 11th Avenue South  
Des Moines, WA 98198

Dear Andrew:

Congratulations! Governor Inslee recently signed the 2023-25 State Capital Budget, which includes an appropriation of \$1,000,000 for the Des Moines Marina Steps (Des Moines) Project. The Department of Commerce, which will administer the project, will retain three percent (up to a maximum of \$50,000) to cover our administrative costs. Accordingly, your net grant award will be \$970,000.

Prior to receiving funds, your organization will need to fulfill the following requirements:

- Provide documentation of your organization's financial ability to complete the project. All funds from sources other than the state must be expended, raised, or secured by documented pledges or loans.
- For nonprofit grantees, any property relevant to the project must be owned or secured by a long-term lease that remains in effect for a minimum of ten years following the final payment date the date the facility becomes usable by the public, whichever is later. A lien on owned property is also required when receiving grants over \$250,000.
- Prevailing wages must be paid for all construction labor costs incurred as of May 16, 2023.
- Review by the Washington State Department of Archaeology and Historic Preservation and any affected Tribes (Governor's Executive Order 21-02).
- Your project may also need to comply with the state's green buildings standards (RCW 39.35D).

Please fill out the linked [Contract Readiness Survey](#) and submit at your earliest convenience.

Also enclosed is a comprehensive set of contracting guidelines to assist you with the process. If you have any questions or need additional information, please contact your Project Manager, Lena Moore, at (360) 280-4729 or [Lena.moore@commerce.wa.gov](mailto:Lena.moore@commerce.wa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Tony Hanson".

Tony Hanson, Deputy Assistant Director  
Local Government Division



Attachment #6

STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

July 21, 2025

Michael Slevin  
City of Des Moines  
21650 11th Avenue South  
Des Moines, WA 0

Dear Michael:

Congratulations! Governor Ferguson recently signed the 2025-27 State Capital Budget, which includes an appropriation of \$1,030,000 for the Des Moines Marina Steps Project. The Department of Commerce, which will administer the project, will retain three percent (up to a maximum of \$50,000) to cover our administrative costs. Accordingly, your net grant award will be \$999,100.

Prior to receiving funds, your organization will need to fulfill the following requirements:

- provide documentation of your organization's financial ability to complete the project. All funds from sources other than the state must be expended, raised, or secured by documented pledges or loans;
- for nonprofit grantees, any property relevant to the project must be owned or secured by a long-term lease that remains in effect for a minimum of ten years following the final payment date, the date the facility becomes usable by the public, whichever is later. A lien on owned property is also required when receiving grants over \$250,000;
- prevailing wages must be paid for all construction labor costs incurred as of May 20, 2025;
- review by the Washington State Department of Archaeology and Historic Preservation and any affected Tribes (Governor's Executive Order 21-02);
- comply with the state's green buildings standards (RCW 39.35D); and
- five percent of your contracted amount will be held back until project completion.

Please fill out the [Contract Readiness Survey](#) and submit at your earliest convenience.

Also enclosed is a comprehensive set of contracting guidelines to assist you with the process. If you have any questions or need additional information, please contact your Project Manager, Lena Moore, at [Lena.Moore@commerce.wa.gov](mailto:Lena.Moore@commerce.wa.gov).

Sincerely,

Addeline Craig, Managing Director  
Community Capital Facilities

**STATEMENT OF WORK**

Stormwater Strategic Initiative Lead (SIL)

**Project Name: City of Des Moines Marina Steps Innovative Stormwater BMPs Targeting Priority Pollutants**

RECIPIENT Organization: City of Des Moines

Recipient Specific Organization Info

Statewide Vendor#: SWV0000307

UBI: 600-016-906

Federal Tax ID: 91-6016496

Indirect Rate: 30%

RECIPIENT Contacts:

Project Manager: Tyler Beekley, [TBeekley@desmoineswa.gov](mailto:TBeekley@desmoineswa.gov), 206-870-6869

Authorized Signatory: Katherine Caffrey, [KCaffrey@desmoineswa.gov](mailto:KCaffrey@desmoineswa.gov)

Other Signatories: N/A

Fiscal Office: Jackson Sweigart, [JSweigart@desmoineswa.gov](mailto:JSweigart@desmoineswa.gov)

Stormwater Strategic Initiative Lead (SIL) Grant Contacts:

Project Manager (PM): Michelle Myers, [mmye461@ecy.wa.gov](mailto:mmye461@ecy.wa.gov), (360)-628-4067

Financial Manager (FM): Owen Brummel, [obru461@ecy.wa.gov](mailto:obru461@ecy.wa.gov), (564) 669-3685

Technical Advisor:

Effective Date: 06/01/2025

Expiration Date: 12/31/2027

Not to Exceed: \$560,407

Contract Number/EAGL #	WQNEPSW-2024-DeMSWD-00024
RFP Link	
FY Funding	2023
Strategic Initiative	Stormwater
Vital sign links	<a href="https://www.psp.wa.gov/evaluating-vital-signs.php">https://www.psp.wa.gov/evaluating-vital-signs.php</a>
Implementation Strategy alignment	
Amount of dollars leveraged	
Number of positions supported	
Project Location:	
Latitude/Longitude	

**OVERVIEW**



# PUGET SOUND

## National Estuary Program

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### **Project Short Description (500 characters or less)**

This project will integrate 3 water quality facilities into the City of Des Moines (RECIPIENT) Marina Steps project to evaluate the removal efficiency of existing and new treatments on target pollutants (6PPD-Q, PCBs, and metals) from a 30-acre urban basin. The RECIPIENT will sample and analyze pollutant levels during storm events upstream and downstream of treatment and results will guide future stormwater management in Des Moines.

### **Project Long Descriptions (4,000 characters or less)**

This project will install and monitor the effectiveness of three stormwater Best Management Practices (BMPs), comprised of bioretention planters with new soil media types, all in the purpose to remove stormwater pollutants, particularly 6PPD-Q, PCBs, and metals, generated in a 30-acre basin, while improving water quality in the Des Moines Marina and Puget Sound. This research is associated with the City of Des Moines (RECIPIENT) Marina Steps Project (Steps) scheduled for 2026 construction. The Steps will create a new public area from S 223rd Street to the Des Moines Marina, which is a focal point for the community, funded through other sources.

This project connection with Steps offers a unique chance to research new soil media types as a new water quality treatment BMP. This project will develop a QAPP, develop soil media types, implement in bioretention planters, and test and analyze water effluent. A stormwater collection and conveyance system has already been designed as part of the Steps project. The end result of this project will allow the RECIPIENT to submit BMP results and QAPP to the Washington state Technology Assessment Protocol Ecology (TAPE) program.

This project will fund adding 3 bioretention planters to the Steps, each with different engineered soil media and configured, equipped for stormwater sampling. The RECIPIENT will review existing studies to identify media blends that optimize the removal of 6PPD from stormwater and engaging with specialists from Ecology and research institutions to gather recommendations and collaborate on the media design.

Based on the research, the RECIPIENT will select the bioretention soil media types to be tested. The selected media specifications will be documented.

The RECIPIENT will characterize existing stormwater quality by collecting grab samples from at least 4 precipitation events to establish baseline data and inform the sampling methods.

The RECIPIENT's engineer, will size the flow splitter and bioretention areas in accordance with the 2021 King County Surface Water Design Manual in Q1 2025. Integrating with the Steps project, the RECIPIENT will install a flow splitter structure at S 223rd Street to direct stormwater to the BMP sites and construct the 3 bioretention cells. The new system will include piping, structures, and bioretention media. Sampling points will be provided at the outfall of each planter.

The RECIPIENT will calibrate and install flow measurement devices and composite samplers at the flow diversion structure to monitor inflow and will place additional devices at the bioretention cell outlets to measure individual planter effluent quality (combined underdrain and overflow discharge). The RECIPIENT will collect flow-weighted composite samples from as many as 15 storm events. The actual number of significant storms during that period is subject to seasonal variation and oscillations. If results are too few to meet TAPE requirements but are showing improved treatment effectiveness over current engineered media, the RECIPIENT intends to continue the study using City resources and other available funding.

# PUGET SOUND

## National Estuary Program

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Following TAPE protocols, the RECIPIENT will grab samples from at least three events before BMP setup. After BMP installation, automatic samplers will gather flow-weighted samples from up to 15 designated storms. The RECIPIENT will share findings with the stormwater community through presentations and publications, including the Ecology Stormwater Working Group.

The project will involve engagement with multiple key stakeholders and Tribes and

The RECIPIENT will inform local community about the project's purpose, goals, and outcomes through user-friendly outreach materials, combining text and graphics to illustrate the project's status, schedule, and results.

### GOALS & MEASURABLE OBJECTIVES

- 1) Determine the 6PPD-Q removal efficiency of the Ecology approved BSM (current standard bioretention soil mix), as compared to the estimated removal efficiency in previous studies (i.e, Navickis-Brasch et al. 2022), and share results in presentation to Ecology's Stormwater Working Group;
- 2) Determine the performance of the experimental BMPs (two alternative non-proprietary bioretention soil mixes) in comparison to 6PPD-Q removal efficiency of the current standard, and share results in presentation to Ecology's Stormwater Working Group;
- 3) Determine the performance of each BMP in removal efficiency of TSS and other contaminants of concern to aquatic and human health, specifically PCBs, and metals, and share results in the final report;
- 4) Observe how bioretention treatment effectiveness in a new installation changes over time for the measured pollutants, and share results in a Project Summary document.
- 5) Observe qualitatively how bioretention systems change hydraulically (bed thickness, clogging, and permeability), biologically (plant health and density), and challenges (such as maintenance and vector control) and share results in a Project Summary document.

### TASKS & DELIVERABLES

The RECIPIENT will manage all project components, including but not limited to subcontract(s), invoice submission, budget, and deliverable completion and submission. The RECIPIENT will submit deliverables and invoices to the Stormwater SIL Grant Manager, SIL Financial Manager and Washington State Department of Ecology Grant Deliverable management tracking system, EAGL. See Stormwater SIL Grant Guidance

<https://apps.ecology.wa.gov/publications/SummaryPages/2310049.html>

### TASK 1. Project Development

#### 1.1 QUALITY ASSURANCE PROJECT PLAN (QAPP) DEVELOPMENT

Work related to data collection or analysis may not begin until the Quality Assurance Project Plan (QAPP) is approved by the Washington State Department of Ecology's National Estuary Program Quality Coordinator (NEP QC) or the NEP QC provides written documentation that a QAPP is not required.

Per EPA sub-award terms and conditions, for projects that involve the collection, production, evaluation, or use of [environmental information](#), the SUB-RECIPIENT must submit a Quality Assurance Project Plan (QAPP) to the Washington State Department of Ecology's NEP Quality Coordinator (NEP QC) using [EPA's NEP guidance for QAPPs](#). Project work should not begin until the Quality Assurance Project Plan (QAPP) has Quality Assurance approval. At contract start, the RECIPIENT must work with the NEP QC to ensure the project meets quality assurance requirements per the contract terms and conditions.

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## National Estuary Program

The RECIPIENT is also required to conduct and document an annual review of the approved QAPP with ECOLOGY for projects exceeding one year in duration. For any changes prior to the annual review the RECIPIENT must contact the NEP QC to confirm required documentation. Changes may include but are not limited to new sampling sites, extended timeline, updated methods, and changes to analysis.

### 1.2 PROJECT FACTSHEETS

Using the template provided, the RECIPIENT must complete an initial one-page project factsheet at the outset of the grant and a final one-page factsheet at the end of the grant. The initial factsheet will provide an overview of the project and a brief description of the RECIPIENT’s organization. The RECIPIENT will submit the initial factsheet with the first quarterly progress report. The RECIPIENT will submit the final factsheet at the end of the grant to summarize project outcomes, lessons learned, and next steps. The Stormwater SIL will make the factsheets publicly available through the website <https://pugetsoundestuary.wa.gov/>.

Subtask Number	Deliverable	Target Completion Date
1.1	Copy of signed QAPP or QAPP waiver documentation.	Within 90 days of signed agreement
1.2	Initial Project Factsheet	Due with first quarterly report
	Final Project Factsheet	2 weeks prior to grant end date

**TOTAL ESTIMATED COST FOR TASK 1: \$20,534**

## TASK 2. Project Administration and Reporting

Task 2 describes the project administrative and reporting requirements. The RECIPIENT will refer to and comply with all underlying state and federal terms and conditions.

### 2.1 PROGRESS REPORTS/PAYMENT REQUESTS (PRPR)

The RECIPIENT will complete quarterly payment request and progress reports (PRPR) in EAGL (Ecology Administration of Grants and Loans). The RECIPIENT will maintain project records, submit requests for reimbursement with corresponding backup documentation, and fully complete progress reports. Quarterly reporting periods are:

- Quarter 1 reporting period: January 1 – March 31; due April 30
- Quarter 2 reporting period: April 1 – June 30; due July 30
- Quarter 3 reporting period: July 1 – September 30; due October 30
- Quarter 4 reporting period: October 1 – December 31; due January 30

Progress reports shall include:

- A description of:
  - Work completed for each task/subtask during the reporting period, including what deliverables were completed and submitted during the reporting period.
  - Total allowable spending by task.
  - Status for ongoing project tasks.
  - Challenges affecting task-specific or overall project completion date(s), scope of work, or costs.
- Evidence of satisfactory completion of all reporting requirements.

The RECIPIENT will submit invoices at least quarterly, but no more frequently than monthly.

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## National Estuary Program

### 2.2 EPA FEATS REPORTING

The RECIPIENT will complete semi-annual FEATS (*Financial and Ecosystem Accounting Tracking System*) progress reports and a final FEATS report. The final FEATS report will be submitted within 60 days of the grant expiration date and will reflect the final project billing. The final FEATS report must describe task work completed throughout the project, highlight project outcomes, and summarize lessons learned.

#### FEATS Reporting Periods:

April 1 – September 30	Due October 15 <sup>th</sup> or with Quarter 3 progress reporting, whichever comes first
October 1 – March 31	Due April 15 <sup>th</sup> or with Quarter 1 progress reporting, whichever comes first

### 2.3 RECIPIENT CLOSE OUT REPORT (RCOR) IN EAGL

At the conclusion of the project, the RECIPIENT will complete the Recipient Close Out Report (RCOR) in EAGL. The RCOR Form will include project accomplishments, challenges, and all relevant project information.

### 2.4 WATER QUALITY EXCHANGE (WQX) AND EIM DATA REPORTING

The Water Quality Exchange (WQX) is the tool for data partners to submit monitoring data to EPA. If the RECIPIENT collects any physical, chemical, or environmental data (e.g., dissolved oxygen, water temperature, salinity, turbidity, pH, phosphorous, total nitrogen, *E. coli* or enterococci, and other biological and habitat data), then the RECIPIENT’s QAPP will specify data to be reported through WQX.

Data for a calendar year (Jan 1 – Dec. 31) must be submitted at least annually.

See WQX information, including tutorials, at <https://www.epa.gov/waterdata/water-quality-data-wqx>.

WQX reporting completed by: Annually on [AGREEMENT START DATE]

The RECIPIENT will also submit all environmental data to ECOLOGY’s Environmental Informational Management System (EIM). The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully uploaded, find instructions at <https://ecology.wa.gov/Research-Data/Data-resources/Environmental-Information-Management-database>

### 2.5 CONTRACTS AND SUBAWARDS

The RECIPIENT may execute one or more subcontracts (professional services agreements). Selection of subcontractor by RECIPIENT must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at <https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>. A meeting(s) may be held to clarify the scope, schedule, and deliverables. The RECIPIENT and subcontractor will execute the contract and hold a kick-off meeting.

Subtask Number	Deliverable	Target Completion Date
2.1	Quarterly Progress Reporting	Annually on January 30 Annually on April 30 Annually on July 30 Annually on October 30
2.2	FEATS Reporting	Annually April 15 Annually October 15
2.3	Recipient Close Out Report Completed in EAGL	Within 30 days of contract closeout
2.4	WQX and EIM Data Reporting	At least annually on [AGREEMENT START DATE] if needed.

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## National Estuary Program

2.5	Copy(s) of final consultant contract(s) subawards. Upload to EAGL and notify SW SIL PM and FM.	Annually
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**TOTAL ESTIMATE COST FOR TASK 2 : \$17,275**

### Task 3. Cultural Resource Review and Environmental Permitting

The RECIPIENT will ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

#### 3.1 Cultural Resources Review

The RECIPIENT will comply with Section 106 cultural resources review requirements that involve any project site disturbance.

The RECIPIENT will submit the documents listed below to initiate ECOLOGY’s cultural resources review. Property acquisition and above and below ground activities proposed at any project site must be reviewed by ECOLOGY for potential affects to cultural resources.

#### To initiate cultural resources review:

1. The RECIPIENT will submit the Cultural Resources Review Form to ECOLOGY. The RECIPIENT will provide any additional information for ECOLOGY to lead the required cultural resources consultation. Any supporting materials must conform to the Department of Archeology and Historic Preservation’s (DAHP) Washington State Standards for Cultural Resource Reporting.

**The RECIPIENT must receive written notice from ECOLOGY prior to proceeding with work.** Examples of work may include (but are not limited to) geotechnical work, acquisition, site prep work, and BMP installations. Work done prior to written notice to proceed shall not be eligible for reimbursement. Costs incurred for ground disturbing activities that occur before cultural resources review will not be eligible for reimbursement.

#### 3.2 Inadvertent Discovery Plan

The RECIPIENT will submit an Inadvertent Discovery Plan (IDP) to ECOLOGY, using the ECOLOGY Inadvertent Discovery Plan found on the ECOLOGY website. The RECIPIENT will ensure that all contractors and subcontractors have a copy of the completed IDP prior to and while working on-site.

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 and contractors working at the project site.
- Implement the IDP when cultural resources or human remains are found at the project site.

e)Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

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## National Estuary Program

### 3.3 Environmental Permitting

The RECIPIENT will submit the State Environmental Policy Act (SEPA) checklist for ECOLOGY project manager review and notify the ECOLOGY project manager when the official comment period begins. The RECIPIENT will also upload the final SEPA determination and affidavit.

The RECIPIENT is responsible for application of, receipt of, and compliance with all required local, state, tribal, and federal permits, licenses, easements, or property rights necessary for the project.

The RECIPIENT will provide copies of applicable local, state, tribal and federal permits, licenses, easements, and property rights upon request of the project manager or environmental review coordinator.

Subtask Number	Deliverable	Target Completion Date
3.1	Ecology Cultural Resource Review (CRR) form emailed to Ecology PM and Cultural Resource contact. Other applicable permits, approvals, and authorizations. ECOLOGY	Mar 2026
3.2	Inadvertent Discovery Plan (IDP). Email the form directly to the ECOLOGY Project Manager and Cultural Resources Contact for review. Upload to EAGL once review is complete.	Mar 2026
3.3	SEPA checklist submitted to ECOLOGY Project Manager with notice of 30 day comment period. Final SEPA determination and affidavit. Uploaded to EAGL and notify ECOLOGY PM and FM.	Mar 2026

**TOTAL ESTIMATED COST FOR TASK 3: \$7,569**

### TASK 4. Develop Innovative BMPs (3500-character limit)

The RECIPIENT will conduct research about the removal efficiencies of bioretention engineered soil (media) mixtures that are currently used in the Puget Sound region, and about alternative bioretention media with potentially greater capacity to remove 6-PPDq and other high priority pollutants. From this research recommendations will be made for a media that has little or no field performance data to be evaluated in this research. The RECIPIENT will then compile their findings in a Basis of Design Memorandum.

#### 4.1 Initial BMP Research and Partner Outreach

The RECIPIENT will review available scientific and grey literature on potential removal efficiencies of various BMPs bioretention media in regard to 6-PPDQ, PCBs (Arochlors), and dissolved metals. This will include a review of both effectiveness studies and of estimated effectiveness based on the chemical properties of the compounds in the media. In addition, the RECIPIENT will conduct outreach to the WSU laboratory and King County Department of Natural Resources and Parks on their ongoing research on this topic.

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## National Estuary Program

The RECIPIENT will summarize the results of the background research and collaborative outreach in a Technical Memorandum . After Ecology’s 45-day review period, the RECIPIENT will respond to comments and revise the Technical Memorandum to finalize the document.

### 4.2 Innovative BMP Selection

The RECIPIENT will prepare a BMP basis of design memorandum documenting a minimum of three specific stormwater filtration media selected in task 3.1 for effectiveness monitoring and the rationale for the selection.

Subtask Number	Deliverable	Target Completion Date
4.1	Technical Memorandum Summarizing Background Research and Results of Collaborative Outreach. Upload to EAGL and notify ECOLOGY PM and FM for 45 day review and comment	November 2025
4.2	Basin of Design Memorandum. Upload to EAGL and notify ECOLOGY PM and FM for 30 day review	January 2026

**TOTAL ESTIMATED COST FOR TASK 3: \$11,263**

## TASK 5. Baseline Pollutant Testing of Stormwater Influent (3500-character limit)

The RECIPIENT will conduct baseline sampling at project site to determine pollutant concentrations within the target basins and prepare the results in a technical memorandum.

### 5.1 BASELINE SAMPLING

After completion and signing of project QAPP, the RECIPIENT will conduct grab sampling of stormwater effluent of the Des Moines North Downtown basin to measure the concentrations of pollutants of concern (6PPD-Q, PCBs (Arochlors), and dissolved metals) prior to Task 7. Samples will be collected for up to 3 storm events with samples collected over a range of rainfall intensities, then analyzed at an accredited laboratory. Samples will be held on ice until they are analyzed at the laboratory. The results will establish the expected range of pollutant concentrations that will be treated in the future by the bioretention planters.

### 5.2 Baseline Sampling Analysis and Results Memorandum

The RECIPIENT will analyze and summarize the laboratory results from task 5.1 The RECIPIENT will then prepare a baseline sampling memorandum, documenting the baseline pollutant data in the stormwater effluent during a range of rainfall intensities. If the baseline sampling shows very low levels of and individual pollutant, the memo will make recommendations to altered or amend the BMP Effectiveness Monitoring Plan and QAPP to exclude specific pollutants, include additional pollutants, or alternatively to increase or decrease sample sizes and the ranges or magnitudes of rainfall intensities.

The RECIPIENT will prepare a technical memorandum summarizing baseline sampling results.

# PUGET SOUND

## National Estuary Program

Subtask Number	Deliverable	Target Completion Date
5.1	Laboratory receipts. Upload to EAGL and notify ECOLOGY PM and FM.	March 2026
5.2	Baseline sampling results technical memorandum. Upload to EAGL and notify ECOLOGY PM and FM for 45 -day review.	May 2026

**TOTAL ESTIMATED COST FOR TASK 4: \$23,557**

### TASK 6. Final BMP Design and Construction (3500-character limit)

The BMPs that will be monitored have not been constructed yet. The RECIPIENT will complete the construction plans for the three bioretention planters to be monitored that are part of the Marina Steps project. Then the RECIPIENT will solicit bids for the Marina Steps project, including the planters, and a contractor selected to build the project.

#### 6.1 Bioretention Planters Final Design and Bid Documents

The RECIPIENT will complete a final design and bid documents of the bioretention planters which will hold the soil media BMP designed as necessary to achieve the goals and requirements of this research and grant agreement. The flow splitter and bioretention BMPs have been sized and designed and are immediately ready for Ecology’s review. The RECIPIENT intends to advertise the Steps project for Bid by September 2025.

Bid documents will include ECOLOGY bid inserts provided by ECOLOGY PM. The RECIPIENT will allow ECOLOGY a 45 day review and feedback.

The RECIPIENT anticipates that Ecology may have review comments and intends to issue an addendum to the selected Contractor as needed to address Ecology’s comments, and to finalize the specifications for the bioretention media. Construction of the bioretention BMPs is anticipated to start in Q2 2026. The Bid package for construction of the Steps will require the bioretention BMPs to be operational by October 15, 2025.

#### 6.2 BMP Construction

The BMP system will be constructed as part of the Des Moines Marina Steps project. The Steps project will be advertised for public bid in Q3 2025 and will be constructed in 2026. The Steps project Bid package includes the flow splitter that will be installed at S 223<sup>rd</sup> Street to divert water from the stormwater trunkline to the new bioretention planters, construction of the planters, and installation of the monitoring system. Addendums to the selected contractor will be issued as needed following ECOLOGY feedback from Task 6.1

The RECIPIENT will be responsible for inspecting the bioretention planters to ensure they are constructed according to the approved engineering design. The RECIPIENT will work closely with the Contractor to ensure monitoring ports are correctly placed to collect water quality samples and flow measurements. The RECIPIENT will then complete a Stormwater Construction Completion Form to be signed by a professional engineer, indicating that the project was completed in accordance with the plans and specifications, and major change orders approved by ECOLOGY’s Project Engineer. The Stormwater Construction Completion Form can be found on the ECOLOGY website.

The RECIPIENT will contact ECOLOGY if any changes in construction are required, prior to making any changes, through a change request order.

Subtask Number	Deliverable	Target Completion Date
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# PUGET SOUND

## National Estuary Program

6.1	Design Plans, bid documents, and Specifications. Upload to EAGL and notify ECOLOGY PM and FM for 45-day review for feedback and acceptance.	December 2025
6.2	Construction completion form. Upload to EAGL and notify ECOLOGY PM and FM for 30-day review.	October 2026

**TOTAL ESTIMATED COST FOR TASK 5: \$277,881**

### TASK 7. BMP Effectiveness Testing for Priority Pollutants (3500-character limit)

Engineered soil mixes used in bioretention BMPs to treat stormwater change over time as the materials are repeatedly wetted and dry and exposed to outdoor environmental conditions. Organic material and other compounds incorporated into bioretention media may initially leach nutrients or other constituents into the stormwater that is being treated. For this reason it is generally understood that the first year after construction may not be representative of the long term performance as the soil is being “seasoned” or “conditioned”. The RECIPIENT accounts for this initial conditioning of the soil mix by extending the monitoring to a second season, and possibly longer if additional funding becomes available.

#### 7.1 Instrumentation Installation

The RECIPIENT will assemble, test, and install monitoring equipment at the Steps. The bioretention planters will be constructed “at-grade”, approximately the current parking lot elevation, adjacent to the Marina Steps. This location will facilitate inspections, sampling, and maintenance during and following the Project. The flow splitter will be installed at the top of the steps in the 223<sup>rd</sup> Street right-of-way.

The equipment will include 4 flow meters and 4 automatic composite samplers:

- Flow splitter structure: Flow meter and composite stormwater sampler
- Planter #1 discharge pipe: Flow meter and composite stormwater sampler
- Planter #2 discharge pipe: Flow meter and composite stormwater sampler
- Planter #3 discharge pipe: Flow meter and composite stormwater sampler

#### 7.2 Precipitation Monitoring

The RECIPIENT will track significant forecast precipitation events to identify storms where the bioretention pollutant removal effectiveness will be measured, and water quality sampled by the BMPs installed in task 6. Rainfall records will be attained and reviewed for the sampled events.

#### 7.3 2026-27 Wet Season BMP Effectiveness Monitoring

The RECIPIENT will collect and analyze water quality samples from a minimum of 8 (target of 12) storms over this initial “conditioning” 2026-2027 water year. For each event, equipment will be primed before the storm to be in optimal condition to collect flow weighted composite samples. Collection bottles, testing supplies, and coolers will be assembled. Following the storm events, water quality samples will be transferred to the collection bottles following sampling protocols, iced, and delivered to the accredited laboratory for analyses. Flow records will be downloaded.

#### 7.4 2027 Q3/4 Wet Season BMP Effectiveness Monitoring

The RECIPIENT will collect and analyze water quality samples from a target of 3 storms during 2027 Q3 and Q4 after the BMPs have been conditioned for at least 9 months. For each event, equipment will be primed before the storm to be in optimal condition to collect flow weighted composite samples. Collection bottles, testing supplies, and coolers will be assembled. Following the storm events, water quality samples will be transferred to the collection bottles following sampling protocols, iced, and delivered to the accredited laboratory for analyses. Flow records will be downloaded.

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## National Estuary Program

Subtask Number	Deliverable	Target Completion Date
7.1	Chain of custody reports, pictures of completed installation.	Oct 2026 – Nov 2027
7.2	Laboratory analyses reports. Upload to EAGL and notify Ecology PM and FM.	Oct 2026 – Nov 2027
7.3	2026-27 Wet Season BMP Effectiveness Monitoring Memo. Upload to EAGL and notify Ecology PM and FM.	June 2027
7.4	2028 (Q4 2027) Wet Season BMP Effectiveness Monitoring Memo. Upload to EAGL and notify Ecology PM and FM.	Dec 2027

**TOTAL ESTIMATED COST FOR TASK 6: \$189,242**

### TASK 8. Communicating Impacts (3500-character limit)

The recipient will communicate project outcomes, lessons learned, and recommendations.

#### 8.1 BROADER IMPACT OPTION

The RECIPIENT and their subcontractors will provide project outcomes and lessons learned at a relevant engineering conference, likely the American Public Works Association Semi-Annual conference in either spring or fall of 2027. This is noted for scope and budget completeness only and is not included in our request for grant funding as the conference preparation and attendance costs will be borne by the applicants.

#### 8.2 Draft Final Report

The RECIPIENT will complete a draft version and final report. The final report will summarize methods, results, lessons learned, and recommendations for future work. The final report will also include analyses of the effectiveness of three BMPs for removal of 6PPD-Q, PCBs (Arochlors), and metals over the sampling period. The draft final report will be submitted for ECOLOGY feedback, and the final report will be submitted, pending ECOLOGY acceptance.

#### 8.3 Final Report

Integrating feedback from Task 8.2, The RECIPIENT will prepare a final report summarizes methods, results, lessons learned, and recommendations for future work.

Task Number	Deliverable	Target Completion Date
8.1	Presentation materials, number of participants, meeting notes including questions and feedback, and, recordings if applicable. Upload to EAGL and notify Ecology PM and FM.	
8.2	Draft final Report. Upload to EAGL and notify ECOLOGY PM and FM for 30 day review and comment	
8.3	Final report. Upload to EAGL and notify ECOLOGY PM and FM.	

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## National Estuary Program

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**TOTAL ESTIMATED COST FOR TASK 7: \$13,086**

**TOTAL GRANT AMOUNT: \$560,407**

<b>TASK</b>	<b>AMOUNT</b>
TASK 1. Project Development	\$20,534
TASK 2. Project Administration and Reporting	\$17,275
TASK 3. Cultural Resource Review	\$7,569
TASK 4. Develop Innovative BMPs	\$11,263
TASK 5. Baseline Pollutant Testing of Stormwater Influent	\$23,557
TASK 6. Final BMP Design and Construction	\$277,881
TASK 7. BMP Effectiveness Testing for Priority Pollutants	\$189,242
TASK 8. Communicating Impacts	\$13,086
<b>TOTAL</b>	<b>\$560,407</b>

# Marina Steps Bid Award



# Marina Steps Bid Results

- The project was advertised for bids on September 9, 2025 and bids were received and opened on October 9, 2025.
- The Engineers Construction Estimate for the project after value engineering was \$10,00,000.
- 8 Responsive bids were received ranging from a high bid of \$12,633,125 to a low of \$8,537,716.
- The low responsive bidder was Bayshore Construction in the amount of \$8,537,716.
- Deductive Alternates were received from Bayshore:

Spray Park	\$396,000
Vertical Play Area	\$976,425



# Marina Steps Budget Update

- Value Engineering (VE) design with no deductive alternatives: Construction cost \$8.54M (Bid number)
- Plus design, permitting, contingency, internal services, and construction management: \$4.35M

**Total Project Cost \$12.89M**



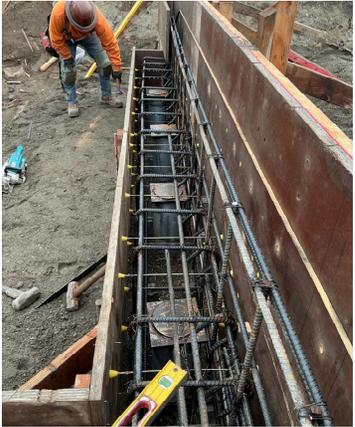
# Marina Steps Revenue update

- Bond Proceeds: \$8,110,000
- Commerce & Stormwater grants:
  - \$970,000
  - \$999,100
  - \$560,470 (\$278,000 available for construction)
- City Real Estate Excise Tax: \$1,750,000
- City one-time sales tax: \$500,000
- ARPA and Misc. funding: \$280,000

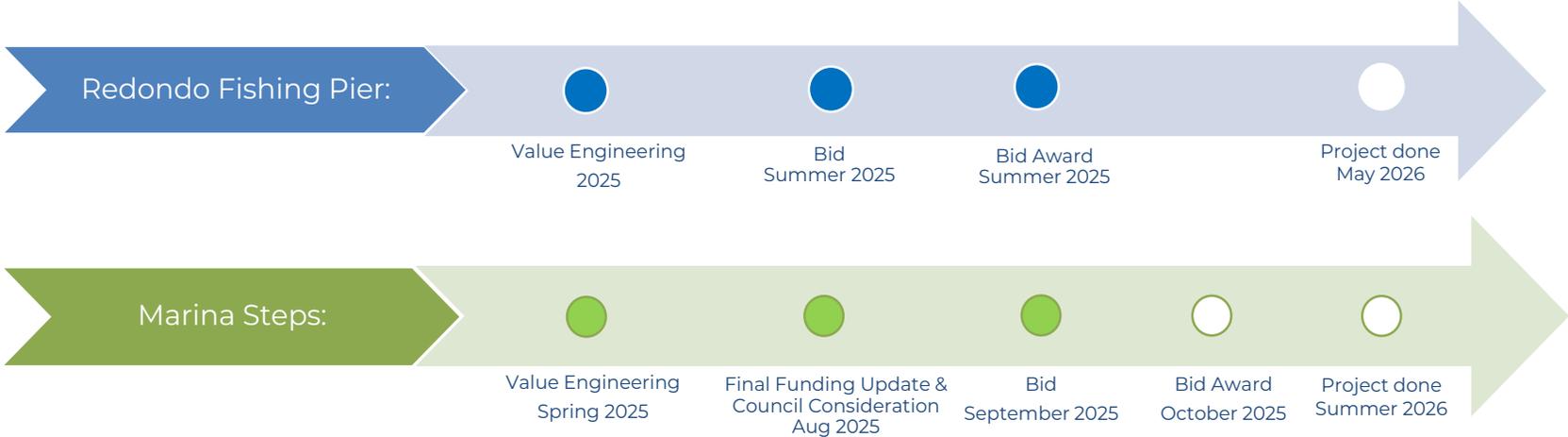
**Total Project Funding \$12.89M**



# Bayshore Construction Projects



# DMMS and Redondo Pier Updated TIMELINE



# Suggested Motions:

**Motion 1:** I move to direct Administration to bring forward a budget amendment to the 2025-2030 Capital Improvement Plan and the 2025 Capital Budget to include the amended Marina Steps Project as described herein, and include such amendment in the next available budget amendment ordinance.”

**Motion 2:** “I move to approve the Public Works Contract with Bayshore Construction (Contractor) for the Marina Steps Project in the amount of \$8,537,713.64, and authorize a project construction contingency in the amount of \$1,375,000.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.”

**Motion 3:** “I move to approve the Consultant Services Contract with Psomas, Inc. to provide Construction Administration and Inspection Services for the Marina Steps Project in the amount of \$924,000.00, and further authorize the City Manager to sign said Consultant Services Contract substantially in the form as submitted.”

**Motion 4:** “I move to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2025-01 with KPFF, Inc. to provide Engineer of Record services for the Marina Steps Project in the amount not to exceed \$426,787 and authorize the City Manager to sign said Task Assignment substantially in the form as submitted.”



# Suggested Motions:

**Motion 5:** “I move to authorize the acceptance of the 2023-25 Washington State Department of Commerce Direct Appropriation in the amount of \$970,000.00, and further authorize the City Manager, or her designee, to sign the State funding agreement(s) when they are available.”

**Motion 6:** “I move to authorize the acceptance of the 2025-27 Washington State Department of Commerce Direct Appropriation in the amount of \$999,100.00, and further authorize the City Manager, or her designee, to sign the State funding agreement(s) when they are available.”

**Motion 7:** “I move to authorize the acceptance of the Stormwater Ecology Grant in the amount of \$560,407.00, and further authorize the City Manager, or her designee, to sign the State funding agreement(s) when they are available.”



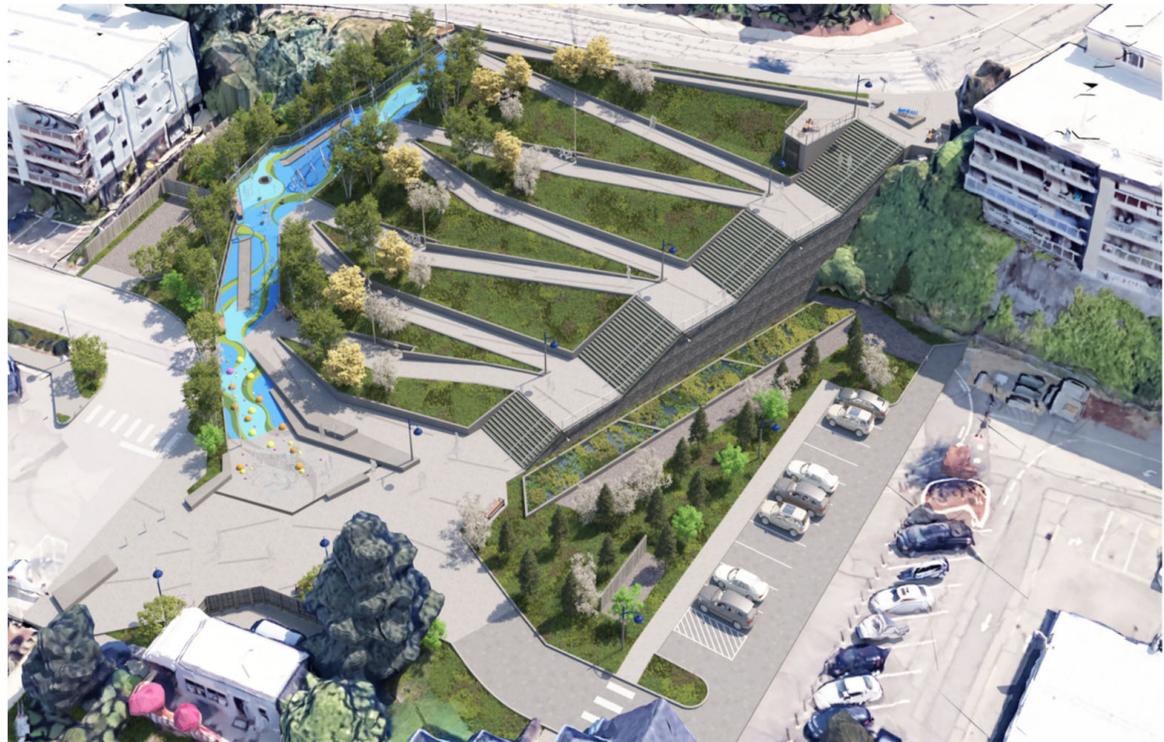


**Des Moines**  
WATERLAND CITY

## 2025 VE Design: No Deductive Alternates

A

- Deleted underground power
- Eliminated stair landing overhangs
- Specialty concrete reduction
- Eliminated drift logs and reduced specialty landscaping
- \$10M construction estimate



# 2025 VE Design: No Deductive Alternates

A



**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Water/Sewer Franchise Agreements

FOR AGENDA OF: October 23, 2025

ATTACHMENTS:  
1. None

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: October 14, 2025

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Finance *ML*
- Human Resources \_\_\_\_\_
- Legal */s/TG*
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works *WPS*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

The purpose of this agenda item is for the City Council to receive additional information to decide whether to begin renegotiations of eligible water/sewer franchise agreements or to allow the agreements to extend an additional 5 years under the existing terms.

**Suggested Motion**

**Motion 1: "I move to direct the City Manager to notify eligible utility providers of the City's intent to renegotiate existing franchise agreements."**

**Background**

A franchise agreement authorizes an entity to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public. The grant of a franchise is a special privilege that allows particular individuals/entities to use of the city streets in a manner not generally available to the public as a common right. The legislature has granted authority to cities to grant a nonexclusive franchise. RCW 35A.47.040. Once granted, a franchise is a contract which is binding on both the grantor and the grantee.

There are five water/sewer utilities currently operating in the City under valid franchise agreements. The terms of those agreements and the entities are listed below:

1. Highline Water District – Expiration 6/22/26 with 5 year extension to 6/22/31.
2. Southwest Suburban Sewer District – Expiration 6/27/26 with 5 year extension to 6/27/31.
3. Midway Sewer District – Expiration 6/27/26 with 5 year extension to 6/27/31.
4. Water District 54 – Expiration 5/2/31.
5. Lakehaven Water/Sewer District – Expiration 7/18/41.

The franchise agreements with Highline, SW Suburban and Midway were all negotiated in 2016 and were for a ten year term with the possibility to extend an additional 5 years. The franchise agreement with WD54 was negotiated in 2011 and contained a 20 year term. The agreement with Lakehaven was originally negotiated in 2011 with a 20 year term. It was recently renegotiated by agreement of both parties and now contains a 16 year term.

The question being asked of the Council is whether to begin negotiations on a new franchise agreement with Highline, SW Suburban and Midway, or to allow the 5 year extension to go into effect and leave the agreements as they are until 2031. A minimum of 180 days-notice is required to begin renegotiations so the City must provide notice to the utility providers by mid-December of 2025.

If the Council were to decide to direct staff to begin negotiations, it is recommended that the Council re-establish the Ad Hoc Franchise Committee to assist with the process. Historically, the negotiation team has consisted of the City Manager, the City Attorney, the Public Works Director and the Mayor. Any proposed edits are then taken to the Ad Hoc Franchise Committee for discussion and approval before going to the full Council. This allows the Council to be involved from the starting point and ensure that any updates/amendments are in line with the Council's goals. During this agenda item we are looking for Council direction regarding beginning negotiations. If the Council wants to begin negotiations, then we will bring a future item regarding the creation of the Ad Hoc committee.

### **Discussion**

Besides the length of a franchise agreement, there are various provisions in a franchise that govern the relationship between the City and the franchisee. These include right of way management, planning, and operations, relocation procedures, indemnification and insurance requirements, franchise fees, taxes, abandonment processes, vacation processes, collaboration with projects, etc.

Allowing renegotiations of the franchises that potentially expire in 2026 will allow the City and the utilities to discuss current operations and ascertain whether a future franchise agreement can better serve the parties. Additionally, updating the franchise to reflect current technology or changes in practice could be beneficial to both parties as well.

An additional major consideration is financial. The City does not impose a utility tax on any water/sewer provider in the City but the City does collect a 6% franchise payment from all water/sewer utilities. These payments were negotiated and included as part of existing franchise agreements. This 6% is generally lower than the rate of utility tax imposed by surrounding jurisdictions. The rates for water/sewer utility tax for other cities are shown below:

Water rate is shown first, followed by sewer.

- Kent – 13, 9.5%
- Kirkland – 11.8, 9.5%
- Burien – 10, 10%

- Federal Way - 7.75, 7.75%
- Yakima – 20, 20%
- Auburn - 11.5, 11.5%
- Normandy Park - 8, 8%
- Tukwila - 10, 10%
- Covington – 10, 10%
- Des Moines – 6, 6% (Franchise payment in lieu of tax)

Renegotiating the franchise payment rate for eligible utilities could generate significant additional funds for the City’s general fund. Based on annual receipts from the three eligible utilities, increasing the franchise payment by 1% would provide an extra \$150,000 annually. Aligning the franchise payment with that of the neighboring city, Kent, could bring in approximately \$800,000 per year. This topic was discussed with the City Council at the September 25, 2025, meeting, and most Council members expressed interest in exploring this as a potential future revenue source. The Council showed interest in understanding different scenarios of potential increases, how they might affect customer fees, programs for low-income and senior residents, the impact on businesses, the number of customers in each district and the possibility of a City-funded utility discount program for certain customers. These issues could be examined in more detail through the Ad Hoc Franchise Committee, if the Council decides to establish it.

If the City and utility providers were unable to agree on a franchise payment amount, the City could impose a utility tax at a rate acceptable to the City Council.

**Alternatives**

1. Authorize the City Manager to notify eligible utility providers of the City’s intent to renegotiate existing franchise agreements.
2. Do not authorize the City Manager and allow the franchise agreements to extend until 2031.

**Financial Impact**

As stated above, increasing the franchise payment or imposing a utility tax has the potential to raise substantial revenue for the City’s general fund. These funds would be unrestricted and could be used at the discretion of the City Council. For each 1% increase in the franchise payment, it is estimated to raise \$150,000.

**Recommendation**

The Legal Department, Planning, Building, and Public Works, and Finance Department recommend opting to renegotiate the agreements rather than extending them through 2031.

# Water/Sewer Franchise Agreements



# Background

City of Des Moines has over 10 franchise agreements for use of City Right-of-Way (garbage, sewer, water, cable, fiber etc).

Franchise terms are generally 10-20 years.

Longer terms disfavored because of continual changes in law, Technology, and standard practice.



# Water/Sewer Franchise Agreements

City has franchise agreements with five water and sewer providers.

Agreements govern:

- ROW maintenance and planning
- Project collaboration
- Relocation and abandonment procedures
- Insurance and indemnification requirements
- Taxes and/or fees



# Renegotiation Potential

Three of the existing water/sewer franchises have ten year terms that could potentially expire in June of 2026.

- Southwest Suburban Sewer District
- Highline Water District
- Midway Sewer District

- Agreements contain five year extension if no action is taken, meaning they would extend until 2031.
- Must give 180 days notice to trigger renegotiation:
  - Mid-December 2025



# Benefits of Opening Agreements

The parties can:

- Evaluate what is/is not working in current agreement
- Address new technologies and legal issues
- Incorporate newly developed practices



# Financial considerations

A tax on utilities can be a significant source of revenue for municipalities.

Current franchise agreements waive ability of City to impose utility tax and instead provide for a 6% franchise payment.

This percentage was significant in 2016 when first negotiated, but has since been outpaced by surrounding jurisdictions.



# Comparable City Utility Tax Rates

Water rate is shown first, followed by sewer.

- Yakima – 20, 20%
- Kent – 13, 9.5%
- Kirkland – 11.8, 9.5%
- Auburn - 11.5, 11.5%
- Burien – 10, 10%
- Tukwila - 10, 10%
- Covington – 10, 10%
- Normandy Park - 8, 8%
- Federal Way - 7.75, 7.75%
- Des Moines – 6, 6% (Franchise payment in lieu of tax)



# Ad Hoc Franchise Committee

If the Council wishes to pursue renegotiation, staff recommends reinstating the Ad Hoc Franchise Committee.

Keeps Council informed through the process.

Allows the Committee to have an active voice in:

- Effect of cost increases to customers
- Programs for low income and senior residents
- Impact on businesses



# If Renegotiation Fails

Districts no longer pay 6% franchise payment in lieu of utility tax.

City may impose utility tax on water and/or sewer utility business:

- No percentage cap under state law
- Numerous nearby cities have tax rates near or above 10%
- As high as 20% in the state



# Suggested Motion

“I move to direct the City Manager to notify eligible utility providers of the City’s intent to renegotiate existing franchise agreements.”





**Des Moines**  
WATERLAND CITY

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: B&O tax model ordinance update

FOR AGENDA OF: October 23, 2025

ATTACHMENTS:

- 1. Draft Ordinance no. 25-100

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: October 13, 2025

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

The purpose of this agenda item is for the Council to consider on first reading Draft Ordinance 25-100, which would update the City of Des Moines business and occupation tax code to incorporate amendments to the State of Washington’s model ordinance.

**Suggested Motion**

**Motion:** “I move to pass Draft Ordinance 25-100 to a second reading on the next available regular Council meeting agenda.”

### **Background**

In 2003, the legislature passed a bill that required the Association of Washington Cities (AWC) to develop a Model Ordinance to be adopted by all cities imposing a business and occupation (“B&O”) tax. The legislature was concerned about the lack of uniformity of the cities’ B&O tax ordinances and about allegations that some business income was subject to multiple taxation. Any city wishing to impose a B&O tax was required to adopt the mandatory provisions of the model ordinance before January 1, 2005.

The City of Des Moines adopted the Model Ordinance through Ordinance No. 1355, and have amended the adopted provisions, through Ordinance No. 1417 in 2007, Ordinances No. 1555 and 1556 in 2012, and Ordinance No. 1725 in 2019 in order to stay consistent with changes made to the Model Ordinance. In 2023, the Model Ordinance was updated to include non-mandatory language that reflected a change to the rules for allocating printing and publishing income under state law resulting from Senate Bill 5199.

In the 2025 session, the Legislature passed Engrossed Substitute Senate Bill 5814. The bill changes the treatment of certain services under both the state B&O tax and the state sales tax. Many of these services had been excluded from being defined as “retail sales”, which resulted in these services being taxed at a lower tax rate for terms of the state B&O tax and did not subject these services to the state sales tax. The result of the bill is that these services are now taxed at the higher retail sales rate for B&O tax and the sales tax will now apply. As a result of changes the bill made to the state B&O tax the Model Ordinance task force has amended the Model Ordinance again to incorporate the changes. These changes are mandatory.

### **Discussion**

The Model Ordinance amendments incorporate changes to definitions contained in RCW 82.04.050 that were imposed by ESSB 5814. Cities must adopt mandatory changes to model ordinance with the same effective date: January 1, 2026. These changes to the Model Ordinance that are contained in section 1 of the proposed Draft Ordinance are as follows:

The following select services are classified as retail services and subject to retailing B&O tax:

- information technology training services and technical support;
- custom website development services;
- custom software and customization of prewritten computer software;
- investigation, security services, security monitoring services, and armored car services;
- temporary staffing services; and
- advertising services.

The following digital automated services are classified as retail services and subject to retailing B&O tax:

- any service that primarily involves the application of human effort by the seller;
- live presentations;
- advertising services; and
- digital processing services

The following services are excluded from and retailing B&O tax:

- temporary staffing services used by hospitals;
- telehealth and telemedicine services;
- certain advertising services, such as web hosting and domain name registration, newspapers, printing or publishing, certain radio and television broadcasting, out-of-home advertising,

including billboards, street furniture, transit, or place-based advertising, naming rights, and fixed signage advertising; and

The following services when the sale of such service is between members of an “affiliated group”:

- information technology consulting training, and support services;
- custom web design services;
- investigation, security, security monitoring, and armored car services;
- advertising services;
- any digital automated service that primarily involves the application of human effort by the seller;
- live presentations in which participants are connected via the internet or telecommunications equipment; and
- data processing services.

These provisions from ESSB 5814 are mandatory and must be adopted in order to continue imposing a gross receipts B&O tax. Because all business activity classifications are taxed at the same rate at the City level under the Des Moines Municipal Code, these classification changes should not result in any change to B&O tax revenue for the City.

In section 2, the 2023 language from SB 5199 is proposed to be amended to reflect the language change regarding printing and publishing activities mandated by state law. These changes are not mandatory provisions of the Model Ordinance, but the language would correctly state the treatment of these activities and may eliminate potential confusion.

The City does not need to take any action to implement the changes to the sales tax contained in ESSB 5814. The City’s sales tax is imposed on any event taxable by the state and is collected by the Department of Revenue. DOR will be responsible for ensuring compliance with the tax. The City may receive new sales tax revenue due to the classification change for these business activities, but the amount, if any, cannot be projected at this time.

#### **Alternatives**

The Council may:

1. Pass the draft ordinance as presented to a future meeting (recommended)
2. Pass the draft ordinance with changes to a future meeting
3. Suspend Rule 8.06(K)(3)(a) and enact the draft ordinance on first reading
4. Decline to take action on the draft ordinance (not recommended)

#### **Financial Impact**

The update to the model ordinance is prerequisite for the City to collect gross receipts B&O tax under state law. Failing to keep our ordinance current would likely result in a loss of approximately \$1,200,000 in B&O tax revenue in 2026. Staff does not anticipate material changes in B&O revenue. Some increased sales tax revenue is anticipated but cannot be accurately predicted at this time.

The new sales tax on certain service activities will likely cause some increase in future City contract expenses for these service categories.

#### **Recommendation**

Staff recommends the Council pass the draft ordinance for a second reading at the next available regular Council meeting.

**CITY ATTORNEY'S FIRST DRAFT 10/13/2025**

**DRAFT ORDINANCE NO. 25-100**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** relating to taxation, adopting updates to the B&O model ordinance, amending DMMC 3.84.040 and 3.84.100, and setting an effective date.

**WHEREAS**, RCW 35A.82.020 authorizes code cities to impose business licensing requirements and excises upon business transacted within such a city to the extent permitted by the general law, and

**WHEREAS**, RCW 35.21.710 authorizes cities to levy and collect a tax not to exceed two-tenths of one percent (.2%) on the gross income of persons doing business within the City, subject to limitations imposed by the State Legislature, and

**WHEREAS**, the City has acted upon this authority by enacting business licensing and other requirements which are set forth in Titles 3 and 5 of the Des Moines Municipal Code, and

**WHEREAS**, in 2003 the Washington State Legislature approved EHB 2030 requiring that, effective January 1, 2005, all cities levying or planning to levy a general business and occupation tax must revise their ordinances or adopt ordinances to be consistent with the "model ordinance" for municipal gross receipts business and occupation tax created through the Washington Association of Cities ("AWC"), and

**WHEREAS**, the City enacted Ordinance No. 1355, adopting AWC's model ordinance provisions effective January 2005, codified at chapter 3.84 of the Des Moines Municipal Code, and

**WHEREAS**, the City enacted Ordinance No. 1417 amending DMMC chapter 3.84 to adopt AWC's 2007 revised model ordinance provisions effective January 2008, and

**WHEREAS**, the City enacted Ordinance No. 1555 replacing DMMC chapter 3.84 to adopt AWC's 2012 revised model ordinance made to reflect changes made to state law since 2008, and

**WHEREAS**, the City enacted Ordinance No. 1556 to adopt the administrative provisions of the 2012 AWC revised model ordinance at DMMC chapter 3.85, and

**WHEREAS**, the City enacted Ordinance No. 1725 to adopt changes to the model ordinance required by HB 1059 and HB 1403 passed in the 2019 Legislative session, and

**WHEREAS**, AWC made a 2023 non-mandatory revision to the model ordinance to reflect Engrossed Substitute Senate Bill, incorporating Senate Bill 5199 defining the sourcing of certain publishing activities, and

**WHEREAS**, AWC has once again revised the model ordinance to reflect Engrossed Substitute Senate Bill, passed in the 2025 session, which must be adopted by cities imposing a business and occupation tax effective January 1, 2026, and

**WHEREAS**, the City Council finds that adopting the required changes to the Des Moines Municipal Code to maintain consistency with the AWC model ordinance is appropriate and necessary to preserve the public health, safety, and general welfare; now therefore,

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

**Sec. 1.** DMMC 3.84.040 and section 5 of Ordinance No. 1555 as amended by section 1 of Ordinance No. 1725 are amended to read as follows:

**Definitions.** In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

(1) "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

(2) "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

(3) "Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

(a) Any use as a consumer; and

(b) The manufacturing of articles, substances or commodities.

(4) "Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. "Dominion and control" means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

(5) "Digital automated service," "digital code," and "digital goods" have the same meaning as in RCW 82.04.192.

(6) "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b).

(7) "Eligible gross receipts tax" means a tax which:

(a) Is imposed on the act or privilege of engaging in business activities within DMMC 3.84.050; and

(b) Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and

(c) Is not, pursuant to law or custom, separately stated from the sales price; and

(d) Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and

(e) Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a country, state, province, or any other nonlocal jurisdiction above the county level.

(8) Engaging in Business.

(a) The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

(b) This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimis business activities in the City without having to register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (8)(a) of this section. If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

(c) Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf, constitutes engaging in business and requires a person to register and obtain a business license:

(i) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

(ii) Owning, renting, leasing, using, or maintaining an office, place of business, or other establishment in the City.

(iii) Soliciting sales.

(iv) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(v) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(vi) Installing, constructing, or supervising installation or construction of real or tangible personal property.

(vii) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(viii) Collecting current or delinquent accounts.

(ix) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(x) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(xi) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, and veterinarians.

(xii) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(xiii) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

(xiv) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(xv) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(xvi) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

(d) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax:

(i) Meeting with suppliers of goods and services as a customer.

(ii) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(iii) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of directors member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

(iv) Renting tangible or intangible property as a customer when the property is not used in the City.

(v) Attending, but not participating in, a "trade show" or "multiple vendor events." Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(vi) Conducting advertising through the mail.

(vii) Soliciting sales by phone from a location outside the City.

(e) A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license; provided, that it engages in no other business activities in the City. Such activities do not include those in subsection (8) (d) of this section.

The City expressly intends that engaging in business includes any activity sufficient to establish nexus for purposes of applying the tax under the law and the Constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact or subsequent contacts.

(9) "Extracting" is the activity engaged in by an extractor and is reportable under the extracting classification.

(10) "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of "farmer."

(11) "Extractor for hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

(12) "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(14) "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

(15) Manufacturer, To Manufacture.

(a) "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than 20 percent of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer.

(b) "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

(i) The production of special made or custom made articles;

(ii) The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

(iii) Crushing and/or blending of rock, sand, stone, gravel, or ore; and

(iv) The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and

the preparing and freezing of fresh fruits and vegetables.

"To manufacture" shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(16) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(17) "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

(18) "Retail service" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.

(h) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(19) Sale, Casual or Isolated Sale.

(a) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(b) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

(20) Sale at Retail, Retail Sale.

(a) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(ii) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(iii) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(iv) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(v) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. ~~The term shall~~

~~include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in subsections (20)(a)(i) through (v) of this section following such use; or~~

(vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (20)(~~eh~~) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (20)(a)(i), (ii), (iii), (iv), (v), or (vi) of this section following such use.

The term also means every sale of tangible personal property to persons engaged in any business that is taxable under RCW 82.04.280(1)(a), (b), and (g), 82.04,290, and 82.04.2908.

(b) "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under DMMC 3.84.050(1)(g).

(c) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(i) Information technology training services, technical support, and other services including, but

not limited to, assisting with network operations and support, help desk services, in-person training related to hardware or software, network system support services, data entry services, and data processing services; or

(ii) Custom website development services. For the purposes of this subsection (c), "website development services" means the design, development, and support of a website provided by a website developer to a customer; or

(iii) Investigation, security services, security monitoring services, and armored car services including, but not limited to, background checks, security guard and patrol services, personal and event security, armored car transportation of cash and valuables, and security system services and monitoring. This does not include locksmith services; or

(iv) Temporary staffing services. For the purposes of this subsection (c), "temporary staffing services" means providing workers to other businesses, except for hospitals licensed under chapter 70.41 or 71.12 RCW, for limited periods of time to supplement their workforce and fill employment vacancies on a contract or for fee basis; or

(v) Advertising services.

(A) For the purposes of this subsection (c), "advertising services" means all digital and nondigital services related to the creation, preparation, production, or dissemination of advertisements including, but not limited to:

(1) Layout, art direction, graphic design, mechanical preparation, production supervision, placement, referrals, acquisition of advertising space, and rendering advice concerning the best methods of advertising products or services; and

(2) Online referrals, search engine marketing, and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of website traffic for purposes of determining the effectiveness of an advertising campaign.

(B) "Advertising services" do not include:

(1) Web hosting services and domain name registration;

(2) Services rendered in respect to the following:

(a) "Newspapers" as defined in RCW 82.04.214; and

(b) Printing or publishing under RCW 82.04.280; and

(c) "Radio and television broadcasting" within this state as defined in RCW 82.04 (section 1, chapter 9, Laws of 2025); and

(3) Services rendered in respect to out-of-home advertising, including: Billboard advertising; street furniture advertising; transit advertising; place-based advertising, such as in-store display advertising or point-of-sale advertising; dynamic or static signage at live events; naming rights; and fixed signage advertising. Out-of-home advertising does not include direct mail; or

(vi) Live presentations including, but not limited to, lectures, seminars, workshops, or courses where participants attend either in person or via the internet or telecommunications equipment that allows audience members and the presenter or instructor to

give, receive, and discuss information with each other in real time.

For the purposes of (i) through (iii) and (v) of this subsection (c), the terms "sale at retail" and "retail sale" do not include a sale between members of an affiliated group as defined in RCW 82.04.299(1)(f)

(ed) "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(i) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(ii) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(iii) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the

purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(iv) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(v) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(vi) The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(vii) The installing, repairing, altering, or improving of digital goods for consumers;

(viii) The sale of or charge made for tangible personal property, labor and services to persons taxable under subsections (20)(c)(i) through (vii) of this section when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (20)(a) of this section and nothing contained in subsection (20)(a) of this section shall be construed to modify this subsection.

~~(de)~~ "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

~~(ef)~~     (i) "Sale at retail" or "retail sale" shall also include the sale of prewritten software, custom software, and customization of prewritten computer software to a consumer, other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (20)~~(ef)~~(i) the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

~~The term "sale at retail" or "retail sale" does not include the sale of or charge made for:~~

~~(A) Custom software; or~~

~~(B) The customization of prewritten software.~~

(ii)(A) The term "sale at retail" or "retail sale" also includes the charge made to consumers for the

right to access and use prewritten computer software, custom software, and customization of prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

\_\_\_\_(B) 1. The service described in subsection (20)(e)(ii)(A) of this section includes the right to access and use prewritten software, custom software, and customization of prewritten computer software to perform data processing.

2. For purposes of this subsection (20)(e)(ii)(B) "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

~~(fg)~~ "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind (public road construction).

~~(gh)~~ "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide

indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

| (~~h~~i) "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

| (~~j~~) "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

| (~~k~~) "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action.

| (~~l~~) (i) "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

| (~~A~~) Sales in which the seller has granted the purchaser the right of permanent use;

(~~ii~~B) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(~~iii~~C) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(~~iv~~D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(ii) A retail sale of digital goods, digital codes, or digital automated services under this subsection (20)(1) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(iii) A retail sale of digital goods, digital codes, or digital automated services does not include the following services if the sale occurs between members of an affiliated group as defined in RCW 82.04.299(1)(f):

(A) Any service that primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service;

(B) Live presentations, such as lectures, seminars, workshops, or courses, where participants are connected to other participants via the internet or telecommunications equipment, which allows audience members and the presenter or instructor to give, receive, and discuss information with each other in real time;

(C) Advertising services. For purposes of this subsection, "advertising services" means all services directly related to the creation, preparation, production, or dissemination of advertisements. Advertising services include layout, art direction, graphic design, mechanical preparation, production supervision, placement,

and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of website traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration; and

(D) Data processing services. For purposes of this subsection, "data processing service" means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to extract the required information in an appropriate form or to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. Data processing does not include the service described in subsection (insert reference) of this section.

(iv) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(m) "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or improving of digital goods for consumers.

(21) "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in subsection (20)(e)(ii)(A) of this section, which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

(22) Services. At such time as chapter 82.04 RCW defines "services," that definition shall apply. Until such time as chapter 82.04 RCW shall define "services," "services" means all business activities not defined elsewhere in this section.

(23) "Taxpayer" means any "person," as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

(24) "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

(25) Value of Products.

(a) The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.

(b) Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The director may prescribe rules for the purpose of ascertaining such values.

(c) Notwithstanding subsection (25)(b) of this section, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (i) the retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(26) "Wholesaling" means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

**Sec. 2.** DMMC 3.84.100 and section 11 of Ordinance No. 1555 are amended to read as follows:

**Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction.**

Notwithstanding RCW 35.102.130, effective January 1, 2008, gross income from the activities of printing, and of publishing

newspapers, periodicals, or magazines, shall be allocated to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the Department of Revenue. Beginning January 1, 2024, until January 1, 2034, as used in this section, the activities of printing, and of publishing newspapers and periodicals or magazines are those activities to which the exemption in RCW 82.04.759 and the tax rate in RCW 82.04.280(1)(a) apply.

**Sec. 3. Severability - Construction.**

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

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

**Sec. 3. Effective date.** This ordinance shall take effect and be in full force on January 1, 2026.

**PASSED BY** the City Council of the City of Des Moines this \_\_\_\_ day of \_\_\_\_\_, 2025 and signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Ordinance No. \_\_\_\_  
Page 26 of 26

ATTEST:

\_\_\_\_\_  
City Clerk

Published: \_\_\_\_\_

Effective Date: January 1, 2026

# Draft Ordinance 25-100 Business & Occupation Tax Model Ordinance Update



# Background

Cities authorized under RCW 35A.82.020 to levy Business and Occupation tax (B&O)

Legislature enacts EHB 2030 in 2003 in order to make local B&O taxes more uniform

- Caps B&O tax on retail sales
- Directs AWC to create model ordinance
- Cities required to adopt mandatory provisions
- Model ordinance to be periodically updated

City adopts model ordinance effective 2005

Periodically updated since



# ESSB 5814

Passed by Legislature in 2025 session

Changes tax treatment of certain kinds of services

- Affects sales tax and B&O tax

Change to B&O tax treatment triggered changes to AWC model ordinance

Model ordinance changes must be effective January 1, 2026



# Changes to B&O model ordinance

Now classified as retail services and subject to retailing B&O tax:

- Information technology training
- Website development services
- Custom software development
- Investigation, security services, security monitoring services, and armored car services
- Temporary staffing
- Advertising services

Exclusions removed for certain Digital Automated Services

New exclusions related to health care

- Results in higher tax rate under state tax, but not City tax



# Sales Tax

Reclassified services now subject to sales tax

City not required to take action to effect changes

- City tax applies to any events taxable under state law
- Department of Revenue (DOR) collects tax and remits to City
- DOR responsible to ensuring compliance

Increased revenue for the City can't be accurately predicted

May result in increased cost for City contracts



# Suggested Motion

“I move to pass Draft Ordinance 25-100 to a second reading on the next regular Council meeting agenda.”





**Des Moines**  
WATERLAND CITY

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Consideration of Memorandum of Understanding between City of Des Moines and King County Metro Transit Department

FOR AGENDA OF: October 23, 2025

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: October 10, 2025

ATTACHMENTS:

- 1. Memorandum of Understanding

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal /s/TG \_\_\_\_\_
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

The purpose of this item is for the Council to consider authorizing the City Manager to enter into a Memorandum of Understanding with King County Metro Transit Department for studies related to a potential water taxi service between Des Moines and Seattle.

**Suggested Motion**

**Motion:** "I move to authorize the City Manager to enter into a Memorandum of Understanding with King County Metro Transit Department for studies related to a potential water taxi service between Des Moines and Seattle."

### **Background**

On October 24, 2024, Council accepted a \$160,000 grant awarded from the Washington State Department of Commerce to fund a Community Engagement Study, an Economic & Environmental Analysis Study, and a study of secondary transportation options related to Electric Water Taxi service from Des Moines to downtown Seattle and possible other routes. The grant does not require a City match.

At the July 10, 2025, City Council meeting, staff reported that King County had expressed interest in conducting its own feasibility analysis for a potential ferry route serving Des Moines. Because both the City of Des Moines and King County Metro share a common interest in evaluating ferry service, a Memorandum of Understanding (MOU) is proposed to allow the two entities to collaborate on data collection and share results.

### **Discussion**

The Commerce grant identifies four project goals:

- Complete a Community Engagement Study, an Economic and Environmental Analysis, and a study of secondary transportation options to guide the future of Electric Water Taxi service between Des Moines and downtown Seattle and potential additional routes
- Explore methods for multicultural outreach to ensure effective communication with underserved communities about complementary transit options
- Develop data and recommendations that position Des Moines to pursue future partnerships with regional transit agencies
- Use information from the studies to strengthen state and federal grant applications and enhance the City's eligibility for formula funding opportunities

The City Council has expressed continued interest in pursuing ferry service to Des Moines, while recognizing that the City cannot fund or operate such a service on its own. Over the summer of 2025, Councilmembers and staff met with representatives from King County Metro to discuss opportunities for collaboration. Both parties share a mutual interest in determining whether ferry service between Des Moines and Seattle is a viable component of the regional marine transit network. Collaborating on the City's Commerce grant provides a practical way to leverage the County's subject matter expertise and ensure that the studies are conducted efficiently and effectively.

Under the proposed MOU, King County Metro will work with the City to refine the study scope, share relevant data, and assist with community engagement efforts—particularly outreach to priority populations and exploration of last-mile connections. The City will remain responsible for all aspects of grant administration, including consultant management, payment of study costs, and reporting to the Department of Commerce.

The MOU is limited solely to the collaborative studies and analyses related to potential ferry service; neither party is obligated to fund, provide, or participate in actual ferry operations.

### **Alternatives**

1. The City Council may decline to approve the Memorandum of Understanding with King County Metro Transit Department, which will potentially lessen the value of the work done for the Commerce grant.

**Financial Impact**

**Recommendation**

Staff recommends the adoption of this motion.

**MEMORANDUM OF UNDERSTANDING**

**By and between**

**THE CITY OF DES MOINES and the**

**KING COUNTY METRO TRANSIT DEPARTMENT**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into by and between the CITY OF DES MOINES (the “City”) and KING COUNTY, a home rule charter county and political subdivision of the state of Washington, acting by and through its Metro Transit Department and Marine Division (the “County”), each of which is sometimes referred to individually as a “Party,” and collectively referred to as “Parties.”

WHEREAS, the Parties share a common interest in determining whether water taxi service from Des Moines to downtown Seattle and possible other routes are viable as a component of the regional marine transit system; and

WHEREAS, in pursuit of that goal, in 2024 the City received a \$160,000 grant from the Washington State Department of Commerce comprised of federal funding for the purpose of conducting an Economic and Environmental Analysis Study and a Community Engagement Study (collectively “studies”); and

WHEREAS, the County has subject matter expertise in this area and its participation in the studies will likely make the process more efficient and successful;

WHEREAS, the Parties, having a common interest in the successful completion of these studies, wish to collaborate in conducting the studies and to share in the resulting product;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

The Parties enter into this agreement in a coordinated effort to conduct the studies to evaluate future Des Moines passenger only ferry service as described in Washington State Department of Commerce grant under contract number F24-51701-006 (the “grant”).

The Parties agree to the responsibilities outlined below:

A. County Responsibilities:

1. Coordinate with the City to develop a scope of work for studies to be performed pursuant to the grant.
2. Collaborate with the City to provide relevant information to complete the studies.

3. Coordinate with the City to oversee the design and implementation of community engagement to ensure that the route(s) would benefit priority populations and address last mile connectivity.

B. City Responsibilities:

1. Coordinate with the County to develop a scope of work for studies to be performed pursuant to the grant.
  2. Choose a consultant(s), with input from the County, to perform the work identified by the Parties.
  3. Oversee implementation of the studies in accordance with the requirements of the grant.
  4. Provide funding received from the grant for invoiced work performed under the grant, up to a maximum amount of \$160,000. The City will invoice and pay the consultant(s) directly using either grant funds or City funds. The County will not receive any funding from the grant, either as passthrough or by any other means.
  5. Provide the County with a copy of the completed studies.
- C. Effective Date. This Agreement shall be effective upon the date of execution by both parties and remain in effect until June 30, 2026 unless terminated at an earlier date by either Party as provided herein.
- D. Termination. This Agreement may be terminated by either Party without cause at any time by mutual agreement, or by either Party thirty (30) days following the other Party's receipt of a written intent to terminate. Each Party shall have the right to cancel and immediately terminate the Agreement without prior notice upon breach of the Agreement by the other Party.
- E. Indemnification. The Parties agree to defend, indemnify, and hold harmless each other, their respective officials, agents, and employees from and against any and all claims, damages, injuries, liabilities, actions, fines, penalties, costs and expenses (including reasonable attorney's fees) that arise out of or are related to the negligent acts or omissions of the Indemnifying Party (and its officials, agents, employees acting within the course and scope of their employment) and in the performance of said Party's obligations under this Agreement or the exercise of a Party's rights and privileges under this Agreement. In the event any such liability arises from the concurrent negligence of the Indemnifying Party and the other Party, the indemnity obligation of this Section shall apply only to the extent of the negligence of the Indemnifying Party and its actors.

The foregoing provisions specifically and expressly intend to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the Indemnified Party with a full and complete

indemnity of claims made by the Indemnitor's employees. This waiver has been mutually negotiated.

IN WITNESS WHEREOF, we have set our hands on this \_\_\_ day of \_\_\_\_\_, 2025

CITY OF DES MOINES

KING COUNTY

\_\_\_\_\_  
Katherine Caffrey, City Manager

\_\_\_\_\_  
Michelle Allison, General Manager  
Metro Transit Department

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Attest:  
(City Attorney)

\_\_\_\_\_  
Kristin A. Relyea  
Senior Deputy Prosecuting Attorney



Memorandum of  
Understanding between  
City of Des Moines and  
King County Metro  
Transit Department

October 23, 2025

# MOU Purpose

- MOU between City of Des Moines and King County Metro Transit for studies related to a potential water taxi service route
- October 2024: Council accepted \$160,000 grant award from WA Department of Commerce to fund a ***Community Engagement Study, an Economic & Environmental Analysis Study, and a Study of Secondary Transportation Options for an Electric Water Taxi service from Des Moines to downtown Seattle and possible other routes***
- King County Metro has interest in conducting its own feasibility analysis
  - MOU allows the two entities to collaborate on data collection and share results

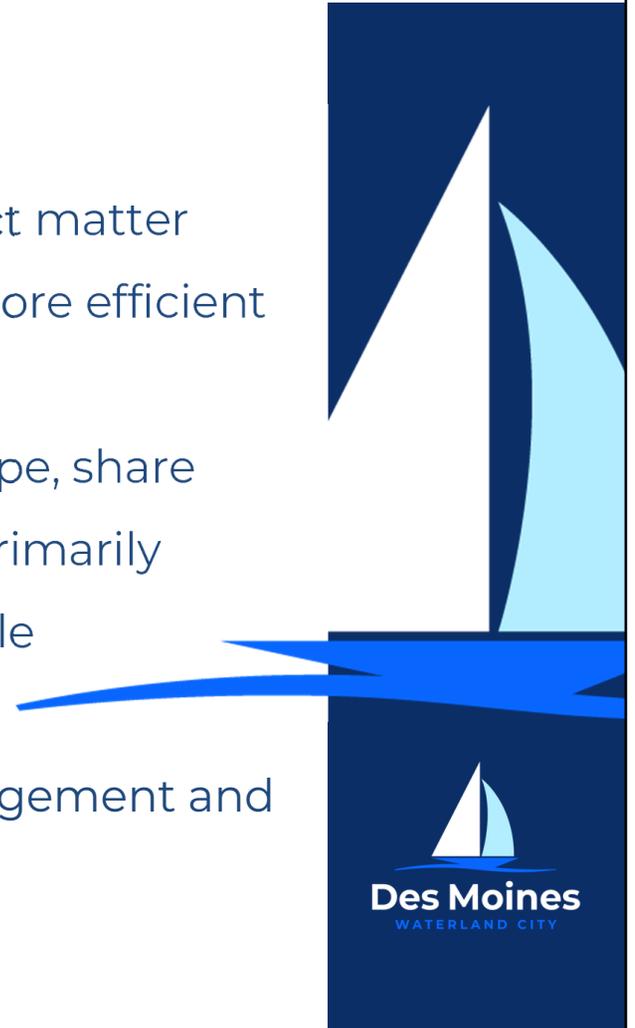


# Goals of the Commerce Grant

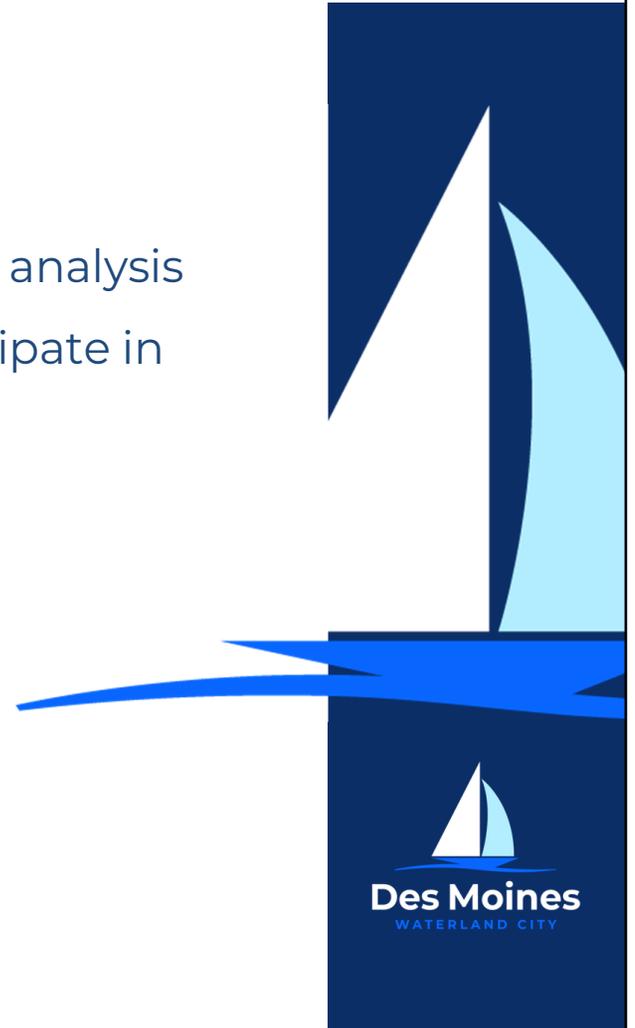
- Complete set of studies:
  - Community engagement
  - Economic & environmental analysis
  - Secondary transportation options
- Develop data and recommendations that position Des Moines the pursue future partnerships with regional transit agencies
- Use information from studies to strengthen future grant applications



- MOU allows us to utilize King County's subject matter expertise and information to make studies more efficient and effective
- County will work with City to refine study scope, share data, assist with community engagement– primarily underserved populations and explore last-mile connections
- City responsible for all aspects of grant management and compliance

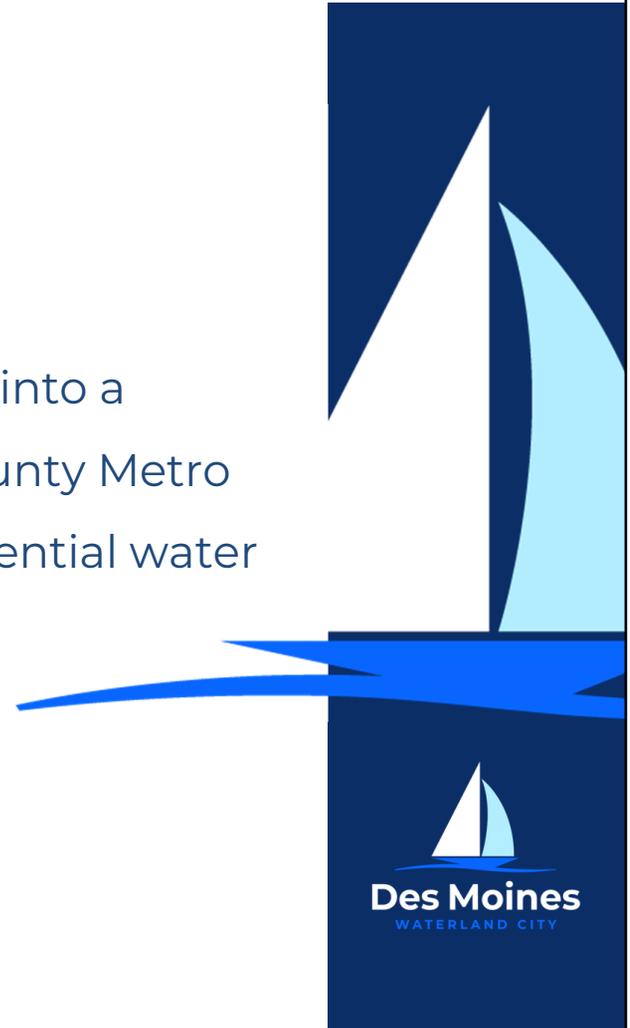


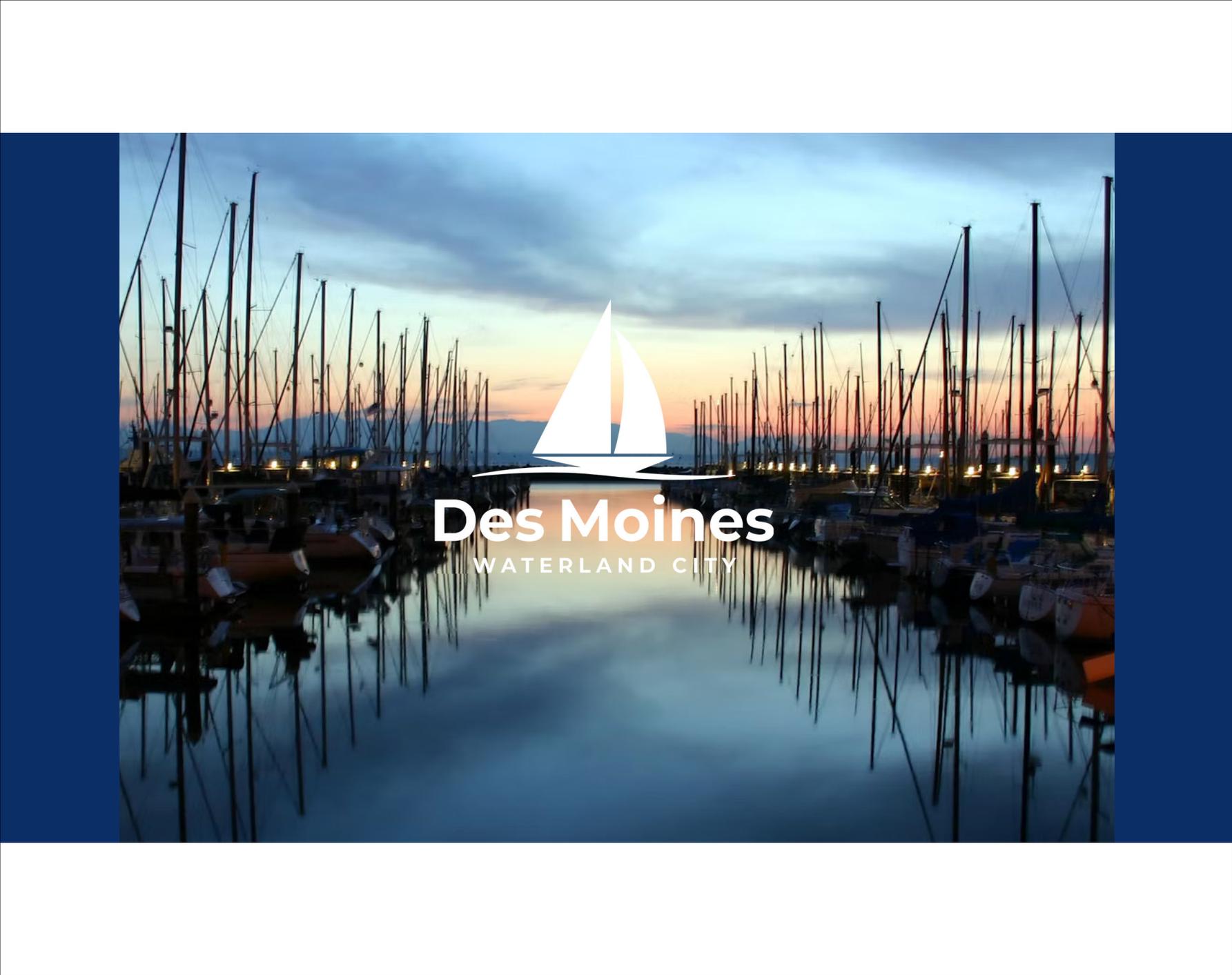
- MOU solely about collaboration on data and analysis
- No party obligated to fund, provide or participate in actual ferry operations



Motion:

“I move to authorize the City Manager to enter into a Memorandum of Understanding with King County Metro Transit Department for studies related to a potential water taxi service between Des Moines and Seattle.”





**A G E N D A I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Consultant Services Contract with  
Nelson\Nygaard

FOR AGENDA OF: October 23, 2025

DEPT. OF ORIGIN: Administration

ATTACHMENTS:

DATE SUBMITTED: October 10, 2025

- 1. Consultant Services Contract with  
Nelson\Nygaard

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal /s/TG
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

**Purpose and Recommendation**

The purpose of this item is for the Council to consider approving a contract and scope of work with Nelson\Nygaard, amount not to exceed \$100,000, to complete the economic analysis required by the Washington Department of Commerce Grant for Economic Analysis of the Electric Water Taxi Pilot Program.

**Suggested Motion**

**Motion:** "I move to approve the Consultant Services Contract with Nelson\Nygaard in the amount not to exceed \$100,000 for the implementation of a Washington Department of Commerce Grant for Economic Analysis of the Electric Water Taxi Pilot Program, and authorize the City Manager to sign the Contract substantially in the form as attached."

### **Background**

On October 24, 2024, Council accepted a \$160,000 grant awarded from the Washington State Department of Commerce to fund a Community Engagement Study, an Economic & Environmental Analysis Study, and a study of secondary transportation options related to Electric Water Taxi service from Des Moines to downtown Seattle and possible other routes.

Pending the City Council's approval of a Memorandum of Understanding with King County Metro, the City and King County Metro are working together on studies related to this grant. Additionally, the City will share the resulting work product with King County Metro.

### **Discussion**

The majority of the work to implement the grant is proposed to be completed by Nelson\Nygaard (N\N), a nationally recognized transportation planning firm with a strong local presence in Seattle. During interviews, N\N staff demonstrated a broad and objective understanding of regional transportation modes, costs, and travel demand across the Puget Sound area. They also shared several relevant case studies and highlighted their extensive experience with community outreach on transportation projects.

Key tasks N\N will complete include:

- Reviewing prior reports and planning efforts by the City of Des Moines, Sound Transit, and King County Metro related to potential ferry service and public transportation planning for the Des Moines area
- Conducting a market analysis of travel patterns in Des Moines, with an emphasis on public transportation demand
- Engaging stakeholders through interviews and community input—particularly from underserved populations—to assess how potential transportation options may affect them
- Evaluating the 2022 Ferry Pilot service using metrics such as cost effectiveness, ridership, operations, community impacts, and environmental factors
- Performing an alternatives analysis comparing a potential ferry service with other options, such as King County Metro's RapidRide A Line and Sound Transit's Link light rail expansion, considering factors like operating cost, capital cost, and connectivity for underserved communities
- Providing recommendations for the implementation of regular ferry service

N\N will focus primarily on assessing the potential for a new ferry route, most likely connecting Des Moines to downtown Seattle, while also exploring other possible travel markets that could be served. In coordination with King County Metro, the analysis will use a diesel-powered vessel as the baseline. This approach reflects Metro's concerns about the current readiness of electric ferry technology to reliably support commuter operations. Although electric ferries show promise, Metro believes the technology is not yet sufficiently advanced for consistent daily service. To ensure future feasibility is captured, N\N will prepare a supplemental electrification memo outlining the key cost, infrastructure, and operational differences between diesel and electric ferries. The Department of Commerce has been informed of this adjustment and has confirmed that the revised approach remains consistent with the intent of the grant.

A separate consultant, BERK Consulting, will partner with N\N to conduct the Economic Development Analysis. The remaining grant funds will support stakeholder meetings, materials, and grant administration.

The City reviewed the proposed scope of work with King County Metro, and Metro staff concluded that the analysis and findings will meaningfully inform their own evaluation of a potential ferry route to Des Moines.

**Alternatives**

1. The City Council may decline to approve the Consultant Services Contract with Nelson\Nygaard; this would result in most of the work required for the Washington State Department of Commerce Grant not being fulfilled and the \$160,000 grant funds not be used. Additionally, the City does not have adequate resources to perform this work in-house.

**Financial Impact**

The \$160,000 provided by the Washington State Department of Commerce Grant requires no local match and will cover all costs associated with the work.

**Recommendation**

Staff recommends the adoption of this motion.



## **CONSULTANT SERVICES CONTRACT between the City of Des Moines and**

### **Nelson\Nygaard Consulting Associates, Inc.**

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Nelson\Nygaard Consulting Associates, Inc., a corporation organized under the laws of the State of California, located and doing business at 1525 International Parkway Suite 3021 Lake Mary, FL 32746 (hereinafter the "Consultant").

#### **I. DESCRIPTION OF WORK.**

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

REFER TO EXHIBIT A: DESCRIPTION OF WORK

Notwithstanding anything within the full scope of this agreement to the contrary, Consultant shall perform its services consistent with the professional skill and care ordinarily provided by planners practicing in the same or similar locality under the same or similar circumstances. Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the project.

**II. TIME OF COMPLETION.** The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I by MARCH 31, 2026.

#### **III. COMPENSATION.**

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed \$100,000.00 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit B: BUDGET AND RATES for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

CONSULTANT SERVICES CONTRACT

*(Various)*



- 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 thirty (30) 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-Client 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.

**CHANGES.** Changes to the Contract work constitutes amendments to the contract, subject to the provisions of Section XV(E). The City shall issue a written change order in order to request any change in the Contract work during the performance of this Contract. If the change increases or decreases the Consultant's costs or time for performance, Consultant and the City will negotiate adjustments to the Consultant's fee. The City will attempt, in good faith, to reach agreement with the Consultant on all such adjustments. The Consultant shall proceed with the change order work as set forth in such change order.

**CLAIMS.** If the Consultant disagrees with anything required by a 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. At a minimum, a Consultant's written claim shall include the information set forth in subsections A, items 1 through 5 below.

- 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 reasonably 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

CONSULTANT SERVICES CONTRACT 2  
(Various)



protest.

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

**V. COOPERATION.** The parties acknowledge and agree that the project contemplated hereunder is a collaboration between the City and Contractor, and that Contractor's timely performance is, to some extent, dependent upon the City's timely and professional support.

- VI.** Unless otherwise provided for under this Agreement, the City shall provide information in a timely manner regarding requirements for and limitations on the project, including any reasonably foreseeable changes thereto;
- VII.** the City shall identify a representative authorized to act on Client's behalf with respect to the Project. As of the date of execution, the City's representative is [NAME, TITLE]. Client shall render decisions and approve Contractor's submittals in a timely manner in order to avoid unreasonable delay in the orderly progress of Contractor's services;
- VIII.** the City shall promptly furnish information or materials related to the project as reasonably requested by Contractor in a commonly readable digital format;
- IX.** the City shall make reasonable efforts to cooperate with Contractor throughout the duration of the project, including but not limited to timely communication, reasonable participation in any meetings with Contractor or any subcontractor thereof, and a respectful regard toward Contractor, any of its subcontractors, and the representatives and agents of same; and
- X.** to the extent the City's non-compliance with its obligations in this section impacts Contractor's timely performance or causes Contractor to incur additional costs, Contractor's schedule of performance and fees shall be equitably adjusted, but in no case shall the fees exceed the fee cap specified in this Agreement, if any.

**XI. 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.

**XII. 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.

**XIII. INDEMNIFICATION.** Consultant shall indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits brought by third parties, including for attorneys' fees, to the extent resulting from the negligent acts, errors or omissions of the Consultant in performance of

CONSULTANT SERVICES CONTRACT 3  
(Various)



this Contract, except for injuries and damages caused by the sole negligence of the City.

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

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

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

**XIV. 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.

**Limitation of Liability.** To the fullest extent permitted by law, the total liability in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, to the Owner and any one claiming by, through or under the City, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Consultant's services, the project, or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of the Consultant or the Consultant's officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed and is limited to the greater of (a) the total compensation received by the Consultant; or (b) the available proceeds of the applicable insurance policy up to the limit required under this Agreement provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

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

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01. The City shall be included as an additional insured.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, 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 by Consultant for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

CONSULTANT SERVICES CONTRACT 4  
(Various)



4. Employer's Liability coverage shall be endorsed to provide Stop Gap coverage for the state of Washington.
5. Professional Liability insurance appropriate to the Consultant's profession.

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

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate.
3. Employer's Liability/Stop Gap coverage with limits of \$1,000,000 each accident, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
4. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

**C. Other Insurance Provisions.**

1. The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice has been given to the City, except 10 days notice for nonpayment of premium.

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

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

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

CONSULTANT SERVICES CONTRACT 5  
(Various)



**XV. 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. Following its good faith evaluation of the information provided, Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the City and the City's employees, officers, officials, agents, and consultants. Consultant shall provide prompt written notice to the City if Consultant becomes aware of any material error, omission or inconsistency in such services or information.

**XVI. 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.

**MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES**

The Consultant and the City mutually waive consequential damages, including but not limited to damages for loss of profits, loss of revenues, loss of business and of business opportunities, for claims, disputes or other matters in question arising out of or relating to this Agreement. The City and the Consultant agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors, and other entities involved in this Project to carry out the intent of this provision.

**WORK PERFORMED AT CONSULTANT'S RISK.** Consultant shall take all commercially reasonable 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.



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.

#### **XVII. MISCELLANEOUS PROVISIONS.**

A. Non-Waiver of Breach. The failure of a party hereto 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. All fees and expenses for mediation shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

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

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, or such other address as may be hereafter specified in writing by a duly authorized representative of the party. 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 exercise its professional judgment and take all reasonable measures to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

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

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

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



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

<p><b>CONSULTANT:</b></p> <p>By: _____  <i>(signature)</i>  Print Name: Jonathan Watts  Its Director of Operations  <i>(Title)</i></p> <p>DATE: _____</p>	<p><b>CITY OF DES MOINES:</b></p> <p>By: _____  <i>(signature)</i>  Print Name: <u>Katherine Caffrey</u>  Its <u>City Manager</u>  <i>(Title)</i></p> <p>DATE: _____</p> <p>Approved as to form:</p> <p>_____  City Attorney  DATE: _____</p>
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<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONSULTANT:</b></p> <p>Nelson\Nygaard Consulting Associates, Inc.  1525 International Parkway  Suite 3021  Lake Mary, FL 32746</p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF DES MOINES:</b></p> <p>City of Des Moines  21630 11<sup>th</sup> Avenue S., Suite A  Des Moines, WA 98198  [Insert Telephone Number] (telephone)  [Insert Fax/email] (fax/email)</p>
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CONSULTANT SERVICES CONTRACT 9  
*(Various)*

## EXHIBIT A: DESCRIPTION OF WORK

The scope of work and deliverables for this project are outlined below.

### Task 1 – Project Management

To start this effort, Nelson\Nygaard will host a virtual kick-off meeting with the City of Des Moines project team. Nelson\Nygaard will also host bi-weekly one-hour project status meetings that will be used to coordinate project delivery, review project deliverables, and address any challenges that may arise. Nelson\Nygaard will also develop a monthly progress report that will detail work accomplished over the previous month and provide a budget summary for the same duration.

### Task 2 – Document Review

Nelson\Nygaard will complete a review of all major planning documents for the City of Des Moines, Sound Transit, and King County Metro to better understand the long-term vision for the City and the two current public transportation providers. This document review will identify major planning decisions that have been made previously, which will become the baseline for the remaining work in this report. The document review will provide key insights into planned growth of Des Moines, to ensure future transportation investments are consistent with this vision. The review will also note areas where there are differences in direction between the three parties, as well as gaps where the vision is missing elements. Also of specific interest will be to identify vision elements related to transportation disadvantaged individuals and how their needs dovetail with the stated visions.

#### Deliverable

- Memo summarizing key findings from all reviewed plans

### Task 3 – Market Analysis

Utilizing Census data, established travel demand models, and Replica travel data, Nelson\Nygaard will develop a market analysis for travel in Des Moines with special attention focused on public transportation. This analysis will help understand the demand for regional mobility and connectivity to/from Des Moines. The analysis will spatially identify where populations of people with a propensity for using public transportation live and work to better understand how people move into and out of Des Moines today. To the extent this data can also identify more casual travel patterns, such as leisure and tourism-based travel, we will also uncover and discuss those, as well. While the focus of this effort is on

**Ferry Pilot Evaluation and Alternatives**  
City of Des Moines, Washington

development of ferry service, presumably to downtown Seattle, the consultant team will also identify other possible travel markets based on their relative strengths and adaptability to be serviced by a new ferry route. These discussions will not be comprehensive in nature, but will identify other market opportunities for which additional investigations under other efforts may be helpful.

During Task 3, Nelson\Nygaard will work with the identified economic development consultant to ensure projected growth and transportation demand are consistent.

Nelson\Nygaard will prepare a technical memo that summarizes ferry market opportunities related to downtown Seattle. It will also document our high-level evaluation of other opportunities for potential ferry markets which Des Moines may want to consider for further study.

**Deliverable**

- Market analysis report
- Ferry market technical memo

## **Task 4 – Engagement**

Engagement will be divided into two distinct phases: stakeholder interviews, and community survey.

Stakeholder interviews will occur during the development of the market analysis and will be conducted with key individuals, roles, and organizations directly involved in the delivery of the 2022 pilot project. In addition, Nelson\Nygaard will interview key elected officials to understand community priorities and context. Nelson\Nygaard will complete up to 16 virtual stakeholder interviews.

A community survey will be used to engage community members directly to understand insights into how proposed transportation alternatives will impact decisions for people’s daily mobility needs. The survey will be designed and administered in coordination with the City of Des Moines, with a goal to maximize participation across Des Moines residents, with targeted response rates for identified for key demographic factors, including age, income, race, and gender. Nelson\Nygaard will translate and administer the survey in up to 3 languages, aside from English. Nelson\Nygaard will administer the survey through SurveyMonkey or a similar platform. Advertisement of the survey will be through virtual and in-person methods (tabling at Waterfront Farmers Market or similar events). In addition, Nelson\Nygaard will work with the City to identify local newsletters, blogs, and other communication channels where survey information can be shared.

**Ferry Pilot Evaluation and Alternatives**  
City of Des Moines, Washington

Community engagement will be used to inform the alternatives analysis and to understand community support for investments in future ferry service.

**Deliverable**

- Key Stakeholder Interview Memo
- Community Engagement Report

## **Task 5 – Ferry Pilot Evaluation**

Utilizing data provided by the City of Des Moines, Nelson\Nygaard will evaluate the ferry pilot operated in 2022 across a variety of metrics, possibly including:

- Cost effectiveness
  - Operational cost
  - Cost per passenger
  - Cost per revenue hour
- Ridership
  - By day
  - By time of day
  - User (round trip analysis?)
- Operations
  - On-time performance/schedule adherence
  - Operational challenges
    - Delays
    - Weather impacts
- Community impacts
  - Key markets served
- Environmental impacts

**Key assumption**

- Economic Impacts Assessment completed by others, with transportation inputs provided by Nelson\Nygaard

**Deliverable**

- Ferry Pilot Evaluation Technical Report

## Task 6 – Alternatives Analysis

Task 6 will compare the proposed ferry service investments to other alternative transportation options, including the King County Metro – Rapid Line A, and the planned Sound Transit – Link 1 Line Expansion with community connections to those services. Based upon input from the Market Analysis, Nelson\Nygaard will evaluate how effectively differing transportation infrastructure investments meet needs identified in Task 3. Alternatives will be evaluated across several factors, including:

- Operating cost
- Capital cost
- Connectivity impacts on underserved communities

In addition, for alternatives that include existing or planned infrastructure, Nelson\Nygaard will identify additional service and capital investments planning-level cost estimates that improve local connectivity to those services.

The alternatives analysis will assume a diesel-operated ferry as baseline for the analysis. Nelson\Nygaard will prepare a supplemental electrification memo that outlines key cost, infrastructure, and programming differences between diesel and electric ferries

### **Deliverable:**

- Alternatives Analysis Report
- Ferry electrification memo

## Task 7 – Recommendations

Nelson\Nygaard will develop clear recommendations for the City of Des Moines to make definitive decisions about the implementation of regular ferry service. These recommendations will clearly articulate, based on findings from previous tasks, if investing in ferry service or another alternative best meet the city's planned outcomes. We will also leave points for further investigation with respect to economic development opportunities that may be presented by a ferry operating in and out of the Des Moines waterfront. While these will need further evaluation/consideration by others, they will present a starting point.

If Nelson\Nygaard recommends an alternative other than ferry service, Nelson\Nygaard will develop planning-level capital and operating cost estimates.

### **Deliverable:**

- Final Full Report
- Recommendations/Executive Summary

Ferry Pilot Evaluation and Alternatives  
City of Des Moines, Washington

## EXHIBIT B: BUDGET AND RATES

The budget established for this project is outlined below.

Task	Description	Nelson\Nygaard Labor Costs							NN Labor Cost	Total Labor Hours	Total Labor Costs	Expenses	Expenses	Total Direct Expenses	Total Costs	
		Payne, Timothy Senior Principal 2 296.17	Nordin, Gregory Principal 1 227.42	Johnson, Christopher Senior Principal 2 297.68	Kolesinskas, Ian Senior Associate 1 143.55	Carraher, Assistant Manager 199.46	Associate 3 162.22	Project Accountant 162.22								
-	PROJECT MANAGEMENT and QA/QC															
<b>1.00</b>	<b>Project Management</b>															
1.10	Kick-off	2	5		1			8	1,872.97	8.00	1,872.97				1,872.97	
1.20	Coordination Meetings	4	10		10			24	4,894.36	24.00	4,894.36				4,894.36	
1.30	Progress Reports		5					5	1,948.19	10.00	1,948.19				1,948.19	
	Task Total 1	6	20	-	11	-	-	5	42	8,715.52	42.00	8,715.52	-	-	-	8,715.52
<b>2.00</b>	<b>Document Review</b>															
2.10	Document Review		4		20			24	3,780.70	24.00	3,780.70				3,780.70	
	Task Total 2	-	4	-	20	-	-	24	3,780.70	24.00	3,780.70	-	-	-	3,780.70	
<b>3.00</b>	<b>Market Analysis</b>															
3.10	Transit Market Analysis	4	16	8	32	36		96	18,979.07	96.00	18,979.07				18,979.07	
3.20	Ferry Market Memo	6	2					8	2,231.85	8.00	2,231.85				2,231.85	
	Task Total 3	10	18	8	32	36	-	104	21,210.92	104.00	21,210.92	-	-	-	21,210.92	
<b>4.00</b>	<b>Engagement</b>															
4.10	Stakeholder Interviews		12		20			32	5,600.03	32.00	5,600.03				5,600.03	
4.20	Survey Development and Administration		4		8			12	2,058.08	12.00	2,058.08				2,058.08	
4.30	In-Person Survey Promotion					20		20	3,244.42	20.00	3,244.42				3,244.42	
4.40	Community Engagement Report	4	4		8			16	3,242.76	16.00	3,242.76				3,242.76	
	Task Total 4	4	20	-	36	-	20	80	14,145.29	80.00	14,145.29	225.00	5,000.00	5,225.00	19,370.29	
<b>5.00</b>	<b>Ferry Pilot Evaluation</b>															
5.10	Ferry Pilot Evaluation	12	12		44	20		88	16,588.55	88.00	16,588.55				16,588.55	
	Task Total 5	12	12	-	44	20	-	88	16,588.55	88.00	16,588.55	-	-	-	16,588.55	
<b>6.00</b>	<b>Alternatives Analysis</b>															
6.10	Concept Development	4	6		16			26	4,846.01	26.00	4,846.01				4,846.01	
6.20	Concept Evaluation	8	8		36			52	9,356.56	52.00	9,356.56				9,356.56	
6.30	Opportunities for Improved Connectivity	4	6		20			30	5,420.22	30.00	5,420.22				5,420.22	
6.40	Ferry Electrification Memo	7	2					9	2,528.02	9.00	2,528.02				2,528.02	
	Task Total 6	23	22	-	72	-	-	117	22,150.81	117.00	22,150.81	-	-	-	22,150.81	
<b>7.00</b>	<b>Recommendations</b>															
7.10	Recommendations Report	4	8		36			48	8,171.88	48.00	8,171.88				8,171.88	
	Task Total 7	4	8	-	36	-	-	48	8,171.88	48.00	8,171.88	-	-	-	8,171.88	
	<b>TOTAL HOURS</b>	<b>59</b>	<b>104</b>	<b>8</b>	<b>251</b>	<b>56</b>	<b>20</b>	<b>503</b>	<b>94,763.67</b>	<b>503.00</b>					<b>503.00</b>	
	<b>TOTAL COSTS</b>														<b>99,988.67</b>	



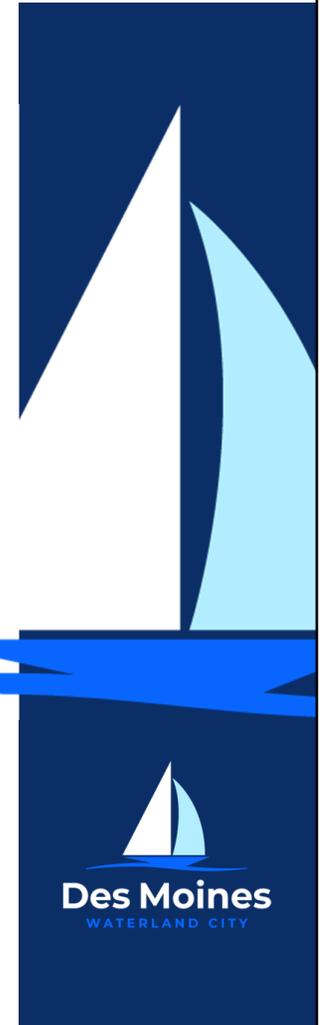
# Consultant Services Contract with Nelson- Nygaard

October 23, 2025



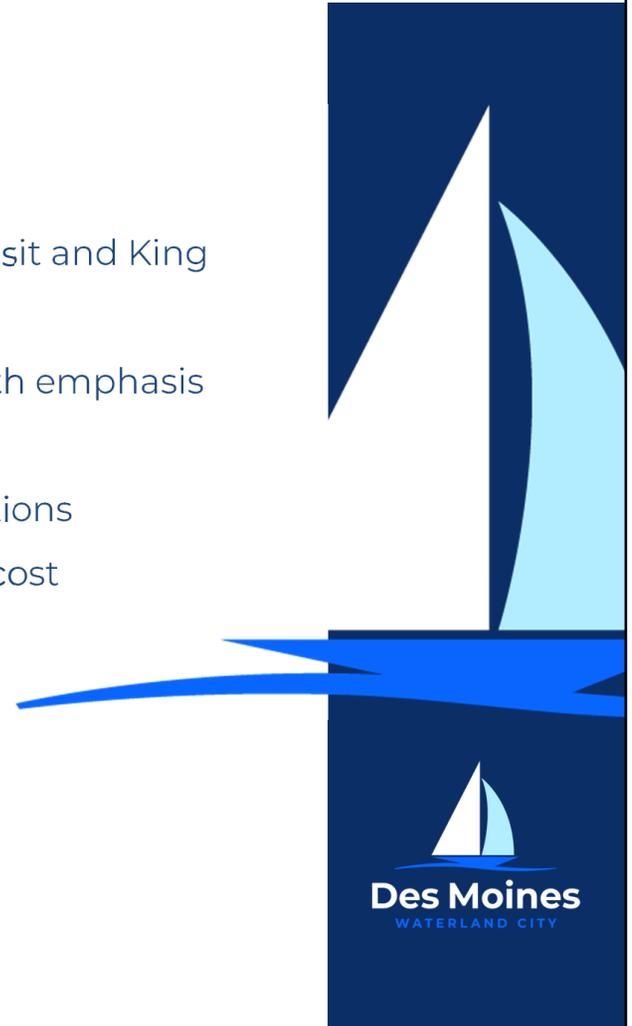
## Contract Purpose

- Contract with Nelson\Nygaard in amount not to exceed \$100,000 to complete the economic and transportation analysis for the WA Department of Commerce Grant related to Electric Water Taxi Service between Des Moines and downtown Seattle and possible other routes
- Nelson\Nygaard (NN) is a nationally recognized transportation planning firm familiar with various transportation modes, costs and travel demand in Puget Sound



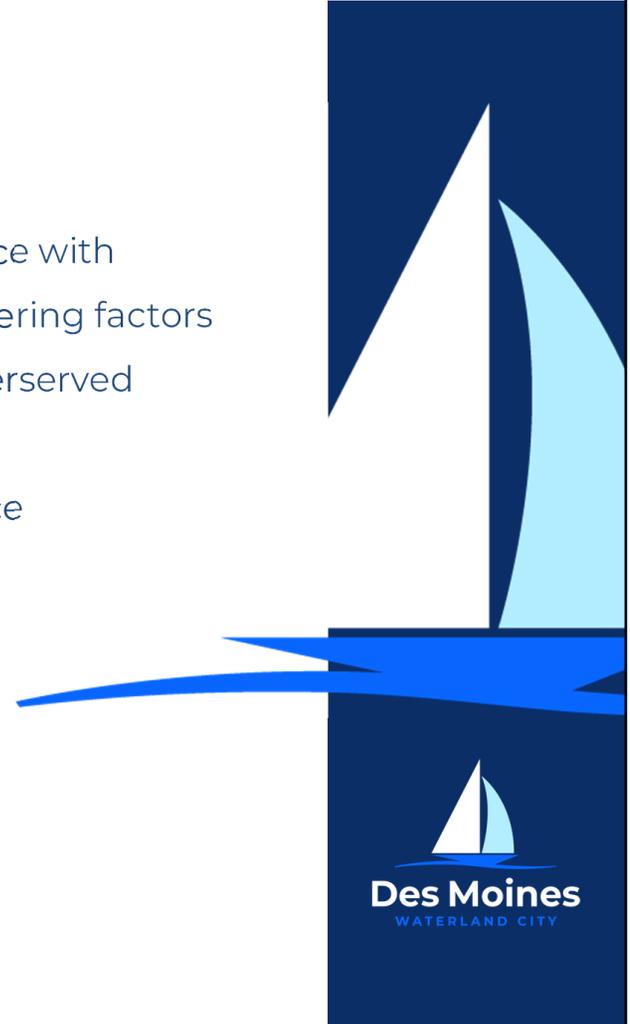
## Key Tasks

- Review prior reports and planning efforts by City, Sound Transit and King County Metro related to potential ferry services
- Conduct market analysis of travel patterns in Des Moines, with emphasis on public transportation demand
- Engage stakeholders– particularly from underserved populations
- Evaluate the 2022 Ferry Pilot service study using metrics for cost effectiveness, ridership, operations, community impacts and environmental factors

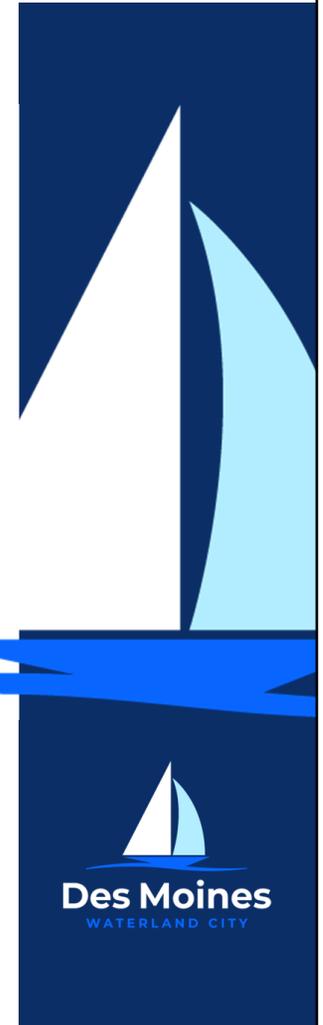


## Key Tasks cont'd

- Perform alternatives analysis comparing potential ferry service with other transit options (RapidRide A Line, Link light rail) considering factors such as operating cost, capital cost and connectivity for underserved communities
- Recommendations for implementation of regular ferry service



- Will explore feasibility of commuter service and tourism/day service
- Baseline will be diesel-powered vessel:
  - Meets grant parameters
  - Assumption determined in concert with King County Metro
  - Supplemental memo developed for electric vessels– cost, infrastructure, operational differences
- Separate consultant (BERK) will partner with NN for Economic Development Analysis

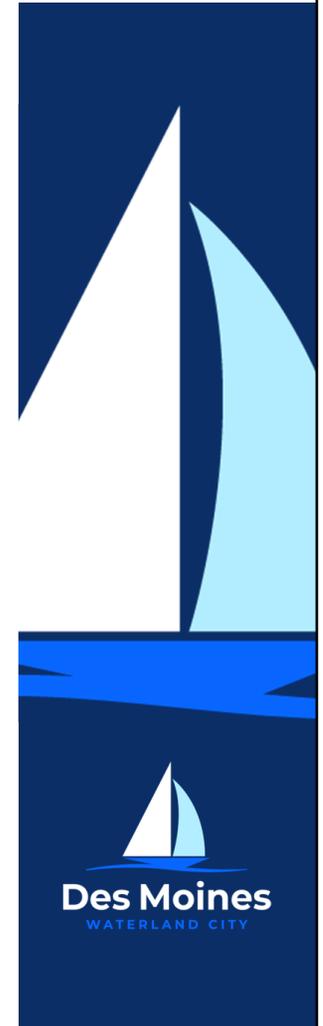


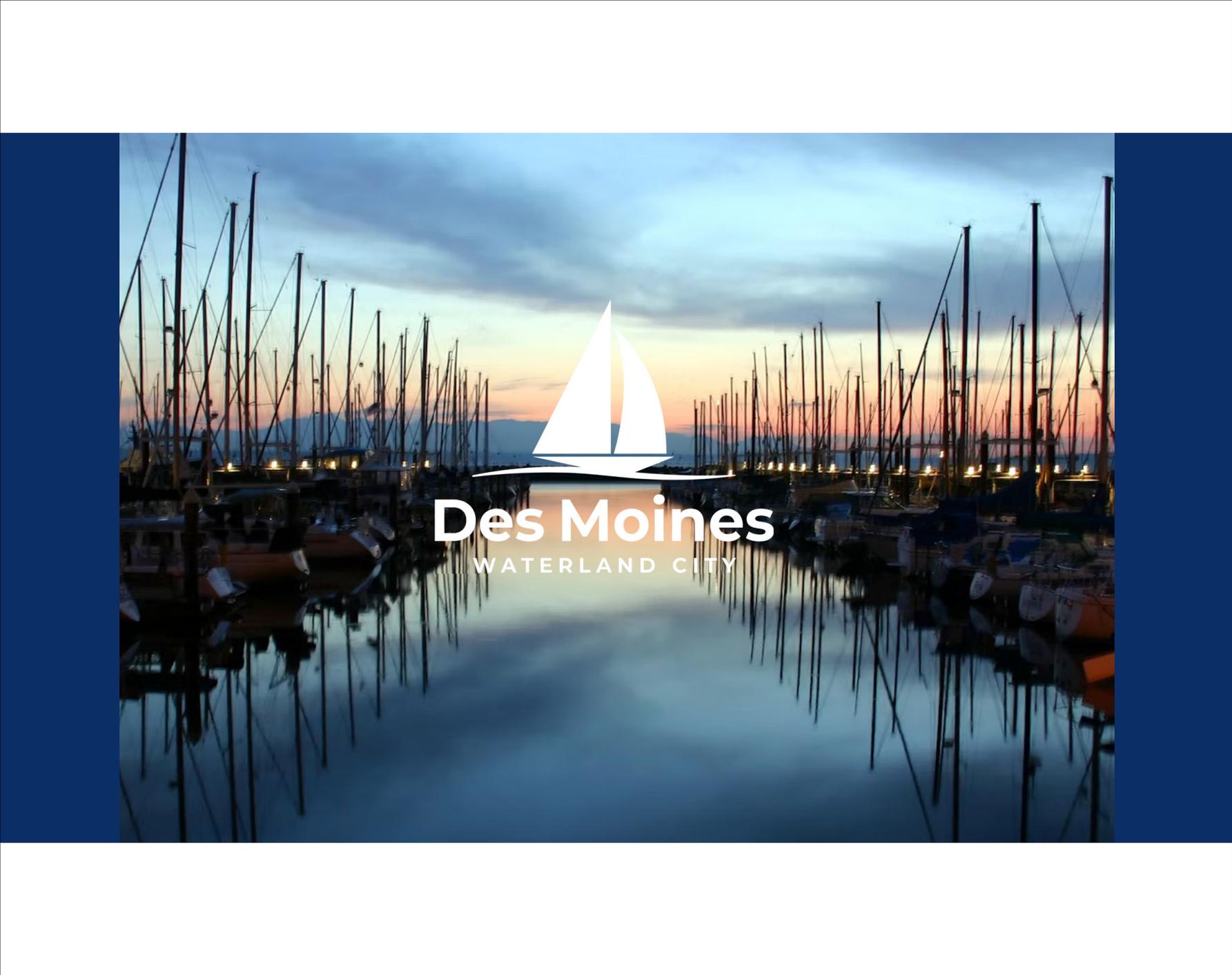
- Timeline: November-March 31, 2026
- Findings will be presented to City Council & King County Metro



Motion:

“I move to approve the Consultant Services Contract with Nelson\Nygaard in the amount not to exceed \$100,000 for the implementation of a Washington Department of Commerce Grant for Economic Analysis of the Electric Water Taxi Pilot Program, and authorize the City Manager to sign the Contract substantially in the form as attached.”







# CITY COUNCIL REGULAR MEETING

## Speaker Sign-Up Sheet

October 23, 2025

NAME (PLEASE PRINT)	ADDRESS	TOPIC	PHONE/E-MAIL ADDRESS
<i>Bettina Carey</i>	<i>Des Moines</i>	<i>Transparency</i>	<i>askbettina@gmail.com 206-349-4297</i>