

## AGENDA

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11th Avenue S, Des Moines, Washington  
Thursday, October 27, 2022 - 6:00 PM**

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

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### ROLL CALL

### CORRESPONDENCE

### COMMENTS FROM THE PUBLIC VIA ZOOM/WRITTEN PUBLIC COMMENT

### CITY MANAGER REPORT

- Item 1. AMY COOK THOMAS - BURNING BOAT EVENT
- Item 2. QUARTERDECK

### CONSENT CALENDAR

- Item 1. APPROVAL OF VOUCHERS  
**Motion** is to approve for payment vouchers through October 20th, 2022 and the payroll transfers through October 20th, 2022 in the attached list and further described as follows:

ACH/EFT Vendor Payments	#	7371 to 7432	\$ 342,094.01
Wires	#	2061 to 2064	\$ 103,787.02
Payroll Checks	#	19592 to 19596	\$ 11,226.32
Accounts Payable Checks	#	164390 to 164426	\$ 111,875.98
Payroll Direct Deposit	#	3063 to 3222	\$ 405,334.78
Unclaimed Property Checks	#	See Report	\$ (2,775.35)

Total Checks and Wires for A/P and Payroll: \$ 971,542.76

[Approval of Vouchers](#)

- Item 2. APPROVAL OF MINUTES

**Motion** is to approve the October 6, 2022 Regular Council meeting minutes.

[Approval of Minutes](#)

Item 3. SMALL BUSINESS SATURDAY PROCLAMATION

**Motion** is to approve the Proclamation recognizing the Saturday after Thanksgiving as Small Business Saturday.

[Small Business Saturday Proclamation](#)

Item 4. QUARTERDECK CHANGE OF OWNERSHIP AND LEASE AGREEMENT

**Motion** is to approve the lease agreement with Nourishmints, LLC for the Quarterdeck, and authorize the City Manager to sign the agreement substantially in the form as attached as well as to take the necessary steps to terminate the existing lease with DM Harborside.

[Quarterdeck Change of Ownership and Lease Agreement](#)

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

Item 1. 2023 PRELIMINARY ANNUAL BUDGET

- Staff Presentation by Finance Director Beth Anne Wroe

[2023 Preliminary Annual Budget](#)

## **NEW BUSINESS**

INTRODUCTION OF ITEMS FOR FUTURE CONSIDERATION – 10 Minutes

## **BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS**

(4 minutes per Councilmember) - 30 minutes

## **PRESIDING OFFICER'S REPORT**

## **EXECUTIVE SESSION**

## **NEXT MEETING DATE**

November 17, 2022 City Council Regular Meeting

## **ADJOURNMENT**

**CITY OF DES MOINES**  
**Voucher Certification Approval**

**October 27, 2022**

**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 27, 2022** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through October 20th, 2022 and payroll transfers through October 20, 2022 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:

*Beth Anne Wroe*

Beth Anne Wroe, Finance Director

	# From	# To	Amounts
<b>Claims Vouchers:</b>			
EFT Vendor Payments	7371	7432	342,094.01
Electronic Wires	2061	2064	103,787.02
Unclaimed Property Checks	See Report		(2,775.35)
Accounts Payable Checks	164390	164426	111,875.98
<b>Total claims paid</b>			<b>554,981.66</b>

<b>Payroll Vouchers</b>			
Payroll Checks		19592	11,226.32
Direct Deposit	10/20/2022	3063	405,334.78
<b>Total Paychecks/Direct Deposits paid</b>			<b>416,561.10</b>
<b>Total checks and wires for A/P &amp; Payroll</b>			<b>971,542.76</b>

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**MINUTES**

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11th Avenue S, Des Moines, Washington**

**Thursday, October 6, 2022 - 6:00 PM**

**CALL TO ORDER**

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

**PLEDGE OF ALLEGIANCE**

The flag salute was led by Deputy Mayor Traci Buxton.

**ROLL CALL**

**Council Present:**

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

**Staff Present:**

City Manager Michael Matthias; Assistant City Attorney Matt Hutchins; Executive Director of Marina Redevelopment Dan Brewer; Chief Administrative Officer Bonnie Wilkins; Harbormaster Scott Wilkins; Finance Director Beth Anne Wroe; Deputy Finance Director Jeff Friend; Building Official Dan Hopp; GIS Analyst/Addressing Max Mousseau; City Clerk Taria Keane; and Senior Planner Jason Woycke

**CORRESPONDENCE**

There were no correspondence.

**COMMENTS FROM THE PUBLIC**

- Sarah Tuttle, Lighthouse Domestic Violence
- Becky Hanks, Marina Redevelopment
- Melanie Barlow, Handicap Sidewalk Concern
- Rick Johnson, Graffiti

[Public Comment](#)

## CITY MANAGER REPORT

- Building Official Dan Hopp along with GIS Analyst Max Mousseau presented the idea of naming the Alley from 222nd to 227th Streets behind the Des Moines Theater.

### **Direction/Action**

**Motion** made by Councilmember Jeremy Nutting to move forward in the naming of the Alley with the Community input and bring back to Council; seconded by Councilmember Vic Pennington.

Motion passed 7-0.

- City Manager Michael Matthias gave Council a background on Consent Calendar Item #6.
- Executive Director of SCORE Devon Schrum gave Council a PowerPoint Presentation update on SCORE Jail.
- City Manager Michael Matthias gave Council an update on the 2023 Budget Process.
- City Manager Michael Matthias gave Council an update on the Marina Redevelopment Community Meeting.
- City Manager Michael Matthias gave Council a background on Consent Calendar Item #3.

[DowntownAlley](#)  
[SCORE Update Des Moines 2022](#)

## CONSENT CALENDAR

Item 1: APPROVAL OF VOUCHERS

**Motion** is to approve for payment vouchers through September 22, 2022 and the payroll transfers through September 20, 2022 in the attached list and further described as follows:

ACH/EFT Vendor Payments	#	7254 to 7306	\$ 1,447,832.92
Voided EFT Electronic Wires	#	7277 to 7277	\$ (8,250.00)
Accounts Payable Checks	#	2044 to 2050	\$ 298,902.06
Voided Checks	#	164329 to 164353	\$ 178,925.10
	#	164322	\$ (1,052.80)

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Payroll Checks 08/31/2022	#	19547 to 19548	\$	8,528.91
Payroll Direct Deposit 08/31/2022	#	2569 to 2570	\$	0.00
Payroll Checks 09/20/2022	#	19549 to 19553	\$	7,206.58
Payroll Direct Deposit 09/20/2022	#	2741 to 2894	\$	400,872.19
Payroll Checks 09/21/2022	#	19554	\$	719.27
Payroll Direct Deposit 09/21/2022	#	2895 to 2900	\$	12,707.95

Total Checks and Wires for A/P and Payroll: \$ 2,346,392.18

Item 2: APPROVAL OF MINUTES

**Motion** is to approve the August 4, August 25, 2022 Regular Council meeting minutes and September 8, 2022 Study Session meeting minutes.

Item 3: LUA2019-0063 SHIFERAW MODIFIED SHORT SUBDIVISION  
PRELIMINARY APPROVAL CONCURRENCE

**Motion** is to concur with City staff preliminary approval of Shiferaw Modified Short Subdivision, City File No. LUA2019-0063.

Item 4: 24TH AVE S. IMPROVEMENT PROJECT, ON-CALL GENERAL CIVIL  
ENGINEERING TASK ASSIGNMENT WITH PARAMETRIX

**Motion** is to approve 2020-2021 On-Call General Civil Engineering Task Assignment 2020-01.03 with Parametrix Inc., to provide engineering services for the 24th Ave S Improvements Project, Kent-Des Moines Rd. to S. 223rd St., in the amount of \$84,235.84, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

Item 5: REDONDO BOAT RAMP BOARDING FLOATS - REQUEST TO  
REJECT BIDS

**Motion** to reject the bids received for the Redondo Boat Ramp Boarding Floats Project.

Item 6: SOUTH 216TH STREET PEDESTRIAN BRIDGE EASEMENT TO  
WESLEY HOMES DES MOINES

**Motion** to approve the Pedestrian Bridge Easement Agreement with Wesley Homes Des Moines, LLC and authorize the City Manager to sign the Agreement substantially in the form as submitted.

**Direction/Action**

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

Councilmember Harry Steinmetz pulled Consent Calendar Item #6

Councilmember JC Harris pulled Consent Calendar Item #5

The remainder of the Consent Calendar passed 7-0.

Council discussed Consent Calendar Item #5.

**Motion** made by Councilmember Jeremy Nutting to approve the Consent Calendar Item #5 as presented; seconded by Councilmember Vic Pennington.  
Motion passed 7-0.

Council discussed Consent Calendar Item #6.

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

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

**Against:** Councilmember JC Harris.

## **NEW BUSINESS**

INTRODUCTION OF ITEMS FOR FUTURE CONSIDERATION – 10  
Minutes

There were no new items for future consideration.

## **BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS**

(4 minutes per Councilmember) - 30 minutes

### **COUNCILMEMBER JC HARRIS**

- Marina Redevelopment Community Meeting
- Commission of the Port of Seattle Budget Study Session
- Community Listening Meeting



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**COUNCILMEMBER VIC PENNINGTON**

- Public Safety/Emergency Management Committee Meeting
- Des Moines Farmers Market

**COUNCILMEMBER HARRY STEINMETZ**

- Public Safety/Emergency Management Committee Meeting
- Des Moines Farmers Market

**COUNCILMEMBER GENE ACHZIGER**

- Marina Redevelopment Community Meeting

**COUNCILMEMBER JEREMY NUTTING**

- Passenger Ferry

**DEPUTY MAYOR TRACI BUXTON**

- Attended 23 engagement with colleagues, staff, citizens, boards and committees
- Celebration for Ezra Nehemiah Taylor
- AD-HOC Committee Council Rules Committee
- Public Safety/Emergency Management Committee Meeting
- Domestic Violence 5K Run
- Des Moines Trick or Treat Path

**PRESIDING OFFICER'S REPORT**

- Celebration for Ezra Nehemiah Taylor
- Marina Redevelopment Community Meeting
- Highline Forum
- Seattle Southside Mayor's Reception
- SR3 Fundraiser
- Mount Rainier High School and Federal Way High School Football Game

**NEXT MEETING DATE**

October 20, 2022 City Council Regular Meeting

**ADJOURNMENT**

**Direction/Action**

Regular Meeting Minutes  
October 6, 2022

**Motion** made by Councilmember Jeremy Nutting to adjourn; seconded by Councilmember Harry Steinmetz.  
Motion passed 7-0.

The meeting adjourned at 7:42 p.m.

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Small Business Saturday Proclamation

FOR AGENDA OF: October 27, 2022

ATTACHMENTS:

- 1. Proclamation

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: October 19, 2022

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

**Purpose and Recommendation**

The purpose of this agenda item is to recognize the November 26, 2022 as Small Business Saturday.

**Suggested Motion**

**Motion:** "I move to approve the Proclamation recognizing the Saturday after Thanksgiving as Small Business Saturday."

**Background**

Small Business Saturday was created in 2010 in response to small business owners' most pressing need, more customers. Falling between Black Friday and Cyber Monday, it's a day to support the local businesses that create jobs, boost the economy and preserve the neighborhoods around the country. It has since become a well-known, celebrated event on the nation's calendar with support from elected officials and public and private organizations.

**Discussion**

None:

**Alternatives**

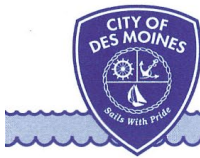
None provided.

**Financial Impact**

No financial impact.

**Recommendation**

Administration supports Council approving the Proclamation recognizing the Saturday after Thanksgiving as Small Business Saturday.



## City of Des Moines

ADMINISTRATION  
21630 11TH AVENUE SOUTH, SUITE A  
DES MOINES, WASHINGTON 98198-6398  
(206) 878-4595 T.D.D.: (206) 824-6024 FAX: (206) 870-6540



### Proclamation

**WHEREAS**, according to the United States Small Business Administration, there are currently 32.5 million small businesses in the United States; and

**WHEREAS**, small businesses employ 46.8 percent of the employees in the private sector in the United States; and

**WHEREAS**, 79% of consumers in the United States value the contributions small businesses make in their community; and

**WHEREAS**, 96% of consumers who plan to shop on Small Business Saturday® said the day inspires them to go to small, independently-owned retailers or restaurants that they have not been to before, or would not have otherwise tried; and

**WHEREAS**, 92% of companies planning promotions on Small Business Saturday said the day helps their business stand out during the busy holiday shopping season; and

**WHEREAS**, 59% of small business owners said Small Business Saturday contributes significantly to their holiday sales each year; and

**WHEREAS**, Des Moines supports our local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

**NOW THEREFORE, THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS** the Saturday after Thanksgiving as

### ***SMALL BUSINESS SATURDAY***

**AND** urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.

**SIGNED** this 27<sup>th</sup> Day of October, 2022

\_\_\_\_\_  
Matt Mahoney, Mayor

*The Waterland City*

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**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Quarterdeck Change of Ownership  
and Lease Agreement

FOR AGENDA OF: October 27, 2022

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

- 1. Lease Agreement
- 2. Nourishmints Letter
- 3. Ken Rogers Letter

DATE SUBMITTED: October 20, 2022

CLEARANCES:

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

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: [Signature]

**Purpose and Recommendation**

The purpose of this agenda item is for the City Council to consider a lease agreement with Nourishmints, LLC for the Quarterdeck located on City property in the Des Moines Marina. Approval of this item would allow the sale of the business from DM Harborside to Nourishmints, LLC. The following motion will appear on the consent calendar:

**Suggested Motion**

**Motion 1:** "I move to approve the lease agreement with Nourishmints, LLC for the Quarterdeck, and authorize the City Manager to sign the agreement substantially in the form as attached as well as to take the necessary steps to terminate the existing lease with DM Harborside."

### **Background**

The Quarterdeck is located on City property in the Des Moines Marina. It has been a popular attraction for residents and visitors since it's opening in 2018. The founder and current owner, Ken Rogers, has informed the City he is seeking to sell the business. The City Council, as the landlord of the property where the Quarterdeck is located, has the authority to approve or deny any transfer of ownership. In addition to seeking approval of a transfer of ownership, the potential new owner is seeking a lease extension.

City staff met with the potential new owner (Mackenzie Meyers dba Nourishmints LLC) and reviewed her business plan. Additionally, Ms. Meyers attended the most recent Economic Development Committee meeting and the Municipal Facilities Committee meeting where this item was discussed. Ms. Meyers is currently the Manager of the Quarterdeck and it is anticipated this change in ownership will not materially affect the Quarterdeck operations.

### **Discussion**

Rather than assigning the existing lease, staff met with Ken Rogers and Mackenzie Meyers who proposed to terminate the existing lease and sign a new lease with the potential new owner. This was communicated to both the Economic Development Committee and the Municipal Facilities Committee at their latest committee meetings. A lease agreement has been drafted that substantially mirrors the existing lease with DM Harborside and includes the following terms:

1. Term: The initial term is for 5 years, with mutual option to extend an additional 5 years subject to City confirmation all terms of the lease agreement have been satisfactorily met.
2. Rent: The proposed rent at this time is to remain consistent with the previous rent. The current rent is \$381 per month with an annual increase based on CPI.
3. Premises: Exhibit A to the lease agreement shows the existing footprint. The leased area is the footprint of the building, deck and accessories. The outdoor seating area is open to the public and is therefore not included in the lease area.
4. The remainder of the terms will remain substantially similar or identical to the previous lease with Ken Rogers. These include requirements for high quality service, restrictions on uses, insurance requirements, and various other boilerplate language customary in lease agreements.

Additional items that will be addressed simultaneously with the new lease include termination of the existing lease with Ken Rogers and execution of a new restroom use agreement with Nourishmints.

### **Alternatives**

1. Pass the motion as recommended.
2. Pass the motion with amendments to the lease agreement.
3. Decline to enter into a new lease agreement.

### **Financial Impact**

The proposed lease contains the same rental rate as the previous agreement. This amount was calculated using appraisals for other marina ground leases. The rental rate has been adjusted for inflation every year since it was first executed and it will continue to do so.

### **Recommendation**

Staff recommends approval of the item as presented.



**Council Committee Review**

This item has previously been reviewed by the Economic Development Committee and the Municipal Facilities Committee. Both Committees have approved the item to come to the full Council.

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**MARINA PROPERTY LEASE  
BETWEEN THE CITY OF DES MOINES  
AND NOURISHMINTS, LLC**

This COMMERCIAL LEASE (the "Lease"), is made by and between the **CITY OF DES MOINES**, a municipal corporation of the State of Washington ("**Landlord**"), and **NOURISHMINTS, LLC**, a Washington limited liability company, located and doing business at the Des Moines Marina, ("**Tenant**").

**1. PREMISES**

Landlord leases to Tenant and Tenant leases from Landlord, upon the terms and conditions set forth in this Lease, the exclusive right to use and occupy certain real property located at the Des Moines Marina and as described on **Exhibit A**, attached hereto and incorporated herein by this reference. Such property shall be hereinafter referred to as "**Premises**".

**2. TERM**

2.1. Lease Term. The Initial Term of this Lease is 5 (five) years, commencing on \_\_\_\_\_ (the "Commencement Date") and ending on the last day of the month 60 months following \_\_\_\_\_, unless sooner terminated as provided elsewhere in this Lease. As used herein, "Term" refers to the Initial Term and any Option Periods then exercised.

2.2. Option to Extend. With the concurrence of the Landlord, Tenant shall have 1 (one) option to extend the Initial Term for a period of 5 (five) years (the "Option Period") on the following terms and conditions: (i) Tenant shall provide Landlord with written notice of its intent to exercise the option not earlier than three hundred sixty (360) calendar days nor later than one hundred eighty (180) calendar days before the expiration of the Initial Term; and (ii) Tenant shall not be in default under the terms of this Lease either at the time Tenant exercises its option to extend or at the time the Option Period commences. All terms and conditions of the Lease shall apply during the Option Period except that Rent shall be adjusted in accordance with the terms of Section 5.2.

**3. POSSESSION**

Tenant will be entitled to possession of the Premises on the Commencement Date and shall yield possession to Lessor on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Lessee shall remove any facilities or structures on the Premises as well as goods and effects and peaceably yield up the Premises to Lessor in as good a condition as when delivered to Lessee, ordinary wear and tear excepted.

**4. USE**

4.1. Use. Tenant covenants that, at all times during the Lease Term and such further time as Tenant occupies the Premises, Tenant shall use the Premises for the following

enumerated permitted uses and for no other use without Landlord's express written consent, which consent will not be unreasonably withheld:

- A. Retail sales of food and beverages (including sale of alcohol).
- B. Rental of facilities in part or whole for events, meetings, and classes.
- C. Retail sales of branded merchandise and items related to the sale of food and beverages.
- D. Entertainment events complimentary to the sale of food and beverage.

4.2. Restriction on Hours of Tenant Operations. The Landlord shall have the right to restrict certain types of operations during the hours when the Marina parking lot is closed or to the extent such operations create a nuisance or have a detrimental effect upon adjacent residents and other Marina tenants.

4.3. Building Codes and Zoning. Tenant accepts the Premises "as is" and subject to future changes in all applicable statutes, ordinances, rules and regulations governing Tenant's use of the Premises. Any and all expenses required to comply with all future changes in applicable statutes, ordinances, rules, regulations and requirements in effect during the term or any part of the term of this Lease regulating Tenant's use of the Premises shall be borne exclusively by Tenant. Tenant further agrees to comply with all such statutes, ordinances, rules and regulations pertaining to the Premises or its operations thereon throughout the Term.

4.4 Use of City Restrooms. Tenant and Tenant's customers shall be entitled to the use of the City-owned restroom adjacent to the lease area during the period of time that the Marina is open. A separate Restroom Use Agreement will be negotiated by the parties detailing the terms of use.

## 5. RENT

5.1. Initial Term Rent. Beginning on the Commencement Date and continuing until the end of the calendar year, Tenant agrees to pay Landlord rent at the rate of \$380.81 dollars (three hundred eighty dollars and eighty one cents) per month.

All amounts due under this paragraph shall be paid by Tenant to Landlord in advance, on a monthly basis, on or before the first day of each month of this lease.

On January first 2023, and each succeeding year of the lease (including the option period) the rent shall be established by application of the Consumer Price Index, All Urban Consumers, Seattle – Tacoma – Bremerton, Washington Area, for the 12 – month period ending in June of the preceding year, published by the U.S. Department of Labor, Bureau of Labor Statistics, (hereinafter, "CPI"). The rental rate for the succeeding year will be established by multiplying the baseline rate in this

paragraph by the CPI and then adding that amount to the baseline rate. The result shall be the rental rate for the succeeding year and the baseline rate for calculating the rental rate for the year after the succeeding year.

5.2 Payment. Rent for a partial month shall be prorated. All Rents and Additional Expense shall be paid in advance on the first day of each calendar month without set-off or demand, and without any abatement or deduction to Landlord at the address specified in this Lease, unless and until Tenant is otherwise notified in writing. Time is of the essence in the payment of all sums due under this Lease. All rent is exclusive of any sales, franchise, business and occupation or other tax based on rents, and should any such taxes apply during the Term of this Lease, the monthly payment shall be increased by such amount. All other sums due from Tenant under this Lease are hereafter referred to collectively as "Additional Expenses" and shall be paid in the manner and at the time set forth in this Lease. Nothing herein shall prejudice Tenant's right to make payment of Rent under protest and to make claim for return of Rent, or a portion thereof.

**6. DEPOSIT.**

Tenant has paid this day to Landlord the sum of \$1,000 (one thousand dollars) as a security deposit (the "Deposit") for Tenant's performance of all of the terms and conditions of this Lease. If Tenant is in default, Landlord may use all or any portion of the Deposit to cure the default or to compensate Landlord for damages sustained by Landlord resulting from Tenant's default, including but not limited to the payment of Rent and the cost of cleaning and/or repairing the Premises. Any payment to Landlord from the Deposit shall not be considered a payment of liquidated damages. Within ten (10) days after Landlord's written demand, Tenant shall deposit cash with Landlord in an amount sufficient to restore the Deposit to the full amount stated above, and Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Deposit separate from its general accounts. If Tenant is not in default at the expiration of the term of this Lease and after Tenant has vacated the Premises, the Deposit will be refunded. No trust relationship is created between Landlord and Tenant with respect to the Deposit.

**7. TENANT EXPENSES.**

7.1. Net Lease. The purposes of this Section 7 is to insure and Tenant hereby agrees that, in addition to Rent, Tenant shall pay Tenant's Share of all expenses relating to the use, maintenance, ownership, repair and insurance of the Premises, as specifically provided for in Section 5.1, above, and of all utilities, insurance and personal property taxes and Leasehold Excise Taxes, as identified in Sections 7.2 through 7.5 below (see Exhibit B).

7.2. Utilities. Tenant agrees to compensate the Landlord for utilities as detailed in Exhibit B. Landlord shall not be liable for the failure of any of these services for any reason whatsoever.

7.3. Personal Property Taxes. Tenant shall pay, before delinquency, any and all taxes levied or assessed and payable during the Term upon all Tenant's equipment, furniture, fixtures and any other personal property located on the Premises.

7.4. Leasehold Excise Tax. Tenant shall also pay the Leasehold Excise Tax imposed on Tenant under RCW §82.29A.030. Said amount will be paid by Tenant to Landlord and Landlord will pay the same to the State of Washington. Landlord hereby indemnifies and agrees to defend and hold Tenant harmless from and against any costs, including legal fees, that proximately result from Landlord's breach of the covenant to pay the Leasehold Excise Tax once received from Tenant.

**8. MAINTENANCE, REPAIRS, ALTERATIONS, AND RELOCATION.**

8.1. "As-Is" Condition of Premises. Tenant completely and unconditionally accepts the premises in the AS-IS condition. Tenant waives any right that it may have under any current or future law or ordinance to make repairs at Landlord's expense. Tenant accepts responsibility for any condition left by the previous Tenant and will be bound by all requirements of this Lease regardless of whether the condition originated from a prior Lease of the Premises.

8.2. Tenant's Obligations. Tenant is the owner of the container structure on the Premises. Upon the expiration or sooner termination of this Lease, Tenant shall remove Tenant's structures and surrender the Premises to Landlord. Site restoration shall not be required upon removal of Tenant's structure at the end of the Lease. Any damage to adjacent Premises caused by Tenant's use of the Premises shall be repaired at Tenant's sole cost and expense. If Tenant fails to perform the maintenance, repair or replacement required by this Section 8.2 or to surrender the Premises in the condition required by this section, Landlord shall have the right to perform the necessary work at Tenant's sole cost and expense, and Tenant agrees to reimburse costs incurred by Landlord to satisfy the terms of Section 22.20, Redelivery.

In addition, Tenant shall:

- A. Comply with all city, state, and federal regulations related to environmental protection, and any special provisions described in this lease.
- B. Keep the leased Premises as clean and sanitary as the conditions of the Premises permit;
- C. Properly dispose all solid waste, liquids, and hazardous waste in a clean and lawful manner at reasonable and regular intervals;
- D. Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances;
- E. Not intentionally nor negligently destroy, deface, damage, impair, or remove any part of the Premises;
- F. Not permit a nuisance or common law waste;
- G. Not allow junk or debris to accumulate on the Premises;
- H. Conduct all business within the Premises described in this lease.

I. At the expiration of the lease term, or any extension thereof, surrender the Premises in as good condition as they were at the beginning of the term, reasonable wear and tear excepted.

8.3. Municipal Obligations to the Public. The parties acknowledge that the Landlord, being a municipal corporation, is obligated to see that businesses operated on land leased from the Landlord are operated in a manner that benefits the Des Moines Marina, its other tenants and the public in general. To this end, Tenant agrees and covenants to abide by the Landlord's reasonable operational requirements as set forth herein, or as may be specified in writing in the future, which are intended solely to fulfill the Landlord's municipal duties to its citizenry.

8.4. Alterations and Additions. Tenant shall not make or permit any alteration, addition or improvement to the Premises without obtaining and complying with appropriate building permits and without Landlord's written consent, which consent will not be unreasonably withheld. Any alteration, addition or improvement shall be made in a good and workmanlike manner by a contractor at Tenant's sole cost and expense and shall comply with all applicable laws, codes, ordinances, rules and regulations and in a manner (a) consistent with the plans and specifications submitted to and approved by Landlord and any conditions imposed by Landlord, (b) which includes acceptable insurance/bond coverage for Landlord's benefit and (c) which does not disrupt the business or operations of other Marina tenants. Prior to expiration or sooner termination of the Lease, Tenant shall, at Tenant's sole cost and expense and with all due diligence, remove any alterations, additions or improvements made by Tenant and designated by Landlord to be removed at the time it gave its consent thereto. At its sole cost and expense, Tenant shall repair any damage to the Premises caused by such removal.

8.5 Relocation. The parties are aware of the mobile nature of Tenant's structure and the necessity based on Marina redevelopment that the structure be relocated to a different site in the Marina. The City will have the sole discretion to require Tenant to relocate the structure subject to the following conditions.

- A. The City will provide 180 day notice prior to relocation.
- B. After receiving the relocation notice, Tenant has the option to terminate this Agreement with no penalty.
- C. If the City requires the structure to be relocated to another site in the Marina during the first three (3) years of this Agreement, the relocation costs associated with the relocation will be paid equally by the parties. Any relocation costs after year three (3) of this Agreement will be paid entirely by Tenant.

**9. LIENS**

Tenant shall keep the Premises Real Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or at the direction of Tenant. Landlord may require, at Landlord's sole option, that Tenant provide at Tenant's sole cost and expense a materialmen's labor and performance bond acceptable to Landlord in an amount equal to one and one-half (1½) times the estimated cost of any improvements, additions or alterations to

the Premises which Tenant desires to make, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of the work.

The Tenant-owned container structure(s) may be encumbered as a normal course of business as collateral for the purpose of securing financing as required from time to time.

**10. INDEMNIFICATION / HOLD HARMLESS**

Tenant shall defend, indemnify, and hold harmless Landlord (the City), its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Tenant's use of Premises, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the Landlord. Tenant further agrees to indemnify, defend and hold Landlord and its employees, contractors, lenders and agents harmless from all costs (including but not limited to attorneys' fees) incurred by Landlord in connection with its defense against any claim made against Landlord as to which Tenant must indemnify Landlord pursuant to this section. Tenant shall give prompt notice to Landlord of any casualty or accident in the Premises. Tenant further assumes all risk of, waives and releases all claims against Landlord for and agrees to indemnify and hold Landlord and its agents harmless from and against any damages or injury to person or property sustained by Tenant or any person claiming through Tenant, which damage results from any accident or occurrence in or on the Premises from any cause whatsoever, except and then only to the extent caused by the sole negligence of Landlord, its representatives and/or agents. Tenant agrees that the foregoing indemnity is specifically and expressly intended to constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence. LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION 10 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

**11. INSURANCE**

Tenant 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 Tenant's operation and use of the leased Premises.

**No Limitation.** Tenant's maintenance of insurance as required by this Lease shall not be construed to limit the liability of Tenant to the coverage provided by its insurance, or otherwise limit Landlord's recourse to any remedy available at law or equity.

11.1. Tenant shall obtain insurance of the types described below:

A. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. Landlord shall be named as an insured on Tenant's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage.



B. Property insurance shall be written on an all risk basis.

11.2. Minimum Amounts of Insurance. Tenant shall maintain the following insurance limits:

A. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, which policy shall include product liability and blanket contractual liability coverage insuring performance of Tenant's indemnity obligations under this Lease, excluding insurance for the payment of rent. Landlord may increase the required limit as it deems necessary after thirty (30) days written notice based upon periodic insurance reviews. The insurance required by this section shall be on an occurrence basis only. This insurance shall be written as a primary policy not contributing with and not in excess of coverage that Landlord may carry.

B. Property Insurance shall be written covering the full value of Tenant's property and improvements with no coinsurance provisions

C. Business Interruption. Business interruption insurance in an amount sufficient to protect Tenant against any additional costs and lost income associated with a move to temporary space due to a business interruption for at least twelve (12) months (which coverage is not intended to, and will not, cover loss of income due to business interruption associated with interruption of Tennant's business due to relocation of Tenant's business by the Landlord for reasons other than accidental loss or damage to the Premises).

11.3. General Requirements. All insurance required to be provided by Tenant under this Lease: (a) shall be issued by insurance companies authorized to do business in the State of Washington and with a current A.M. Best rating of not less than A:VII; (b) shall be issued as a primary policy and contain cross-liability endorsements; (c) contain deductibles of no more than \$10,000 per occurrence; and (d) shall contain an endorsement requiring at least thirty (30) days' prior written notice of cancellation to Landlord and Landlord's lender before cancellation or change in coverage, scope or amount of any policy. Tenant shall deliver a certificate or copy of such policy evidenced to reflect Landlord's additional insured status, together with evidence of payment of all current premiums, to Landlord within three (3) days of execution of this Lease. Tenant's failure to provide evidence of such coverage to Landlord may, in Landlord's sole discretion, constitute a material default under this Lease, giving Landlord the right to immediately procure such coverage, the cost of which shall be reimbursable by Tenant upon demand.

11.4. Waiver of Subrogation.

Tenant and Landlord hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said building. The release shall apply only to the extent that such claim, loss or liability is covered by insurance.

## 12. RECONSTRUCTION

12.1 . Either party shall have the option either to repair the Premises or to terminate this Lease if the Premises: (a) damage results from any cause not covered by either party's

insurance: or (b) insurance proceeds are insufficient to fully pay for repair and restoration: or (c) the cost to repair exceeds twenty-five percent (25%) of the then complete replacement cost of the Premises: or (d) the repair or restoration, in either party's opinion, cannot be completed within six (6) months of the damage: or (e) the damage occurs during the last twelve (12) months of the Lease Term. Either party shall exercise its option to terminate this Lease by giving notice to the other party, at any time within sixty (60) days after the damage, written notice of its election to terminate this Lease as of the date specified in the notice. The termination date shall not be less than thirty (30) nor more than sixty (60) days after the date of the notice.

12.2. Rent Abatement. This Lease shall remain in full force and effect if either party elects to repair the damage or until the termination date specified in the notice of termination, as applicable, except that Rent shall be proportionately abated from the date of damage until the repairs are completed or until the specified termination date. Such proportionate abatement shall be based upon the extent to which the damage materially interferes with the business carried on by Tenant in the Premises.

12.3. Tenant's Repair Obligations. Landlord shall have no liability to Tenant for, and not be required to repair or replace any Leasehold improvements, fixtures or other personal property of Tenant, all of which shall be repaired or replaced promptly by Tenant at Tenant's sole cost and expense.

**13. EMINENT DOMAIN**

Intentionally omitted.

**14. ASSIGNMENT AND SUBLETTING**

14.1. Restriction. Tenant shall not sublet the whole or any part of the Premises, nor shall Tenant assign, transfer or encumber this Lease or any interest thereunder whether directly or by operation of law or by any process or proceeding of any court, or otherwise, without the prior written consent of Landlord. Each assignment to which there has been consent shall be by an instrument in writing in form satisfactory to Landlord, an executed copy of which shall be delivered to Landlord. As a material inducement to Landlord to execute and deliver this Lease, Tenant agrees it shall be reasonable under this Lease and under applicable law for Landlord to withhold consent to any proposed assignment, encumbrance or sublease if Landlord determines that any one or more of the following applies (without limitation as to other reasonable grounds for withholding consent): (a) Landlord is not reasonably assured that the proposed transferee will fully, completely and promptly perform all obligations of Tenant under this Lease, (b) either the net current assets or the tangible net worth of the proposed transferee, determined in accordance with general accepted accounting principles, consistently applied by Tenant's and the proposed transferee's respective independent certified public accountants, is less than the net current assets or tangible net worth of Tenant and any guarantor as of the date of this Lease or the date of the proposed transfer, whichever is greater, (c) the transferee proposes to use the Premises for any purpose other than the permitted uses under this Lease, (d) the proposed transfer would cause Landlord to be in violation of any other lease or agreement to which Landlord is a party, (e) the proposed transferee fails to deliver to Landlord its written assumption of all of the obligations to be performed by Tenant under the Lease in connection with the portion of the Premises which is the subject of the proposed transferee, (f) if Tenant will not continue to remain liable on this lease

or (g) the proposed transferee's operating experience or reputation are less than Tenant's on the date of this Lease. No assignment or sublease shall release Tenant from primary liability on this Lease. In lieu of consenting to an assignment or sublease, Landlord may elect to terminate this Lease. Any assignment or sublease without Landlord's prior written consent shall, at Landlord's option, be void.

14.2. Costs. Tenant shall reimburse Landlord for all reasonable attorneys' fees and other costs incurred by Landlord in connection with the review and preparation of documents incident to any request by Tenant for Landlord's consent. Each request for Landlord's consent shall be accompanied by payment of a fee in the amount of \$750 to be applied to such fee. Landlord shall return to Tenant any unused balance of such fee.

## 15. **DEFAULT**

15.1. Defaults. Time is of the essence of this Lease. Tenant shall be deemed in material default hereunder if Tenant fails to comply with any covenant, term or condition of this Lease, or if Tenant vacates or abandons the Premises or if Tenant files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Tenant's assets, or if Tenant makes an assignment for the benefit of creditors, and if such failure continues for or is not remedied within three (3) days (or, if no default in the payment of rent is involved, within twenty (20) days) after notice in writing thereof given by Landlord to Tenant specifying the failure; provided, however, if a non-monetary default is not reasonably capable of being cured, then the twenty (20) day period shall be extended, but not for more than twenty (20) days, if Tenant immediately commences such cure and diligently and continuously prosecute such cure throughout the period.

15.2. Landlord's Remedies. If Tenant is in default hereunder, then Landlord may:

A. Declare the term hereof ended and reenter the Premises and, with the exception of the structure, take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or hereunder; or

B. Without declaring this Lease terminated, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid rentals and other charges, which have become payable, or which may thereafter become payable; or

C. Even though it may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

If Landlord elects to terminate this Lease pursuant to the provisions of options a. or c. above, Landlord may recover from Tenant as damages, the following:

(i) The worth at the time of award of any unpaid rental which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited, any costs or expenses incurred by Landlord in (a) retaking possession of the Premises, including reasonable attorneys' fees therefor, (b) maintaining or preserving the Premises after such default, (c) preparing the Premises for reletting to a new tenant, including reasonable repairs or alterations to the Premises for such reletting, (d) leasing commissions, and (e) any other costs necessary or appropriate to relet the Premises; plus

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington.

Landlord's remedies hereunder are cumulative, and not exclusive, and Landlord's exercise of any right or remedy shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy which Landlord may have under this Lease or at law or in equity, including the right to cure Tenant's default on Tenant's behalf and recover from Tenant upon demand all costs and expenses incurred by Landlord in connection therewith, including interest thereon at the rate stated in Section 15.2 from date incurred until paid. Neither the acceptance of rent nor any other acts or omissions of Landlord at any time or times after the happening of any default or breach by Tenant shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel or forfeit this Lease, or estop Landlord from promptly exercising any other option, right or remedy that it may have under any term or provisions of this Lease, or at law or in equity.

15.3. Late Charges. Tenant acknowledges that the late payment to Landlord of rent and any other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. These costs include but are not limited to processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage, deed of trust or other security agreement covering the Premises. Accordingly, if any installment of rent or other sums due from Tenant shall not be received by Landlord or Landlord's agent within five (5) days after the amount shall be due, then, without any requirement of notice to Tenant, Tenant shall pay to Landlord a late charge equal to one percent (1%) of the amount past due for each month until the default is cured. The parties agree that this late charge plus interest represents a fair and reasonable estimate of the costs Landlord will incur because of Tenant's late payment. Landlord's acceptance of such late charge in no event shall constitute a waiver of Tenant's default with respect to the overdue amount nor prevent Landlord from exercising any of the other rights or remedies granted to Landlord under this Lease.

15.4. Landlord's Default. Landlord shall be in default under this Lease only if Tenant serves upon Landlord a written notice specifying the alleged default and Landlord does not remedy the failure within twenty (20) days following receipt of such notice or, in the case of a failure which takes more than twenty (20) days to cure, if Landlord has not commenced to remedy

the same within such twenty (20) day period. Tenant shall not exercise any remedies available to it until the grace period provided for in this Section has elapsed, or during any period that a secured party is proceeding to cure Landlord's default or is diligently taking steps to obtain the right to enter the Premises and cure the default. In no event shall Tenant have the right to terminate this Lease because of Landlord's default; Tenant's remedies shall be limited to any other remedy available at law or in equity. Nothing in this Lease shall be interpreted to excuse Tenant from paying rent due under this Lease because of any default by Landlord.

**16. RULES AND REGULATIONS.** Tenant agrees to comply with the City of Des Moines Marina Rules & Regulations, as published from time to time by Landlord.

**17. HOLDING OVER**

If Tenant remains in possession of all or any part of the Premises after the expiration of the Lease Term with the express written consent of Landlord (which consent may be granted, withheld or conditioned in Landlord's sole discretion), such occupancy shall be a tenancy from month to month at Rent equal to one and one-half (1½) times the last monthly Rent, plus all Additional Rent and other charges payable under this Lease, and upon all the terms of this Lease applicable to a month-to-month tenancy. If Tenant holds over without Landlord's express prior written consent, such shall constitute a tenancy at will, terminable upon notice from Landlord at three (3) times the last monthly Rent, and Tenant shall liable all damages suffered by Landlord as a consequence of such holding over.

**18. ENTRY BY LANDLORD**

In the event Landlord determines that an emergency exists and entry is necessary, Landlord may forcibly enter the Premises without any liability to Tenant. No entry by Landlord as provided in this Section 18 shall be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or an eviction of Tenant from all or any portion of the Premises.

**19. ESTOPPEL CERTIFICATE**

Intentionally omitted.

**20. SIGNS**

Tenant shall not erect, place or maintain, or permit to be erected or placed, any signs on the exterior walls or windows or elsewhere on the Premises, except as permitted by the City of Des Moines Municipal Code. Tenant, at its sole cost and expense, shall maintain all of its signs in good condition and repair and shall remove the same upon termination of the Lease Term and repair all damage caused by the removal. If Tenant fails to remove any sign and/or repair any damage caused by its removal, Landlord may have the same removed and/or repaired at Tenant's sole cost and expense.

**21. PARKING.**

Tenant will be provided two (2) Marina parking access passes free of charge to be used for employee parking while at work. Additional passes can be purchased at the annual parking

pass rate. Parking in the Marina is first come, first serve. No reserved employee or patron parking will be provided.

**22. GENERAL PROVISIONS**

22.1. Exhibits and Addenda. Any exhibits attached to this Lease are a part of and are fully incorporated in this Lease by this reference.

22.2. Non-Waiver of Default. Landlord's waiver of any term, covenant or condition of this Lease shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent default under the same or any other term, covenant or condition. Landlord's acceptance of any sum shall not be deemed to be a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular sum so accepted, regardless of Landlord's knowledge of such preceding default at the time it accepts the sum.

22.3. Joint and Several Obligations

Intentionally omitted.

22.4. Section Titles. The section titles of this Lease are not a part of this Lease and shall have no effect upon its construction or interpretation.

22.5. Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor, including but not limited to Tenant's execution of estoppel certificates and subordination agreements and Tenant's reimbursements to Landlord.

22.6. Successors and Assigns. Subject to the provisions of Section 14 above, the covenants and conditions of this Lease shall apply to and bind the heirs, successors, executors, administrators and assigns of both parties to this Lease.

22.7. Recordation. Neither Landlord nor Tenant shall record this Lease, but a short-form Memorandum of Lease may be recorded at the request of either party.

22.8. Quiet Possession. Provided Tenant pays all sums due under this Lease and observes and performs all of the other covenants, conditions and provisions to be observed and performed by Tenant, Tenant shall have quiet possession of the Premises for the entire Lease Term against any adverse claim of Landlord or any party claiming under Landlord, subject to all the provisions of this Lease.

22.9. Prior Agreements. This Lease contains the full agreement of the parties with respect to any matter covered or mentioned in this Lease. No prior agreements or understandings pertaining to any such matters shall be effective for any purpose. This Lease may be amended or supplemented only by an agreement in writing signed by the parties or their respective successors in interest.

22.10. Inability to Perform. Except as provided in Section 12, this Lease and the parties' obligations under this Lease, including Tenant's obligation to make any payments, shall not be affected or impaired because a party is unable to fulfill any of its obligations, or is delayed

in doing so, if such inability or delay is caused by reason of weather, strike, labor troubles, acts of God or any other cause beyond that party's reasonable control.

22.11. Severability. Any provision of this Lease, which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision, and all other provisions shall remain in full force and effect.

22.12. Cumulative Remedies. No remedy or election under this Lease shall be deemed to be exclusive but shall, whenever possible, be cumulative with all other remedies available at law or in equity.

22.13. Choice of Law. This Lease shall be governed by the laws of the State of Washington.

22.14. Attorneys' Fees. In the event any action or proceeding is brought by either party against the other arising out of or in connection with this Lease, each party will be responsible for their own attorney fees, including any appeal.

22.15. Notices. All notices or demands which are required or permitted to be given by either party to the other under this Lease shall be in writing. All notices and demands shall be either personally delivered, sent by courier or fax or sent by United States Mail, registered or certified, postage prepaid, addressed to the address set forth below, or to such other place as a party from time to time may designate by written notice. Any notice sent by United States Mail as provided above shall be deemed to have been received three (3) business days after deposit into the mail, unless sooner received or rejected:

**TO LANDLORD AT:** c/o City Manager  
City of Des Moines  
21630 – 11<sup>th</sup> Ave S., Suite A  
Des Moines, WA 98198-6398  
Fax No. (206) 870-6540

**TO TENANT AT:** Mackenzie Meyers  
22307 Dock Ave S Unit 1,  
Des Moines, WA 98198  
Mackenziemeyers43@gmail.com  
253-880-4045

22.16. Subordination. Intentionally omitted.

22.17. Attornment. Intentionally omitted.

22.18. Compliance with Environmental Laws. The parties acknowledge that there are certain federal, state and local laws, regulations and guidelines now in effect and that additional laws, regulations and guidelines may hereafter be enacted relating to or affecting the Premises, concerning the impact on the environment of activities related to construction, land use, the

maintenance and operation of structures and the conduct of business. Tenant shall obtain all necessary local, state, and federal approvals prior to any actions that would require a permit. Such permits shall become part of the Lease by reference and all duties and responsibilities incurred by the Tenant under the permits shall be included by reference in Paragraph 8.3, "Tenant's Obligations", of this Lease. Tenant shall also be required to obtain and maintain any other permits that may be required by additional laws, regulations and guidelines that may hereafter be enacted. Tenant shall not cause or permit to be caused any act or practice, by negligence, omission or otherwise, that would adversely affect the environment or do anything or permit anything to be done that would violate any of such laws, regulations or guidelines. Any violation of this covenant shall be an event of material default under this Lease. Tenant shall indemnify and hold Landlord harmless from any and all costs, expenses, claims, losses, damages, fines and penalties, including reasonable attorneys' fees that may in any manner arise out of or be imposed because of Tenant's failure to comply with this covenant. The foregoing shall cover all requirements whether or not foreseeable at the present time and regardless of expense.

22.19. Intentionally omitted.

22.20. Redelivery. Tenant shall redeliver the Premises to Landlord at the end of the Term or upon the earlier termination of this Lease in the same condition in which received or, if altered, then the Premises shall be returned in such altered condition (unless otherwise directed by Landlord under terms of Section 8.4), reasonable wear and tear and damage by casualty excepted. Tenant shall remove all structures, trade fixtures and appliances and equipment which do not become a part of the Premises. Upon Landlord's request, the terms of redelivery shall be satisfied by removing Tenant's structure, capping utility supply lines, drain lines and conduits. Tenant's obligation to perform this covenant shall survive the expiration or termination of this Lease. Landlord may place and maintain signs in conspicuous places on the Premises for one hundred twenty (120) days prior to the expiration or earlier termination of this Lease advertising the Premises' availability.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day set forth below.

**LANDLORD**

CITY OF DES MOINES, a Municipal Corporation

By \_\_\_\_\_

Michael Matthias, City Manager

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

By Direction of the Des Moines City Council In  
Open Public Meeting on \_\_\_\_\_

**TENANT**



Nourishmints, a Washington LLC

By: \_\_\_\_\_  
Mackenzie Meyers, Owner

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

STATE OF WASHINGTON            )  
                                          )    ss.  
COUNTY OF KING            )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before the undersigned, a Notary Public in and for the State of Washington personally appeared before me **Michael Matthias**, to me known to be the **City Manager** of the **City of Des Moines**, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

In Witness whereof I have set my hand and official seal the day and year first written above.

\_\_\_\_\_  
Printed name: \_\_\_\_\_  
Notary Public in and for the State  
of Washington, residing at \_\_\_\_\_  
County: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF WASHINGTON            )  
                                          )    ss.  
COUNTY OF KING            )

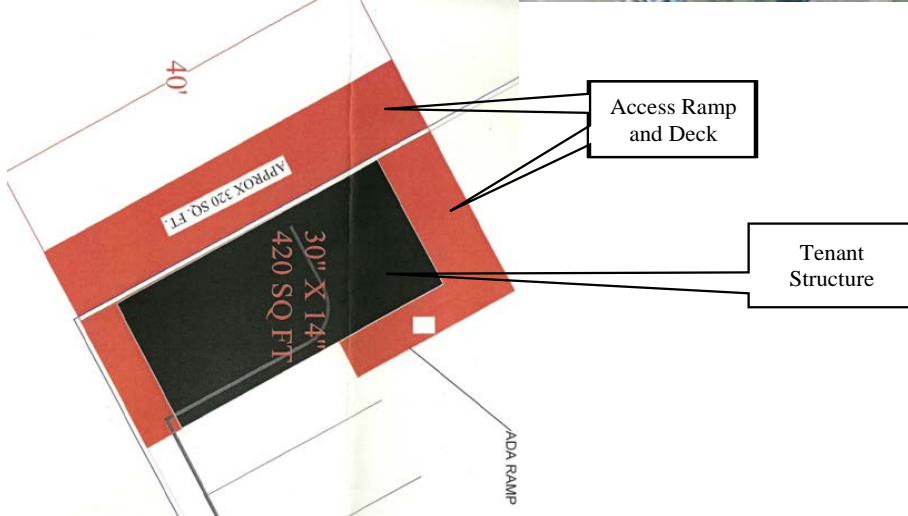
On this \_\_\_\_ day of \_\_\_\_\_, 2018, before the undersigned, a Notary Public in and for the State of Washington personally appeared before me **Mackenzie Meyers**, to me known to be the **Owner of Nourishmints, LLC**, a Washington corporation, that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath, stated that he was authorized to execute said instrument.

In Witness whereof I have set my hand and official seal the day and year first written above.

\_\_\_\_\_  
Printed name: \_\_\_\_\_  
Notary Public in and for the State  
of Washington, residing at \_\_\_\_\_  
County: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**EXHIBIT A**

The subject property as depicted on drawing:



**EXHIBIT B**

Tenant agrees to pay in amounts as follows:

1. Initial base rent of \$380.81 per month subject to annual increase as provided in Section 5.  
This rent includes costs of electricity and garbage; plus
2. Leasehold tax each month as required by Washington State law; plus
3. Separate monthly/bi-monthly bill for water/sewer utilities.

Hi I am Mackenzie Meyers, Manager at DM Harborside, LLC (DBA Quarterdeck) and I am working on purchasing Quarterdeck from Ken Rogers. I am writing to request a lease agreement between the City of Des Moines and Nourishmints, LLC (DBA Quarterdeck). For me to move forward with my loan process I will need a rough write up of the lease agreement from the city.

As you know due to the pandemic the past two years have been difficult. Having been through each step of the way with Ken Rogers we have been able to overcome each circumstance that created uncertainty. As I have learned through the worst, I am ready to take on whatever challenges come up moving forward and I would love to secure a base for the future of the Quarterdeck and its employees.

I have spoken with the Mayor and he has expressed support for the continued operation of the Quarterdeck. I am committed to maintaining the same focus on running the Quarterdeck as a family friendly, high-quality asset to the Marina and City. I am aware of the waterfront development efforts, I have a strong interest in how that development comes together, but I am also focused on stabilizing our existing operation and its future.

Factor in the terms between Nourishmints and the City of Des Moines for a minimum **5 year lease combined with an option for another 5-year extension**. This would provide the business and the employees solid foundation to plan for the future.

The Quarterdeck has been extremely lucky to have been so supported by the community since its opening and especially through the pandemic. I feel we have been reasonably successful under the circumstances by providing quality services and products that the public truly wants and hope you share the same view.

Without such remarkable community support we would have not survived as a business and for that I am exceedingly grateful. I feel blessed to have the opportunity to be part of this City in such an impactful way.

Please advise at your earliest opportunity.

Thank you.

Genuinely,

Mackenzie Meyers

Nourishmints, LLC

DBA Quarterdeck

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I am writing to request an extension of the terms and conditions of the lease currently in place between DM Harborside, LLC (DBA Quarterdeck) and the City of Des Moines.

The previous two years have been particularly difficult for small businesses due largely to the pandemic. These circumstances created a great deal of uncertainty in every respect to business planning, inventory management, staffing, customer experience and revenue/cost estimation. With perhaps the worst behind us, it would be greatly beneficial to have more certainty for business planning. We are working on forecasting and planning on more stable terms and a lease extension at this time would go a long way toward building a predictable base for the business and our employees. Since the current lease is set to expire in 2024 it is not too soon to secure a base for the future of the Quarterdeck.

I have recently spoken with both the Mayor and the chairman of the facilities committee of the City Council. They both expressed support for the continued operation of the Quarterdeck. In my discussions with them I committed to maintaining the same focus on operating the Quarterdeck as a family friendly, high-quality asset to the marina and city. While I am aware of waterfront and land side development efforts, normally the scope and scale of these projects are on a fairly long and uncertain timeline. I have a keen interest in how that development comes together, but I also am compelled to stay focused on stabilizing our existing operation and its immediate future.

Extending the terms of the current lease between DM Harborside and the City of Des Moines for 5 years combined with an option for another 5-year extension would provide the business and the employees solid footing on which to plan for the near term. We feel that we have been modestly successful under the circumstances in providing quality services and products that the public wants and hope you share the same view.

The Quarterdeck has been extremely fortunate to have been so well supported by the community since its opening and especially through the disruption during COVID. Without such remarkable community support we would have not survived as a business and for that I and our employees are exceedingly grateful.

Please advise on the viability of this request at your earliest opportunity.

Thank you.

Sincerely,

Ken Rogers

DM Harborside, LLC

DBA Quarterdeck

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**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Public Hearing:  
2023 Preliminary Annual Budget

- ATTACHMENTS:
1. Draft Ordinance No. 22-060
  2. Appendix A

FOR AGENDA OF: October 27, 2022

DEPT. OF ORIGIN: Finance Department

DATE SUBMITTED: October 10, 2022

CLEARANCES:

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

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

**Purpose and Recommendation**

The purpose of this agenda item is to:

- Present to the City Council the 2023 Preliminary Annual Budget for review and consideration, and;
- To hold a preliminary public hearing on the 2023 Preliminary Annual Budget, and;
- To consider for first reading the Draft Ordinance No. 22-060– adopting the final annual budget for the City of Des Moines, Washington for the fiscal year 2023.

The attached Draft Ordinance Appendix A presents the budget summary of sources and uses by funds to be adopted as the final budget by City Council later in the year.

**Suggested Motion**

**Motion 1:** "I move to approve Draft Ordinance No. 22-060 to a second reading on November 17, 2022 for further City Council consideration and approval."

**Background**

In accordance with state law, the 2023 Preliminary Annual Budget was provided to the City Council and made available to the public on October 13, 2022.

Budget adoption requires two public hearings. The first public hearing is scheduled for October 27, 2022 and the final public hearing is scheduled for November 17, 2022. Notice of these public hearings were provided to the public on October 6, 2022 and October 13, 2022

**Recommendation**

Staff recommends that the City Council authorize the second reading of Draft Ordinance No. 22-060 on November 17, 2022 for further City Council consideration and approval.

**CITY ATTORNEY'S FIRST DRAFT 10/20/2022**

**DRAFT ORDINANCE NO. 22-060**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** adopting the final annual budget for the City of Des Moines, Washington, for the fiscal year ending December 31, 2023, in summary form, ratifying and confirming revenues and expenditures previously implemented for fiscal year 2022, as such revenues and expenditures form the basis for development of the budget for fiscal year 2023, approving revenues and expenditures for fiscal year 2023, and temporarily suspending the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2022 budget might be inconsistent.

**WHEREAS**, the City Manager for the City of Des Moines has prepared and submitted the preliminary annual budget for the fiscal year ending December 31, 2023 to the City Council and has filed these budgets with the City Clerk, and

**WHEREAS**, the City Council finds that the City Manager's proposed budget for fiscal year 2023 reflects revenues and expenditures that are intended to ensure provision of vital municipal services at acceptable levels, and

**WHEREAS**, the City Council finds that the City Manager's proposed annual budget for fiscal year 2023 appropriately relies upon anticipated year-end balances derived from revenues and expenditures previously approved and authorized by the City Council as part of the City's budget for fiscal year 2022, and

**WHEREAS**, the City Council finds that the fund adjustments and transfers proposed by the City Manager for fiscal year 2022 are necessary and in the public's interest, and

**WHEREAS**, a preliminary public hearing was held on October 27, 2022, to take public comment with respect to the proposed 2023 annual budget, and

**WHEREAS**, notice of the public hearing was given to the public in accordance with law and the preliminary public hearing was held on the 27th day of October, 2022, and all persons wishing to be heard were heard, and

**WHEREAS**, by motion regularly passed, the Des Moines City Council scheduled the final public hearing for November 17,

Ordinance No. 22-060  
Page 2 of 4

2022, to take public comment with respect to the proposed 2023 annual budget, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and the final public hearing was held on the 17<sup>th</sup> day of November, 2022, and all persons wishing to be heard were heard; now therefore,

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

**Sec. 1.** The findings set forth in the preamble to this Ordinance are hereby adopted and incorporated by reference.

**Sec. 2.** Based on the findings adopted herein, the City Council temporarily suspends the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2023 annual budget might be inconsistent.

**Sec. 3.** The fund adjustments and transfers proposed by the City Manager for fiscal year 2022 which are incorporated in the annual budget for fiscal year 2023, are hereby authorized and approved by the City Council.

**Sec. 4.** Because the City's annual budget for fiscal year 2023 rely upon anticipated year-end fund balances or shortages derived from revenues collected and expenditures incurred in fiscal year 2022, the City Council hereby ratifies and confirms all revenues, from whatever source derived, and expenditures incurred by the City to the extent such revenues and expenditures are in accordance with the City's annual budget for fiscal year 2022 or any subsequent budget amendments formally approved by the City Council.

**Sec. 5.** The City Council hereby adopts, affirms and approves any and all revenues, from whatever source derived, and expenditures as referenced in the attached annual budget for fiscal year 2023.

**Sec. 6.** The final annual budget for the City of Des Moines' fiscal year 2023 is hereby adopted and approved in summary form as set forth in the attached Appendix "A", which is by this reference incorporated herein

**Sec 7. Severability - Construction.**

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

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

**Sec 8. Effective date.** This Ordinance shall take effect and be in full force (5) five days after its final passage by the Des Moines City Council.

Ordinance No. 22-060  
Page 4 of 4

**PASSED BY** the City Council of the City of Des Moines this 17th day of November, 2022 and signed in authentication thereof this 17th day of November, 2022.

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

APPROVED AS TO FORM:

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

ATTEST:

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

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

**DRAFT ORDINANCE 22-060  
APPENDIX A**

**2023 PRELIMINARY BUDGET  
SUMMARY OF SOURCES AND USES**

Funds	Estimated		
	Beginning Fund Balance	Revenue	Total Sources
General Fund	\$ 6,947,169	\$ 24,809,248	\$ 31,756,417
Streets	942,370	1,910,518	2,852,888
Street Pavement	2,414,956	1,642,086	4,057,042
Development	3,048,214	2,815,250	5,863,464
Police Drug Seizure	141,562	40,000	181,562
Hotel-Motel Tax	154,257	120,750	275,007
Affordable Housing Sales Tax	57,095	34,200	91,295
American Rescue Plan Funding	7,384,040	1,750	7,385,790
Redondo Zone	5,230	77,850	83,080
Waterfront Zone	391,642	128,350	519,992
PBPW Automation Fee	496,500	126,500	623,000
Urban Forestry	-	5,000	5,000
Abatement	35,319	5,400	40,719
Automated Speed Enforce (ASE)	220,206	365,500	585,706
Transportation Benefit District	2,190,935	1,044,000	3,234,935
Total Special Revenue Funds	17,482,326	8,317,154	25,799,480
REET 1 Debt Service	-	-	-
REET 2 Debt Service	20,603	233,492	254,095
2018 LTGO Debt Service	113,452	226,500	339,952
Total Debt Service Funds	134,055	459,992	594,047
Municipal Capital Improvement	524,105	4,550,000	5,074,105
Transportation Capital Improvement	5,965,724	8,559,000	14,524,724
REET 1st Quarter	3,251,830	810,000	4,061,830
REET 2nd Quarter	2,490,980	802,500	3,293,480
Park Levy	2,880	183,000	185,880
Park In Lieu	245,125	402,844	647,969
One Time Revenues	2,259,104	267,500	2,526,604
Traffic In Lieu	1,018,957	1,150,500	2,169,457
Traffic Impact Citywide	737,165	351,250	1,088,415
Traffic Impact Pacific Ridge	677,705	100,750	778,455
Total Capital Project Funds	17,173,575	17,177,344	34,350,919
Marina	4,241,679	8,989,736	13,231,415
Surface Water Management	7,160,142	6,477,077	13,637,219
Total Enterprise Funds	11,401,821	15,466,813	26,868,634
Equipment Rental Operations	331,963	663,109	995,072
Equipment Rental Replacement	1,607,076	1,036,106	2,643,182
Facility Repair & Replacement	238,276	301,770	540,046
Computer Replacement	1,271,186	175,203	1,446,389
Self Insurance	788,126	783,704	1,571,830
Unemployment Insurance	482,562	36,500	519,062
Total Internal Service Funds	4,719,189	2,996,392	7,715,581
Total Budget - All Funds	\$ 57,858,135	\$ 69,226,943	\$ 127,085,078

**DRAFT ORDINANCE 22-060  
APPENDIX A**

Funds		Estimated Ending			
		Expenditure	Fund Balance	Total Uses	
	General Fund	\$ 27,246,473	\$ 4,509,944	\$ 31,756,417	
Special Revenue	Streets	2,032,774	820,114	2,852,888	
	Street Pavement	3,151,000	906,042	4,057,042	
	Development	4,149,839	1,713,625	5,863,464	
	Police Drug Seizure	11,000	170,562	181,562	
	Hotel-Motel Tax	120,000	155,007	275,007	
	Affordable Housing Sales Tax	30,000	61,295	91,295	
	American Rescue Plan Funding	3,154,759	4,231,031	7,385,790	
	Redondo Zone	80,934	2,146	83,080	
	Waterfront Zone	121,692	398,300	519,992	
	PBPW Automation Fee	78,429	544,571	623,000	
	Urban Forestry	5,000	-	5,000	
	Abatement	5,000	35,719	40,719	
	Automated Speed Enforce (ASE)	397,000	188,706	585,706	
	Transportation Benefit District	1,450,000	1,784,935	3,234,935	
	<b>Total Special Revenue Funds</b>	<b>14,787,427</b>	<b>11,012,053</b>	<b>25,799,480</b>	
Debt Service	REET 1 Debt Service	-	-	-	
	REET 2 Debt Service	236,493	17,602	254,095	
	2018 LTGO Debt Service	226,400	113,552	339,952	
		<b>Total Debt Service Funds</b>	<b>462,893</b>	<b>131,154</b>	<b>594,047</b>
Capital Projects	Municipal Capital Improvement	5,199,864	(125,759)	5,074,105	
	Transportation Capital Improvement	8,534,000	5,990,724	14,524,724	
	REET 1st Quarter	1,742,000	2,319,830	4,061,830	
	REET 2nd Quarter	983,492	2,309,988	3,293,480	
	Park Levy	108,000	77,880	185,880	
	Park In Lieu	17,000	630,969	647,969	
	One Time Revenues	270,000	2,256,604	2,526,604	
	Traffic In Lieu	1,150,000	1,019,457	2,169,457	
	Traffic Impact Citywide	926,000	162,415	1,088,415	
	Traffic Impact Pacific Ridge	-	778,455	778,455	
	<b>Total Capital Project Funds</b>	<b>18,930,356</b>	<b>15,420,563</b>	<b>34,350,919</b>	
Enterprise	Marina	9,322,194	3,909,221	13,231,415	
	Surface Water Management	8,079,313	5,557,906	13,637,219	
		<b>Total Enterprise Funds</b>	<b>17,401,507</b>	<b>9,467,127</b>	<b>26,868,634</b>
Internal Service	Equipment Rental Operations	768,629	226,443	995,072	
	Equipment Rental Replacement	946,000	1,697,182	2,643,182	
	Facility Repair & Replacement	605,000	(64,954)	540,046	
	Computer Replacement	428,079	1,018,310	1,446,389	
	Self Insurance	801,000	770,830	1,571,830	
	Unemployment Insurance	42,500	476,562	519,062	
		<b>Total Internal Service Funds</b>	<b>3,591,208</b>	<b>4,124,373</b>	<b>7,715,581</b>
		<b>Total Budget - All Funds</b>	<b>\$ 82,419,864</b>	<b>\$ 44,665,214</b>	<b>\$ 127,085,078</b>