

AGENDA

DES MOINES CITY COUNCIL REGULAR MEETING City Council Chambers VIA ZOOM

Thursday, January 7, 2021 - 5:00 PM

NOTE: The City of Des Moines is currently operating under a Proclamation of Emergency issued on March 5, 2020 and Governor Inslee's Stay-at-Home order issued March 23, 2020 in response to the COVID-19 Pandemic. Accordingly, this meeting will be held virtually using Zoom.

Public Comment continues to be encouraged and will be accepted in the following manner:

- (1) In writing, either by email to the City Clerk's Office at <https://www.desmoineswa.gov/FormCenter/City-Forms-3/Council-Meeting-Comments-49> or by mail; Attn: City Clerk Office, 21630 11th Avenue S., Des Moines WA 98198 no later than **4:00 p.m. day of the meeting**. Please provide us with your first and last name and the city in which you live. Your full name and the subject of your public comment will be read into the record at the Council meeting. Incomplete forms will not be read into the record, however the full correspondence will be attached to the Council packet and uploaded to the website as part of the permanent record.
- (2) By participation via Zoom. If you wish to provide oral public comment please email the City Clerk's office at <https://www.desmoineswa.gov/FormCenter/City-Forms-3/Council-Meeting-Comments-49> no later than **4:00 p.m. day of the meeting** to receive your Zoom log-in and personal identification number. Please note that Zoom attendees do not interact with one another; they join in listen-only mode until it is their turn to address the Council.

City Council meetings can also be viewed live on Comcast Channel 21 or live streamed on the City's website at www.desmoineswa.gov.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

EXECUTIVE SESSION

Potential Litigation under RCW 42.30.110(1)(i), 30 minutes

CORRESPONDENCE

[Council Correspondence](#)

COMMENTS FROM THE PUBLIC VIA ZOOM/WRITTEN PUBLIC COMMENT

ADMINISTRATION REPORTS

FORTERRA GREEN DES MOINES PARTNERSHIP

[Forterra Green Des Moines Presentation](#)

CONSENT CALENDAR

APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers through December 23, 2020 in the attached list and further described as follows:

Total A/P Checks/Vouchers	#161668-161858	\$ 981,649.59
Voided Checks	#161814-161814	\$ (10,033.00)
Electronic Wire Transfers	# 1569-1583	\$2,006,239.83
Payroll Checks	# 19393-19393	\$ 205.10
Payroll Direct Deposit	#490001-490143	\$ 392,314.23
Payroll Checks	#	\$
Payroll Direct Deposit	#510001-510138	\$ 386,728.81
Total Checks and Wires for A/P and Payroll:		\$3,757,104.56

[Consent Item 1](#)

HIGHLINE SCHOOL DISTRICT RIGHT-OF-WAY DEDICATION AND TRAIL EASEMENT DEDICATION

Motion 1 is to authorize the City Manager to accept a Right-of- Way dedication from Highline School District No. 401, which is located along the South 240th Street and 16th Avenue South frontages of Des Moines Elementary as described in Attachment 1.

Motion 2 is to move to authorize the City Manager to accept a future Trail Easement from Highline School District No. 401, which is located along 16th Avenue South frontage of Des Moines Elementary as shown in the approximate location in Attachment 2.

[Consent Item 2](#)

AMENDMENT #1 TO THE 2019 INTER-LOCAL AGREEMENT WITH
KING COUNTY FOR CONSERVATION FUTURES- FUNDED OPEN
SPACE ACQUISITION PROJECTS

Motion is to approve Amendment #1 to the ILA between King County and the City of Des Moines for Conservation Futures funded open space acquisition projects, and authorize the City Manager to sign the amendment substantially in the form as attached.

[Consent Item 3](#)

2021-2022 RECYCLING PROGRAM GRANT FUNDING

Motion is to accept the Seattle-King County Department of Public Health LHWMP Grant and the King County Solid Waste Division WR/R Grant and authorize the City Manager to sign the grant documents substantially in the form as attached.

[Consent Item 4](#)

DES MOINES MARINA MAINTENANCE DREDGING PROJECT -
CHANGE ORDER NO.1

Motion is to approve Change Order No. 1 to the contract with American Construction Company for an additional \$924.00 to the previously authorized amount of \$137,272.68 and authorize the City Manager to sign the Change Order substantially in the form as attached.

[Consent Item 5](#)

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

NEXT MEETING DATE

January 21, 2021 City Council Regular Meeting

ADJOURNMENT

Bonnie Wilkins

From: mvblburns <mvblburns@comcast.net>
Sent: Wednesday, December 23, 2020 10:31 PM
To: _CityCouncil
Subject: Historic Masonic Home

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Friends on Des Moines City Council,
I am writing to show support for a beloved building, the Masonic Home. I know it has a new name. I know it has been sold. I know the plan is to demolish it... but sometimes plans change. If there is any way that the City of Des Moines can influence the current owners to invest in the restoration, rather than the destruction of the Masonic Home, it would be greatly appreciated. My grandparents bought property here in the 1930s, so the grand Masonic Home has always been a part of my life. It was just there in all it's glory. I would love to still see it for years to come.
Vickie Burns

Sent from my Verizon, Samsung Galaxy smartphone

Bonnie Wilkins

From: noreply@civicplus.com
Sent: Monday, December 21, 2020 11:39 AM
To: Bonnie Wilkins; Taria Keane; Matt Pina; JC Harris; Luisa Bangs; Jeremy Nutting; Anthony Martinelli; Matt Mahoney; Traci Buxton
Subject: Online Form Submittal: Council / Public Meeting Comments

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Council / Public Meeting Comments

Your name and the subject of your comment will be read into the record at the next available City Council meeting.

First Name	Linnea
Last Name	Hess
Address1	3172 Forest Knoll Lane
City	Langley
State	WA
Zip	98260
Phone	3602218625
Email	lhess@whidbey.com
Subject	Masonic Building
Comment	Hello, I just read the article in the Seattle Times regarding the potential demolition of the Masonic Building. That building is a historical icon for the city of Des Moines and our Puget Sound region. An idea came to me. The city of Des Moines as well as Zenith Properties should consider contacting McMenamins. If you are not familiar with the company, they renovate and restore historical landmarks in the Pacific Northwest. Their attention to detail and devotion to retaining the historic nature of a building is truly amazing. I frequently stay at the restored Elks lodge in Tacoma while I am visiting family.

Their contact information is:
503-223-0109 Corporate HQ
generalinfo@mcmenamins.com
I am sure that I am not alone in fervently hoping this historic
site will not be demolished.

Thank you for your consideration in this matter.

Regards, Linnea Freed Hess
360-221-8625 H
360-202-5139 C

Do you wish to be
contacted by the City
Clerk's Office with
instructions on how to
participate in the City
Council Zoom meeting?

Yes

Email not displaying correctly? [View it in your browser.](#)

Bonnie Wilkins

From: David Hunsley <dhunsley2016@gmail.com>
Sent: Wednesday, December 23, 2020 2:33 PM
To: _CityCouncil
Subject: Masonic Building

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello,

I'm hoping that the city can do something to save the lovely old Masonic retirement home on the Zenith hill, overlooking the sound. I moved to Des Moines and chose not to move to Burien or Normandy Park because of the character of the town. If we lose this building, we loose history and an architectural treasure that helps make Des Moines special.

Could we perhaps get a grant to secure and improve the property as a community resource? What can we do with this building that adds cultural value to our community? A few ideas off the top of my head include artist lofts, a specialized school, or a corporate campus.

David Hunsley
206-979-4640

Bonnie Wilkins

From: noreply@civicplus.com
Sent: Wednesday, January 6, 2021 2:16 PM
To: Bonnie Wilkins; Taria Keane; Matt Pina; JC Harris; Luisa Bangs; Jeremy Nutting; Anthony Martinelli; Matt Mahoney; Traci Buxton
Subject: Online Form Submittal: Council / Public Meeting Comments

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Council / Public Meeting Comments

Your name and the subject of your comment will be read into the record at the next available City Council meeting.

First Name	Rick
Last Name	Johnson
Address1	28624 Redondo Beach Dr S, , false
City	Des Moines
State	WA
Zip	98198
Phone	2532793310
Email	redondorick@comcast.net
Subject	Masonic Home
Comment	Des Moines has done very little in saving the past, historically. Now we again have a chance to do what we can to keep the Masonic Home from being demolished. A home that's been in Zenith going on 100 years. Sure its easy just to say demolish it, that's the easy way out. Des Moines has little properties of historic value left. The Van Gasken house for one. I ask the council to do all you can to fight the destruction of the Masonic Home. Lets save a part of our history for generations to come. Sincerly Rick Johnson

Do you wish to be
contacted by the City
Clerk's Office with
instructions on how to
participate in the City
Council Zoom meeting?

No

Email not displaying correctly? [View it in your browser.](#)

Bonnie Wilkins

From: Erica Juberg <e.juberg@yahoo.com>
Sent: Wednesday, December 23, 2020 2:16 PM
To: _CityCouncil
Subject: No Landmark on the Sound Demo

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To those in positions to stop the demolition of the Landmark on the Sound,

I have been a lifelong citizen of Des Moines & take great pride in our beautiful city. We offer a unique waterfront getaway full of history and old timey-charm that is hard to come by in our growing world of waste.

The Landmark on the Sound is breathtaking & memorable step back in time. We should not be allowing such a monument to history to be torn down, as we are so lucky to have it. There is so much possibility within those walls.

Yes, it needs repairs, & yes, those cost money. But money can be replaced. The Landmark on the Sound cannot be. I'm sure that if our city asked people for donations, they would turn out to save this building.

Please don't tear it down. It's irreplaceable. We don't need more overpriced condos.

Thank you for your consideration,
Erica Juberg

Bonnie Wilkins

From: noreply@civicplus.com
Sent: Thursday, January 7, 2021 2:30 PM
To: Bonnie Wilkins; Taria Keane; Matt Pina; JC Harris; Luisa Bangs; Jeremy Nutting; Anthony Martinelli; Matt Mahoney; Traci Buxton
Subject: Online Form Submittal: Council / Public Meeting Comments

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Council / Public Meeting Comments

Your name and the subject of your comment will be read into the record at the next available City Council meeting.

First Name	Barbara
Last Name	McMichael
Address1	22810 Thunderbird Drive S
City	Des Moines
State	Washington
Zip	98198
Phone	2068786912
Email	bkmonger@nwlink.com
Subject	Des Moines Masonic Home
Comment	<i>Field not completed.</i>
Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?	Yes

Email not displaying correctly? [View it in your browser.](#)

Bonnie Wilkins

From: Machiko Naito <machikon@comcast.net>
Sent: Saturday, January 2, 2021 5:20 PM
To: _CityCouncil
Subject: PLS STOP Demolition landmark Masonic mansion

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

I read the article about the owner is planning to destroy the mansion which is totally not right. It's historical architecture.

I wish the city would have purchased and used it for the residence of city or everyone visitors for renting this place.

However you did not do it, but pls. Find a way to keep the building and keep good part of city of Des Moines.

Pls. suggest the owner to renovate it not destroy it and make good use of it for everyone. We can make clean, vitalized, cheerful, beautiful, city more than ever!

As you are representing us, pls. oppose demolition for sure.

Best regards

Machiko

Bonnie Wilkins

From: Connie Powell <clynnpowell59@gmail.com>
Sent: Wednesday, December 23, 2020 12:54 PM
To: _CityCouncil
Subject: Demotion of Masonic home

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please do all you can to stop the demolition of this historic building, it is so much a part of the culture here in Des Moines.

Thank you,
Connie Powell

Bonnie Wilkins

From: Marisa Spencer <marisapilcic@msn.com>
Sent: Tuesday, December 29, 2020 6:08 PM
To: _CityCouncil
Subject: Landmark on the Sound

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear City Council of Des Moines,

My name is Marisa Spencer. I am a resident of Des Moines. I have lived in this area for 42 years. I am completely shocked and saddened that there could even be talk of demolishing the Landmark. This building has been around for almost 100 years. Everyone knows about this place. You can see it from Vashon Island. It has a stately presence that is breathtaking and the craftsmanship of this building is something that new construction these days does not have. They definitely do not build buildings the way they used to.

I drive past this building everyday. I understand that it has been vacant for many years. I know that it is a major expense to renovate this property. I just don't think people have the vision for what this place could be. I myself work in the construction industry. I look at this Des Moines/Seatac/Federal Way/Kent area and we don't really have a "wow" tourist destination/ attraction. (I understand that right now the world is in the Covid pandemic phase). Why not make this that "wow" tourist destination. Could this not be made into a hotel/ resort/ restaurant and bar place? There's a good amount of land. Could part of the grounds be used as a concert venue? I just think about places that I have gone around the country and in Europe and when things get back to normal people will go to these places again. In this area we really do not have a fun place to go vacation that families or couples can go to get away. You have to drive far away to go to the San Juan's, The ocean.

We are just 10 minutes from the airport. Have you looked at the not so great places to stay while on international Blvd. I'm pretty sure there would be tons of people that would book this place to stay if they could.

I honestly can see this being a place similar to the Empress Hotel in Victoria if it was done right. This city could be a great place if we clean up some of the rif raf in town and make the Main Street a more appealing area. Is there anyone that has considered reaching out to the million/ billionaires in the area? This building still has a purpose and a history. I'm pretty sure if you don't give up on this building it could be a game changer for this area. If I had the deep pockets I would be all over this place.

Please don't let this building be demolished.

Regards,
Marisa Spencer

Get [Outlook for iOS](#)

Bonnie Wilkins

From: Rebecca Stapleton <beckystapes@yahoo.com>
Sent: Wednesday, December 23, 2020 6:32 PM
To: _CityCouncil
Subject: Please do not demolish the Landmark

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please do not demolish the Landmark. What can I do to ensure that it is certified as a historic landmark?

Thank you
Rebecca Stapleton

Bonnie Wilkins

From: T Steele <txsteele@outlook.com>
Sent: Wednesday, December 23, 2020 2:48 PM
To: _CityCouncil
Subject: preservation of the historic Masonic Home

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you!

Bonnie Wilkins

From: jessie7467 <jessie7467@aol.com>
Sent: Wednesday, December 23, 2020 2:40 PM
To: _CityCouncil
Subject: Masonic Home

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please do not demolish this historical Des Moines building. I have lived in the city since I was one month old (1979). I do not ever recall a time that I did not enjoy driving by and taking in this miraculous structure. I am positive as a city we can come together and figure out what to do in order to keep the building standing long term.

Jessica Tossey

Sent from my Metro By T-Mobile 4G LTE Android Device

Bonnie Wilkins

From: Bea Ziegler <zieglerbea@icloud.com>
Sent: Thursday, December 24, 2020 8:40 AM
To: _CityCouncil
Subject: Landmark on the Sound

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Truly hoping something can be done to save this beautiful building.
Sent from my iPhone

GREEN DES MOINES

PARTNERSHIP

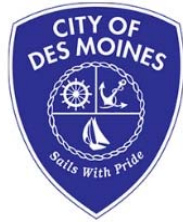


ALI LAKEHART

Forterra
Green Cities Program Manager

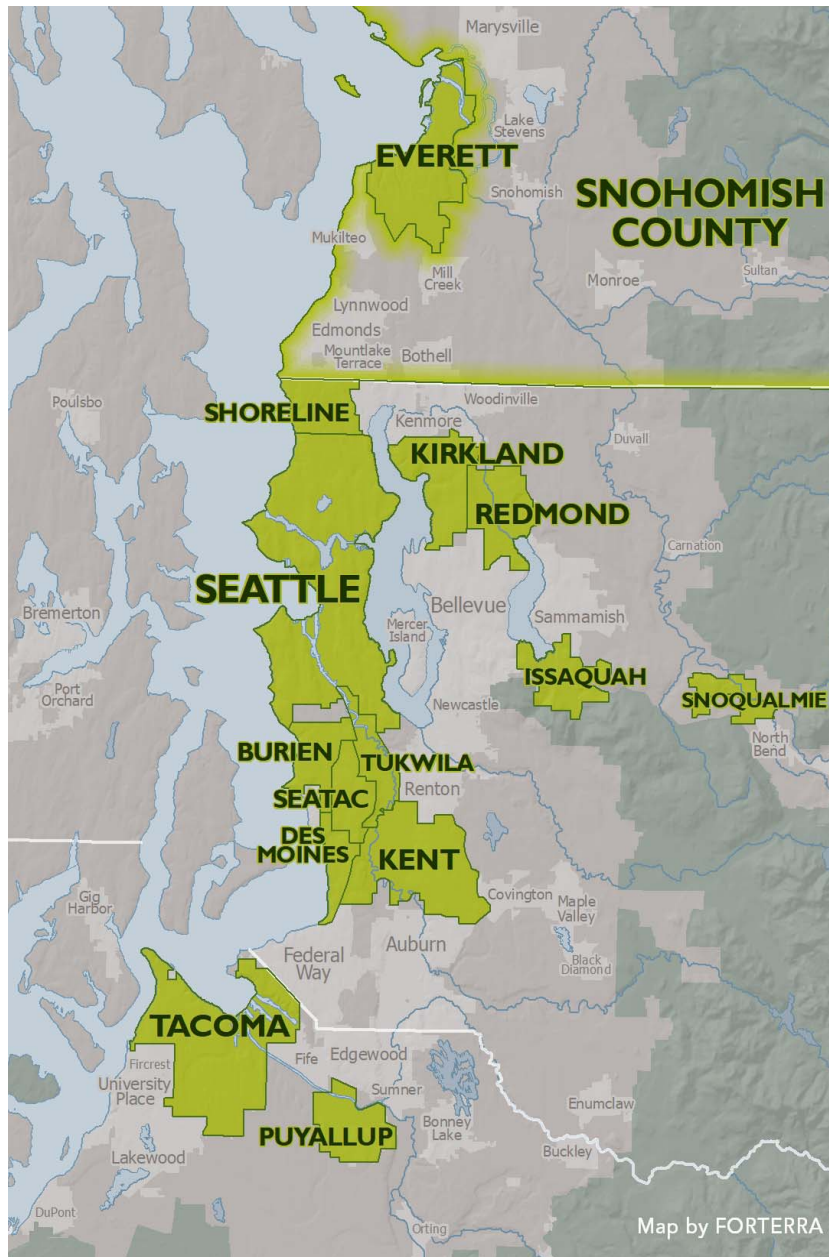


GREEN CITY
PARTNERSHIPS
SEATAC - BURIEN - DES MOINES



FORT&RRA





Growing a Regional Network of Healthy Urban Forest

Program to Date (2005-2019)

- 15 Green Cities/County
- Combined Restoration Goal:
~13,000 acres
- Serving more than 1.6 M people



WHAT IS THE URBAN FOREST?



ALL OF A CITY'S TREES

- Residential trees
- Street trees
- Trees in parks
- Trees on private land
- School trees
- Business's trees

BENEFITS OF URBAN FORESTS

A conifer can remove 50 pounds of particulates from the air per year (Dwyer et al. 1992).



Just 20 minutes in nature can significantly lower stress hormones such as cortisol (Hunter et al. 2019).



Air filtration alone by urban trees in Washington State is valued at \$261 million.



Nationwide, urban trees prevent 670,000 cases of acute respiratory conditions annually (Nowak et al. 2018).



Every 1% increase in a city's usable or total green space results in a 4% lower rate of anxiety/mood disorder treatment (Nutsford et al. 2013).



Buffers of trees and shrubs can reduce 50% of noise detectable by the human ear (USDA Forest Service 1998), including high-frequency noise, which is the most distressing to people (McPherson et al. 2001).



THREATS TO OUR URBAN FORESTS



- Urban growth
- Loss of large canopy trees
- Invasive non-native plant species
- Aging canopy
- Invasive non-native insects and disease
- Improper tree care
- Lack of understanding about the value and benefits of urban trees
- Climate Change
- Inadequate urban forest planning, management, and funding

URBAN FOREST STEWARSHIP PLAN

- Presented to Council and published online 2021
- Reference and guidebook to volunteer projects and City staff -2020 and onwards

GREEN DES MOINES PARTNERSHIP

URBAN FOREST ENHANCEMENT PLAN



COMMUNITY ENGAGEMENT



Over 300
engaged

Primary
concern: air
quality

Seniors,
youth, and
Native voices

Relaxing and
Mental
Health

Over 50%
want to be
involved

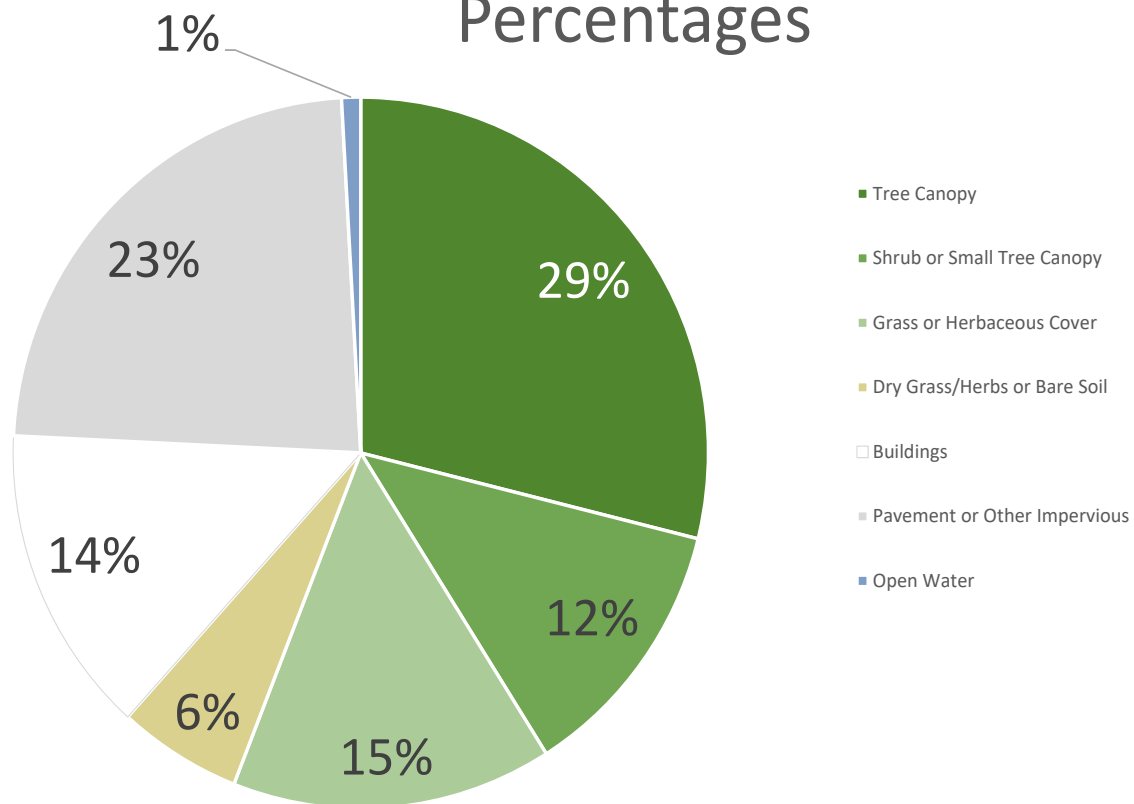
Trees =
community

DES MOINES' URBAN FOREST TODAY

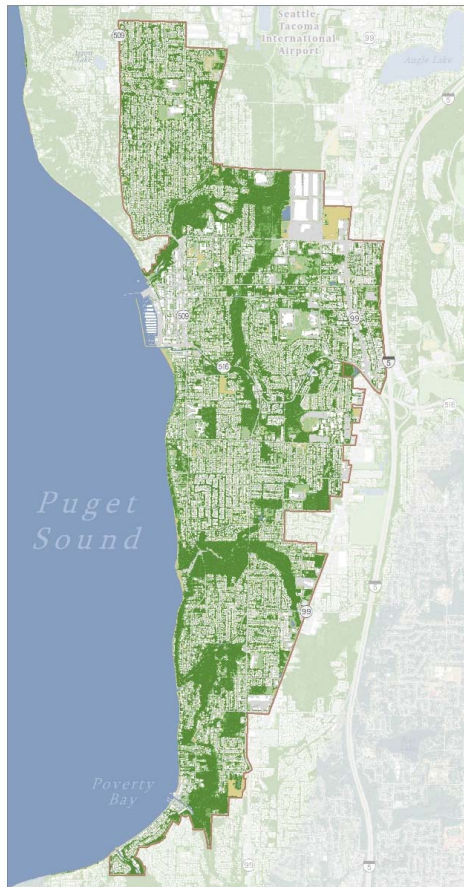


CANOPY COVER

Citywide Land Cover Areal Percentages

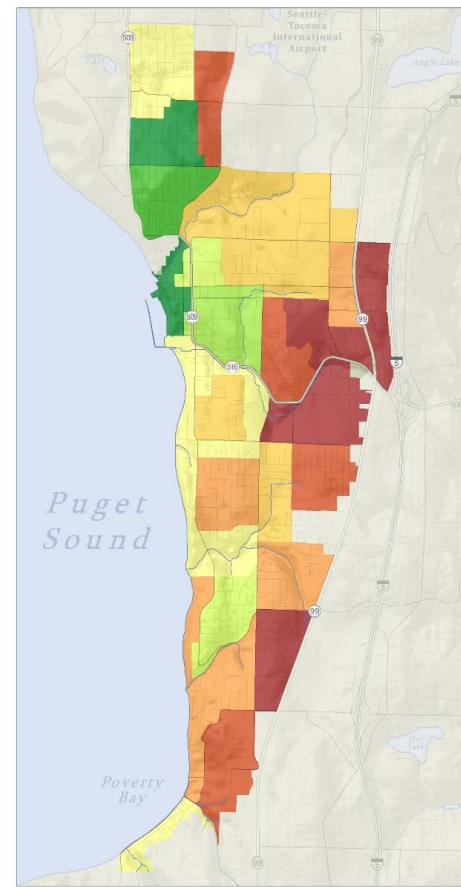


CANOPY COVER & SOCIAL VULNERABILITY



Land cover information shown on this map was produced by CORE GIS on behalf of Forterra in July 2018. This data was derived using guided classification techniques based primarily on USDA NAIP four-band aerial imagery captured during the summer of 2017 at a resolution of one meter. Vegetated areas were stratified by height into three classes based on height information obtained from 2016 King County LiDAR data. Preliminary results were further refined through the use of vector data delineating building footprints and paved areas provided by the City of Des Moines along with 2015 King County impervious surface data.

Map created by FORTERRA in partnership with the City of Des Moines with support from the Port of Seattle Airport Community Ecology (ACE) Fund.



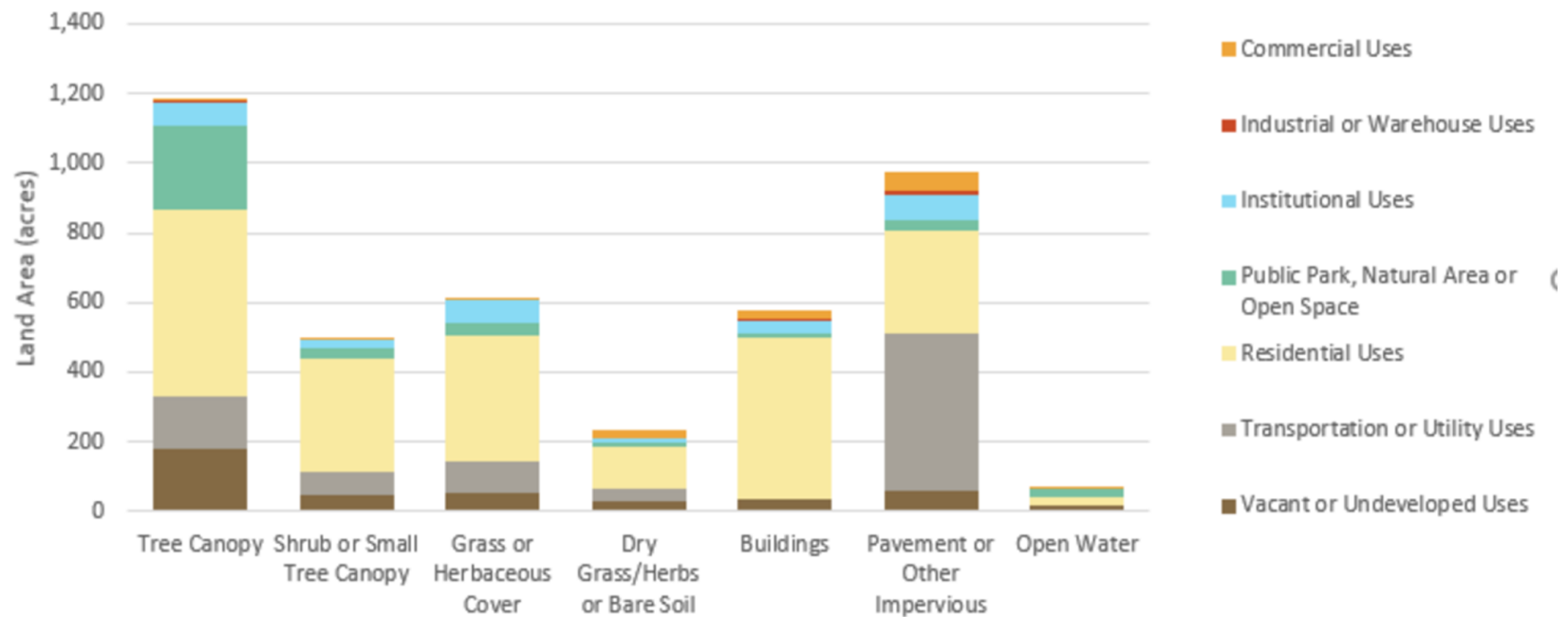
Social vulnerability refers to the relative ability of a given community to overcome stressors such as abuse, social marginalization, disease, pollution or natural hazards. This lack of resilience can persist due to reinforcing social, political and institutional influences, while reducing social vulnerability can decrease both human suffering and economic loss.

The measure of social vulnerability used here is the U.S. Environmental Protection Agency's EJScreen Alternative Demographic Index, which incorporates six population characteristics from the U.S. Census: income, race, education attainment, linguistic isolation, children and the elderly.

Map created by FORTERRA in partnership with the City of Des Moines with support from the Port of Seattle Airport Community Ecology (ACE) Fund.

WHERE ARE DES MOINES' TREES?

Distributions of Land Use Categories by Land Cover Type



CANOPY ON PRIVATE LAND

45% of Des Moines' canopy on private land

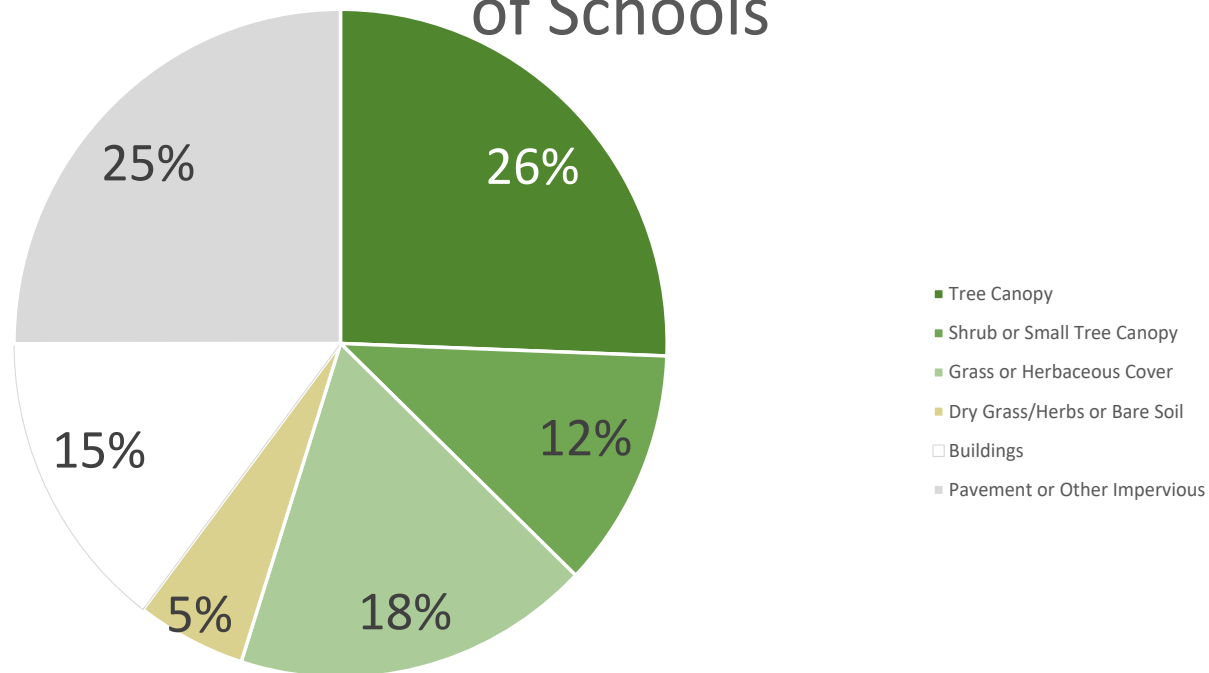
Only 25% of residential land covered with canopy

Greatest potential for retention

Greatest Potential for canopy

CANOPY COVER IN RELATION TO SCHOOLS

Land Cover Within a Quarter-Mile
of Schools



GREEN CITY PARTNERSHIP GOALS

- Steward and enhance the urban forest with an active community.
- Retain forested parks by restoring and maintaining 326 acres of public parkland.
- Ensure sustainability by establishing long-term resources.



NEIGHBORHOOD TREE PROGRAM

- Yard Tree Distributions 2020 and 2021
- Virtual Tree Walk
- Virtual Tree Care Training
- Education about Trees
- DMMD Memorial Elm distribution



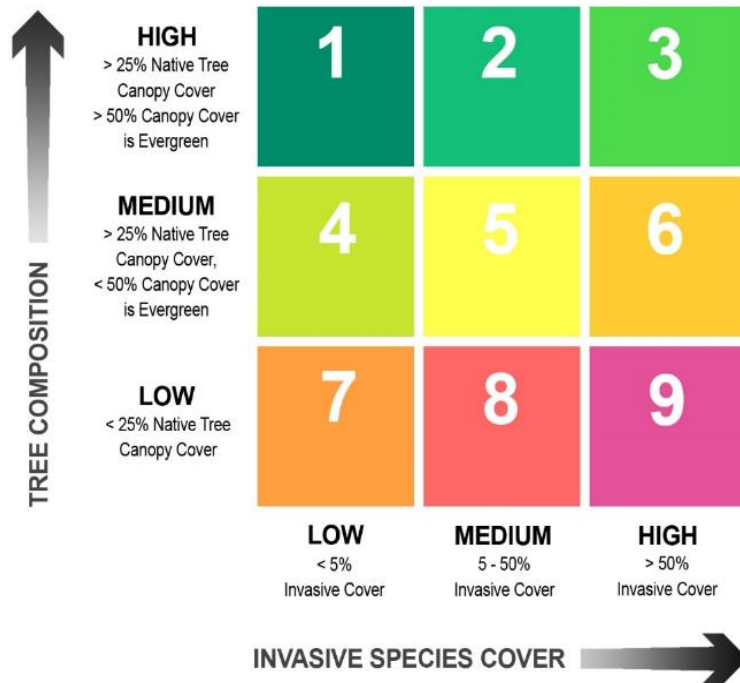
CANOPY RETENTION- PARKS



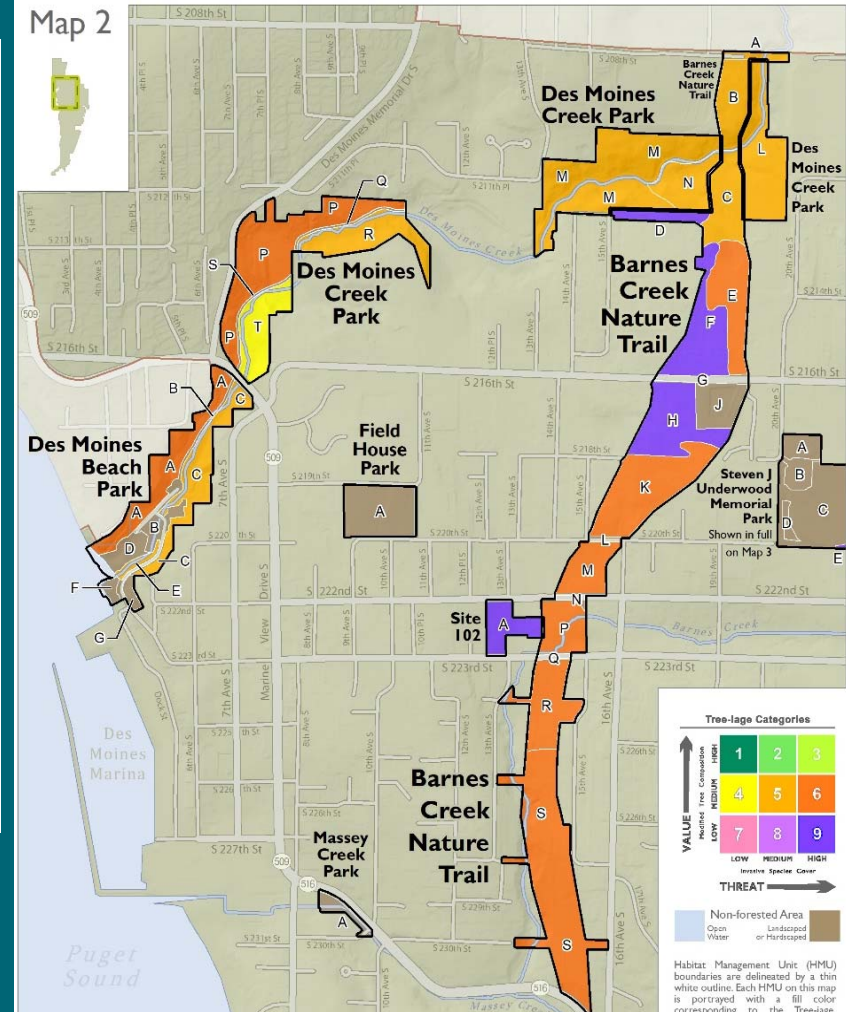
The City of Des Moines with support from the Port of Seattle Airport Community Endowment (ACE) Fund

FORESTED PARKS HEALTH ASSESMENT

Triage Categories



Map 2



IF WE DO NOTHING...

If forested parklands are not restored

Aggressive nonnative vegetation will dominate the urban forest unless removed. In 100 years, the trees will be gone.



WE CAN REVERSE THE TREND

If forested parklands are restored

Aggressively removing invasive vegetation and planting native trees and shrubs will return the urban forest to a more sustainable condition. In 100 years, the forest will provide the city valuable services and better resist invasive plant infestations.



THE FOREST STEWARD PROGRAM 2019-2020

CURRENTLY 300+ VOL HOURS



COMMUNITY STEWARDSHIP COMMUNITY WIDE



NEXT STEPS: RECOMENDATIONS

- Consider each City department's role in caring for the urban forest and create a document outlining roles and responsibilities.
- Complete an inventory of publicly owned trees.
- Strengthen information on, and documentation of, street trees by creating an inventory and monitoring and maintenance protocols for those trees.
- Strengthen the policies around trees on private property in order to preserve almost half of current canopy cover.
- Create an approved plant list for future city plantings, especially street trees. Understand the maintenance requirements and costs associated with the trees on that list and plan accordingly.
- Increase staff capacity to meet the needs of a growing City and Green Des Moines Partnership in order to retain, and potentially expand, the benefits Des Moines currently receives from its urban forest.



THANK YOU FOR SUPPORTING OUR FORESTS!

alakehart@forterra.org

www.greendesmoineswa.org | 206-905-6909



FORTERRA

Port of Seattle®

CITY OF DES MOINES
Voucher Certification Approval

January 7, 2021

Auditing Officer Certification

Vouchers and Payroll 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 **January 7, 2021** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through December 23, 2020 and payroll transfers through December 18, 2020 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
Claims Vouchers:						
Total A/P Checks/Vouchers			161668	-	161858	981,649.59
Voided Checks - (see attached report)			161814	-	161814	(10,033.00)
Electronic Wire Transfers			1569	-	1583	2,006,239.83
Total claims paid						2,977,856.42
Payroll Vouchers						
Payroll Checks	12/4/2020		19393	-	19393	205.10
Direct Deposit			490001		490143	392,314.23
Payroll Checks	12/18/2020		0	-	0	0.00
Direct Deposit			510001		510138	386,728.81
Total Paychecks/Direct Deposits paid						779,248.14
Total checks and wires for A/P & Payroll						3,757,104.56

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Highline School District Right-of-Way Dedication and Trail Easement Dedication

ATTACHMENTS:

1. Right-of-Way Dedication Legal Description and Exhibit
2. Approximate Trail Easement Area Exhibit

FOR AGENDA OF: January 7, 2021

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: December 28, 2020

CLEARANCES:

- [X] Community Development *Superior City*
 [] Marina N/A
 [] Parks, Recreation & Senior Services N/A
 [X] Public Works *R. Blum*

CHIEF OPERATIONS OFFICER: *Dip J.*

- [X] Legal TG
 [] Finance N/A
 [] Courts N/A
 [] Police N/A

APPROVED BY CITY MANAGER
 FOR SUBMITTAL *[Signature]*

Purpose

The purpose of this item is to obtain City Council's approval for the City to accept real property from Highline School District No. 401 as well as a trail easement for the Barnes Creek Trail. The following motions will appear on the consent calendar:

Suggested Motions

Motion 1: "I move to authorize the City Manager to accept a Right-of-Way dedication from Highline School District No. 401, which is located along the South 240th Street and 16th Avenue South frontages of Des Moines Elementary as described in Attachment 1."

Motion 2: "I move to authorize the City Manager to accept a future Trail Easement from Highline School District No. 401, which is located along 16th Avenue South frontage of Des Moines Elementary as shown in the approximate location in Attachment 2."

Background

Motion 1

Pursuant to RCW 35A.11.010, code cities may, through its legislative body, purchase, lease, receive, or otherwise acquire real property to hold, convey, or otherwise dispose of for common benefit. Pursuant to DMMC 3.80.030, the City Council shall approve all nonmonetary donations with value of \$20,000 or more, and all donations of real property, to the City of Des Moines.

The property owner, Highline School District No. 401, has constructed Des Moines Elementary at 23801 16th Avenue South under the City of Des Moines Building Permit BLD2018-1379 and Grading Permit LUA2017-0047. As a condition of the building permit and grading permit, the owner was required to dedicate a portion of the private property to the City for Right-of-Way purposes as identified in Attachment 1.

Motion 2

In addition to Motion 1 background above, Highline School District No. 401, has constructed Des Moines Elementary frontage improvements along 16th Avenue South which has included a portion of the Barnes Creek Trail under critical area review LUA2019-0029. As a condition of this review, an existing wetland will be retained in the proximity of the trail and Massey Creek, ultimately resulting in a meander of the trail alignment as shown in Attachment 2.

Discussion

Motion 1

The dedication of Right-of-Way is required to adjust the property line such that the newly constructed frontage improvements associated with Des Moines Elementary are located within City Right-of-Way. Portions of the current sidewalk, trail, street lighting, curb ramps and franchise utilities along South 240th Street and 16th Avenue South were constructed on Highline School District's property with the condition they be dedicated to City Right-of-Way upon completion and acceptance.

Motion 2

The future Trail Easement is required to allow the City access for operations and maintenance to that portion of Barnes Creek Trail that currently is constructed and located on Highline School District No. 401 property as shown in Attachment 2. Highline School District No. 401 is concluding the construction of their required frontage improvements, which includes this portion of Barnes Creek Trail under a City Right-of-Way Use Permit. It is the intent if the District and City to determine the exact Trail Easement needs once all work is complete and develop a survey Legal Description and Exhibit to be recorded for the Trail Easement.

Alternatives

Motion 1

The City Council may choose not to accept the Right-of-Way Dedication. This would present some challenges with the public using City sidewalks on private property.

Motion 2

The City Council may choose not to accept the future Trail Easement. This would present some challenges with the public using a City multi-use path on private property.

Financial Impact

None.

Recommendation

Staff recommends adoption of the motion.

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Exhibit A

**RIGHT-OF-WAY DEDICATION
LEGAL DESCRIPTION**

THAT PORTION OF THE EAST 400 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON. EXCEPT THAT PORTION LYING WITHIN SOUTH 240TH STREET, AND EXCEPT THAT PORTION CONVEYED TO KING COUNTY FOR 16TH AVENUE SOUTH BY DEED RECORDED UNDER RECORDING NUMBER 5714507, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 17, BEING A FOUND PUNCHED BRASS PLUG IN CONCRETE MONUMENT IN CASE AT THE INTERSECTION OF THE CENTERLINES OF SAID SOUTH 240TH STREET AND 16TH AVENUE SOUTH, THENCE NORTH 88°27'15" WEST ALONG SAID CENTERLINE OF SAID SOUTH 240TH STREET, A DISTANCE OF 42.00 FEET; THENCE DEPARTING NORTH 01°05'34" EAST A DISTANCE OF 30.00 FEET TO THE NORTHERLY RIGHT-OF-WAY MARGIN OF SAID SOUTH 240TH STREET AND THE POINT OF BEGINNING;

THENCE NORTH 88°27'15" WEST ALONG SAID MARGIN, A DISTANCE OF 358.04 FEET TO THE WEST LINE OF THE EAST 400.00 FEET OF SAID SUBDIVISION; THENCE DEPARTING NORTH 01°28'08" EAST ALONG SAID WEST, A DISTANCE OF 5.00 FEET, TO A LINE 35.00 FEET NORTH OF, AND AT RIGHT ANGLES TO, SAID CENTERLINE OF SOUTH 240TH STREET; THENCE SOUTH 88°27'15" EAST, ALONG A LINE PARALLEL WITH SAID CENTERLINE, A DISTANCE OF 340.46 FEET; THENCE DEPARTING NORTH 01°32'45" EAST, A DISTANCE OF 6.25 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWEST, HAVING A RADIUS OF 11.50 FEET (A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 01°32'45" WEST); THENCE NORTHEASTERLY 18.06 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE EAST, HAVING A RADIUS OF 1048.00 FEET (A RADIAL LINE TO SAID BEGINNING BEARS NORTH 88°06'23" WEST); THENCE NORTHERLY 63.14 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°27'08"; THENCE SOUTH 84°37'56" EAST, A DISTANCE OF 6.00 FEET TO THE WESTERLY RIGHT-OF-WAY MARGIN OF SAID 16TH AVENUE SOUTH, BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE EAST, HAVING A RADIUS OF 1,042.00 FEET (A RADIAL LINE TO SAID BEGINNING BEARS NORTH 84°39'16" WEST); THENCE SOUTHERLY 77.34 FEET ALONG SAID MARGIN, COINCIDENT WITH SAID CURVE, THROUGH A CENTRAL ANGLE OF 04°15'10"; THENCE SOUTH 01°05'34" WEST ALONG SAID MARGIN, A DISTANCE OF 8.15 FEET TO THE POINT OF BEGINNING;

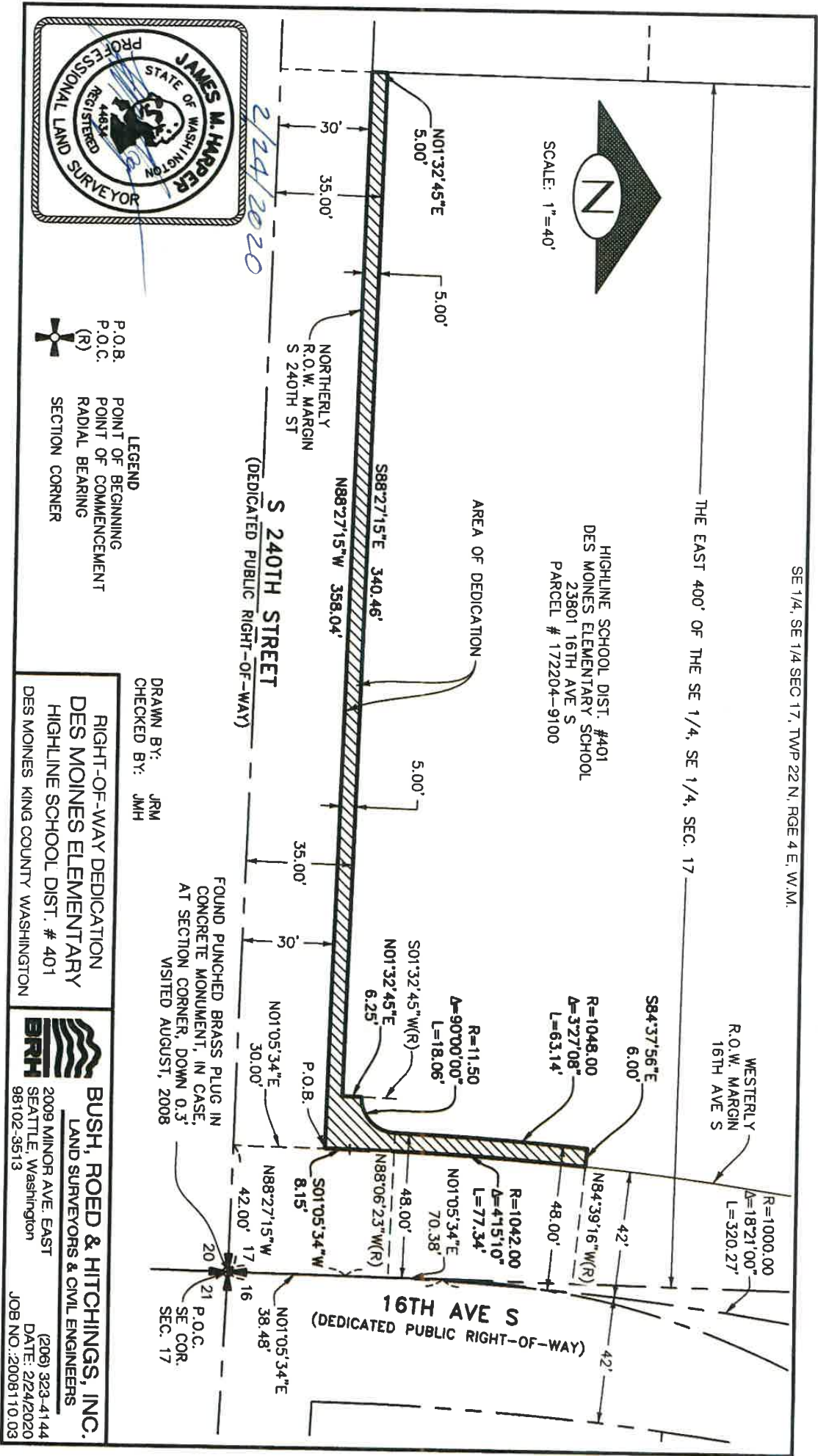
CONTAINING AN AREA OF 2,360 SQUARE FEET (0.0542 ACRE) MORE OR LESS;

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



HIGHLINE SCHOOL DISTRICT #401
DES MOINES ELEMENTARY
JAMES HARPER, P.L.S.
BRH JOB NO. 2008110.03
FEBRUARY 24, 2020

BUSH, ROED & HITCHINGS, INC.
2009 MINOR AVENUE EAST
SEATTLE, WA 98102
(206) 323-4144



Dec 11, 2019 - 12:23pm J:\Public Improvement\Electric Pl - King County\02_MUNICIPALITIES\Des Moines\101121704 - Barnes Creek Trail- 16th Av S\Design\ FINAL 101121704 Des Moines Barnes Creek Trail- 12-10-2019.dwg

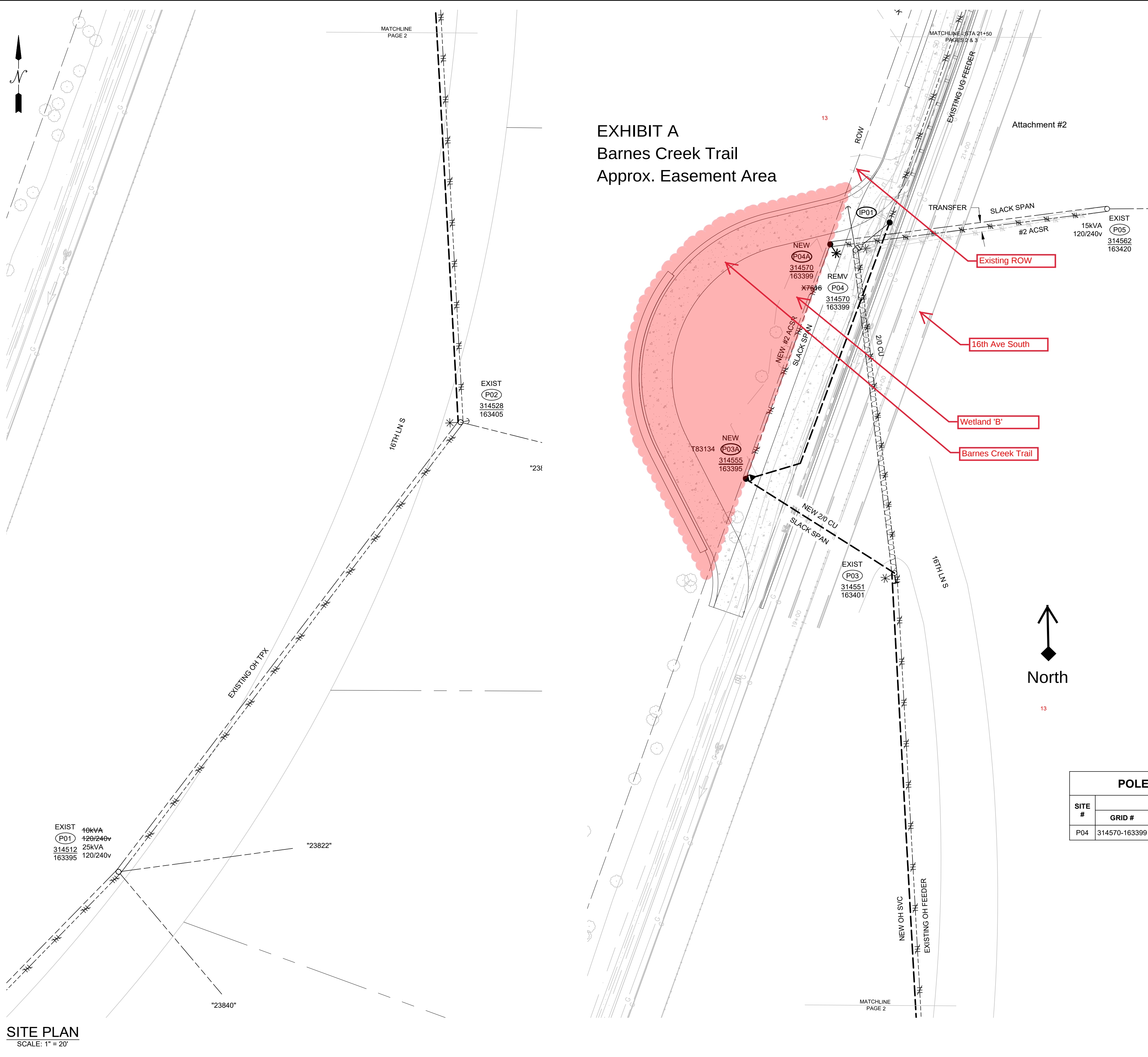


EXHIBIT A
Barnes Creek Trail
Approx. Easement Area

SITE SPECIFIC NOTES:

- AT P03 (314551-163401) EXISTING**
INSTALL PUSH 25' BRACE DE SOUTH (PUSH) [6013.5000]
INSTALL 12kV 1Ø SLACK SPAN DEADEND POLE-MOUNT WEST (SSDD112) [6031.5010]
- AT P03A (314555-163401) NEW**
INSTALL NEW 45' CL1 AS STAKED (PD451) [6010.1000] (40' N, 60' W OF P03)
INSTALL 3Ø TAN PTP (TAN313) [6033.1012]
INSTALL 12kV 1Ø SLACK SPAN DEADEND POLE-MOUNT NORTH (SSDD112) [6031.5010]
INSTALL 12kV 2Ø SLACK SPAN DEADEND POLE-MOUNT EAST (SSD312) [6033.5010]
INSTALL 12kV 3Ø TERM. LB. UG FEED (UTSU3C1) [6043.1001]
INSTALL (2) 6" RISER (RIS6CSS) [6042.1000]
CAP SPARE 6" RISER 10' UP THE POLE
INSTALL SWITCH #T83134
TRANSFER OH PRIMARY AND NEUTRAL
INSTALL GRID NUMBERS
COMMUNICATIONS TO TRANSFER
- AT P04A (314570-163399) NEW**
INSTALL NEW 50' CL1 POLE AS STAKED (PD501) [6010.1000] (10' W OF P04)
INSTALL 12kV 1Ø SLACK SPAN DEADEND POLE-MOUNT EAST (SSDD112) [6031.5010]
TRANSFER STREET LIGHT SLAM5537
INSTALL GRID NUMBERS
COMMUNICATIONS TO TRANSFER
- AT IP01**
EXPOSE AND INTERCEPT EXISTING 1-6" CONDUIT AND EXTEND SOUTHWEST TO P03A
EXTEND ANY SPARE CONDUITS IF AVAILABLE

TRANSFORMER INSTALLATION

Installed at site: **P01**
Grid Number: 314512-163395
kVA Rating: 25kVA
Material ID#: 6207200

Foreman to redline the following information

Company ID#: _____
Primary phase connected to: _____
Tested Secondary Voltage: _____ / _____

TRANSFORMER REMOVAL

Removed at site: **P01**
Grid Number: 314512-163395
kVA Rating: 10kVA

Foreman to redline the following information

Company ID#: _____
Primary phase connected to: _____
Tested Secondary Voltage: _____ / _____

WIRE REMOVAL TABLE					
Location		Wire Size & Type	Quantity	Length (per circuit)	Remarks
From	To				
P03	P04	2/0 CU	4	180'	
720 Total Feet (2/0 CU) Removed					

WIRE STRINGING PRIMARY & SECONDARY							
Location		Pri	Sec	Wire Size & Type	Quantity	Length (per circuit)	Total
From	To						
P02	P03		X	#2 TPX	1	335'	335'
P03	P03A	X		2/0 CU	4	75'	300'
P03A	P04A	X		#2 ACSR	4	105'	420'

POLE RETIREMENT TABLE							TEMP TRANSFERS			ST. LIGHT TRANSFERS		
SITE #	POLE DATA				POLE		TEL	TV	FIBER	TRAN	RMVD	ID NUMBER
	GRID #	HEIGHT	CLASS	YEAR	TOPPED	RMVD						
P04	314570-163399	45			☐	☐	☐	☐	☐	☐		SLAM5537

				REAL ESTATE/EASEMENT		PERMIT	
				N/A		City of Des Moines	
3				FUNCTION	CONTACT	PHONE NO	DATE
2				PROJECT MGR	Hong Nguyen	425-449-6609	8/30/19
1				ENGR - POWER	Michael Haack	253-234-6101	8/30/19
REV#	DATE	BY	DESCRIPTION	ENGR - GAS	N/A	N/A	N/A
COUNTY	Emer Sect	Gas Wk Ctr	POWER WK CTR	DRAWN BY	Keang Lim	253-395-6916	8/30/19
1/4 SEC	S16 T22 R04E	N/A	PLAT MAP	CHECKED BY			
U-MAP NO (POWER)	2204E063, 68	N/A	UG OKT MAP	APPROVED BY			
				FOREMAN #1			
				FOREMAN #2			
				MAPPING			
JOINT FACILITIES ARRANGEMENTS							
UTILITIES	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CONTACT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PHONE#	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PUGET SOUND ENERGY				DES MOINES BARNES CREEK TRAIL			
				POLE RELOCATION			
				1604 S 236TH PL. DES MOINES, WA 98198			
				INCIDENT	MAOP		
				N/A	N/A		
				Gas Order	Elect Order		
				N/A	101121704		
				SCALE	PAGE		
				AS NOTED	2/4		

101121704

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendment #1 to the 2019 Inter-local Agreement with King County for Conservation Futures-funded Open Space Acquisition Projects

FOR AGENDA OF: January 7, 2021

DEPT. OF ORIGIN: Parks, Recreation & Senior Services

ATTACHMENTS:

DATE SUBMITTED: December 28, 2020

1. Amendment #1 to the Inter-local Agreement authorizing 2021 funding for Midway Park Acquisition Phase 2
2. CFT Grant Award Letter
3. 2019 Inter-local Agreement between King County and the City of Des Moines

CLEARANCES:

☒ Community Development *Susan M. Cogg*

☐ Marina _____

☒ Parks, Recreation & Senior Services *Susan M. Cogg*

☐ Public Works _____

CHIEF OPERATIONS OFFICER: *Dip J.*

☒ Legal *TG*

☒ Finance *Catherine Wilson*

☐ Courts _____

☐ Police _____

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

Purpose

The purpose of this agenda item is for the City Council to authorize acceptance of King County Conservation Futures grant funds in the amount of \$1,890,000 for the City of Des Moines' Midway Park Expansion Project Phase 2.

City Council is asked approve Amendment #1 to the existing Inter-local Cooperation Agreement with King County to administer payment of funds for the second phase of our Midway Park expansion project. Two parcels will be acquired through this King County Conservation Futures Open Space grant award.

Suggested Motion[s]

Motion 1: "I move to approve Amendment #1 to the ILA between King County and the City of Des Moines for Conservation Futures funded open space acquisition projects, and authorize the City Manager to sign the amendment substantially in the form as attached."

Background

In 1989, the King County Council established a Conservation Futures Levy Fund to provide for the receipt and disbursement of Conservation Futures (“CF”) tax levy proceeds to King County, the City of Seattle, and suburban cities and established conditions for use of the Fund, including conditions covering allowable cost and expenses. Beginning in 1990, King County executed Inter-local Cooperation Agreements (“ILA”) with roughly thirty King County Cities to allow for disbursement and administration of CF funds.

In 2019 the County streamlined the approval process and executed new inter-local agreements with the cities within King County to facilitate the new County process. Des Moines executed this inter-local agreement (Attachment 1) in connection with the first phase of the Midway Park expansion project.

Inter-local Cooperation Agreements remain in place with an indefinite term for the projects for which Conservation Futures proceeds are disbursed. The agreements require the properties to be maintained as open space in perpetuity.

Discussion

The first phase of the Midway Park expansion project was fully funded by CF funds, and the first two acquisitions are now complete.

In November 2020, the City was notified that the King County Council had approved additional Conservation Futures funding for the City of Des Moines’ Midway Park Expansion Phase 2 project, in the amount of \$1,890,000. With an approved match waiver, this grant will fully fund the acquisition of two additional parcels, for a total acquisition of four parcels adjacent to Midway Park once the purchases are complete in 2021.

The CFT match waiver program funds projects that provide open space in the most under-served parts of the county, where “past history of inequities, discrimination, injustices, and limited regional investment is evident today.” Providing a match waiver is intended to help “eliminate disparities in access to public open spaces and trails in communities with the greatest and most acute needs.” (*King County Land Conservation Advisory Group, Final Report*)

This funding was approved contingent on execution of an ILA amendment consistent with the terms set out in King County Ordinance 18978. Prior to receiving the funds, the ILA amendment must be approved and executed by King County and the City.

The City Council received periodic updates related to the Midway Park expansion project in 2019 and 2020.

Alternatives

The Council may:

1. Approve Amendment #1 to the inter-local agreement as presented.
2. Decline to approve the proposed Amendment. (not recommended)

Financial Impact

Approval and execution of this ILA will allow the City to receive \$1,890,000 for the second phase of the Midway Park expansion project. This application received a match waiver, meaning that there is no local match requirement.

Recommendation or Conclusion

Staff recommends approval of the amendment to the ILA as presented.

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**AMENDMENT TO THE CONSERVATION FUTURES INTERLOCAL
COOPERATION AGREEMENT BETWEEN KING COUNTY AND THE CITY
OF DES MOINES FOR OPEN SPACE ACQUISITION PROJECTS**

Preamble

The King County Council, through Ordinance 9128, has established a Conservation Futures Levy Fund and appropriated proceeds to King County and certain cities. This amendment is entered into to provide for the allocation of additional proceeds made available for open space acquisition.

THIS AMENDMENT is entered into between the CITY OF DES MOINES and KING COUNTY, and amends and attaches to and is part thereof of the existing Interlocal Cooperation Agreement entered into between the parties on the 10th day of December, 2019.

The parties agree to the following amendment:

The Interlocal Cooperation Agreement is hereby amended by adding Exhibit 1, attached hereto.

In all other respects, the terms, conditions, duties and obligations of both parties shall remain the same as agreed to in the Interlocal Cooperation Agreement as previously amended.

Once fully executed, this Amendment shall be incorporated into the existing Interlocal Cooperation Agreement as if fully set forth, and shall become Amendment 1.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below:

KING COUNTY

CITY OF DES MOINES

Dow Constantine
King County Executive

Michael Matthias
Des Moines City Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Dan Satterberg
King County Prosecuting Attorney

Tim George
City Attorney

EXHIBIT 1

**2021 CONSERVATION FUTURES LEVY PROCEEDS
CITY OF DES MOINES ALLOCATION**

Jurisdiction	Project	Allocation
Des Moines	Midway Park Expansion Phase 2	\$1,890,000
TOTAL		\$1,890,000

Project Description:**Project #1137238 Master (Award #1138981): Des Moines – Midway Park Expansion Phase 2**

The City of Des Moines' Midway Park Expansion Phase 2 project continues to expand the west side Midway Park. Building on a 2020 award that funded acquisition of 0.38 acres, this award will fund addition of another 0.4 acres. This project was determined to be an opportunity area project eligible for a match waiver (see Section 6.1 of the ILA), so the local funding match requirement was waived. Project funding was authorized in King County Ordinance 19210.

Is this a Bond-financed Project? Yes

**King County****Water and Land Resources Division**

Department of Natural Resources and Parks

King Street Center

201 South Jackson Street, Suite 600

Seattle, WA 98104-3855

206-477-4800 Fax 206-296-0192

TTY Relay: 711

Attachment #2

November 30, 2020

Susan Cezar
21630 11th Ave S
Des Moines, WA 98198

Dear Susan:

The King County Council has approved Conservation Futures funding for the City of Des Moines' Midway Park Expansion Phase 2 project. The Council approved \$1,890,000 of Conservation Futures bond-backed funding for the project in Ordinance #19210.

We have recently updated our Interlocal Cooperation Agreement with your city. When you are ready to acquire your property, we can work with you on an amendment to authorize this new funding award before releasing Conservation Futures funds.

The project should be completed within two years of King County Council's approval of funds.

Please contact me at (206) 477-4578 or Ingrid.Lundin@kingcounty.gov if you have any questions about this award.

Sincerely,

Ingrid Lundin
Conservation Futures Program Coordinator

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**INTERLOCAL COOPERATION AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF DES MOINES
FOR CONSERVATION FUTURES-FUNDED
OPEN SPACE ACQUISITION PROJECTS**

THIS INTERLOCAL COOPERATION AGREEMENT is a grant agreement entered into between the CITY OF DES MOINES (“City”) and KING COUNTY (“County”).

Article I. Recitals

On February 27, 1989, the King County Council passed Ordinance 8867, which established a process to allocate the proceeds of the Conservation Futures Fund.

On September 21, 1989, the King County Council passed Ordinance 9128, which established a Conservation Futures Levy Fund to provide for the receipt and disbursement of Conservation Futures tax levy proceeds and established conditions for use of the Fund, including conditions covering allowable cost and expenses.

On July 21, 2003, the King County Council passed Ordinance 14714, authorizing funding allocation procedures for King County Conservation Futures tax levy collections and amending Ordinance 8867, Section 2, as amended.

The Conservation Futures Advisory Committee has recommended an allocation of Conservation Futures proceeds to specific projects from the Conservation Futures Levy Fund following notification to the cities that proceeds were available, provision of an opportunity for the cities to respond and receipt by the committee of requests for funding, all pursuant to Ordinance 8867, as amended by Ordinance 14714.

Starting in 1990 and through 2017, the King County Executive, as authorized by the King County Council, executed Interlocal Cooperation Agreements with the cities of Auburn, Bellevue, Black Diamond, Bothell, Burien, Carnation, Covington, Des Moines, Duvall, Enumclaw, Federal Way, Issaquah, Kenmore, Kent, Kirkland, Lake Forest Park, Mercer Island, Milton, Newcastle, Normandy Park, North Bend, Pacific, Redmond, Renton, Sammamish, Seattle, Shoreline, Snoqualmie and Tukwila, and Vashon Park District. Many of these agreements were amended over time to add new projects.

The existing Interlocal Cooperation Agreements remain in place with an indefinite term for the projects for which Conservation Futures proceeds were disbursed. The agreements require the properties to be maintained as open space in perpetuity.

The King County Council, by Ordinance 18978, has approved a new Interlocal Cooperation Agreement for future projects in order to add terms for the use of bond proceeds for certain projects, achieve consistency between the agreement and the King County Code, and make other technical changes.

Pursuant to chapter 39.34 RCW, the parties agree to the following:

Article II. Definitions

1. Open Space

The term “open space” or “open space land” means: (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly; or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes,

or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space, or (v) enhance recreational activities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land of not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farms and agricultural conservation under subsection (8) of RCW 84.34.020. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b) (iii) of this subsection for the purpose of promoting conservation of wetlands.

2. Project

The term “Project” means the specific projects described in Exhibit A or added by follow-on amendments to disburse proceeds pursuant to Section 8.2 of this agreement.

3. Conservation Futures

The term “Conservation Futures” means developmental rights which may be acquired by purchase, gift, grant, bequest, devise, lease or otherwise, except by eminent domain, and may consist of fee simple or any lesser interest, development right, easement, covenant, or other contractual right necessary to protect, preserve, maintain, improve restore, limit future use of, or otherwise conserve open space land, all in accordance with chapter 84.34 RCW and K.C.C. chapter 26.12.

Article III. Purpose of the Agreement

The purpose of this agreement is to create a cooperative arrangement between the City and the County relating to the Project and to define the terms and conditions governing both parties' obligations created by this agreement.

Article IV. Term of Agreement

This agreement shall be continued in full force and effect and binding upon the parties hereto upon execution of the agreement by both parties. The terms of the agreement shall be indefinite. The agreement will be terminated if the City is unable or unwilling: 1) to expend the proceeds provided through this agreement; 2) to satisfy the matching requirements contained in this agreement; and 3) upon reimbursement by the City to the County of all unexpended proceeds provided by the County pursuant to this agreement in the manner and amounts described below and payment of all amounts due pursuant to Section 8.1.

Article V. Conditions of Agreement

Section 5.1 -- Project Descriptions. Proceeds available pursuant to this agreement may be used only for the Projects listed in Exhibit A, such substituted Projects as may be approved by the County as set forth below, or Projects added by follow-on amendments to disburse proceeds pursuant to Section 8.2 of this agreement. All County funded Projects must meet open space criteria as described in chapter 84.34 RCW and K.C.C. chapter 26.12.

Section 5.2 -- Use of Proceeds. Proceeds provided to the City pursuant to this agreement as well as moneys provided by the City as match pursuant to this agreement may be used only to pay capital costs related to property acquisition. Those costs include

appraisals, title searches, negotiations, administrative overhead, and the cost of actual acquisition or purchase options, and all other costs meeting the requirements of K.C.C. 26.12.010. The City shall have the property valued by an appraisal performed by an independent state-certified real estate appraiser with a current general real estate appraiser license, and reviewed by an independent state-certified general real estate appraiser. In requesting reimbursement of proceeds for the Project, the City shall demonstrate to the County compliance with this Section 5.2. Proceeds utilized pursuant to this agreement may not be used to purchase land obtained through the exercise of eminent domain.

Section 5.3 -- Completion/Substitution/Deletion of Projects. The City shall complete the Project described in Section 5.1 of this Agreement within a two year period from the effective date of the County ordinance appropriating funding for the Project. If the City does not meet this two year requirement, unless the City demonstrates to the Advisory Committee a compelling reason for continuance of CFT funding for the Project beyond the two-year limit or a reprogramming request is timely approved as provided for below, the County shall be released from any obligation to fund the Project, and the County in its sole discretion may reallocate such proceeds for other projects in other jurisdictions. The City may submit specific requests for project reprogramming to the County for its approval within the two year period. All projects proposed for reprogramming must meet open space criteria as described in chapter 84.34 RCW and K.C.C. chapter 26.12, be submitted for recommendation by the County's Advisory Committee or its successor, and be approved by action of the King County Council. All

reprogramming requests shall be submitted to the County's Department of Natural Resources and Parks, Open Space Acquisitions Unit, or its successor.

Section 5.4 -- Eminent Domain. If any Project requires the exercise of eminent domain to acquire the property, all proceeds provided pursuant to this agreement plus accrued interest on such proceeds shall be reprogrammed as provided in this agreement or repaid to the County.

Article VI. Responsibilities of the City

Section 6.1 -- Matching Requirements. Except for acquisitions of property interests in opportunity areas, as defined by K.C.C. 26.12.003, any Project funded by Conservation Futures Levy proceeds shall be supported by the City in which the Project is located with a matching contribution, which is no less than the amount of Conservation Futures Levy proceeds allocated to the Project. This contribution may be in the form of cash, land match with a valuation verified by an appraisal by an independent state-certified real estate appraiser with a current general real estate appraiser license, or the cash value, excluding King County conservation futures contributions, of other open spaces acquired within the previous two years from the date of submittal of the application by the City. The appraisal, to be reviewed, shall have been performed within two years of the application deadline set for the annual allocation of conservation futures tax levy proceeds under which the Property received funding. Properties considered as land match or cash value of other open space acquisitions should be directly linked to the property under application. Any City match, other than cash, shall require County

approval. County approval and County acceptance of the City's match will be transmitted in writing to the City by the County's Designated Representative.

Section 6.2 -- Reporting. All proceeds received pursuant to this agreement and accrued interest therefrom will be accounted for separately from all other City moneys, accounts and moneys. Until the property described in the Project is acquired and all proceeds provided pursuant to this agreement have been expended, the City shall provide the reports required by K.C.C. 26.12.035.

Section 6.3 -- Disposition of Remaining Proceeds. If the City does not expend all proceeds obligated to be provided through this agreement and no substitute project is requested or approved as to the excess proceeds, such proceeds, if held by the City, shall be refunded to the County. For purposes of this section, "proceeds" shall include all moneys obligated to be provided by the County plus interest accrued by the City on such moneys. Any proceeds in excess of those required to be provided by the County for the actual costs of the Project shall remain with the County for use in its sole discretion.

Section 6.4 -- Maintenance in Perpetuity. Except as provided in this Section 6.4, the City, and any successor in interest, agree to maintain properties acquired with proceeds provided pursuant to this agreement as open space in perpetuity and, as required by the County, to include in the real property records notice of this restriction. Projects carried out by the City in whole or in part with funds provided for under the terms of this agreement shall not be transferred or conveyed except by agreement with an agency or nonprofit organization as defined in K.C.C. 26.12.003, which shall provide that the land

or interest in land shall be continued to be used for the purposes of K.C.C. chapter 26.12, and in strict conformance with the uses authorized under chapter 84.34 RCW.

The City shall not change the status or use of properties acquired with proceeds provided pursuant to this agreement unless the City provides equivalent lands or cash in exchange for the land to be changed to a different use. The land shall be valued in its changed status or use, and not based upon its value as open space, and the replacement land or payment amount must be approved by the County. If requested by the County, at its own cost the City will provide the County an appraisal performed within the previous year by an independent state-certified real estate appraiser with a current general real estate appraiser license. The value established by the appraisal will not be binding on the County. If the County approves replacement land, the City shall complete the replacement within one year of approval. If the County approves cash reimbursement, the City shall pay the County within 90 days of approval.

Section 6.5 – Tax Covenants. The City acknowledges that proceeds provided by the County for a Project may be proceeds of tax-exempt bonds (the “Bonds”) subject to certain requirements of the Internal Revenue Code of 1986, as amended (the “Tax Code”), including any implementing regulations and any administrative or judicial interpretations. The City will comply with Tax Code requirements, including those set forth in Exhibit B, which is incorporated herein, applicable to Bond-financed Projects identified in Exhibit A, which is incorporated herein, as well as Bond-financed Projects identified in subsequent amendments to this agreement.

Article VII. Responsibilities of the County

Subject to the terms of this agreement, the County will provide Conservation Futures Tax Levy proceeds in the amounts and for the Projects identified in Exhibit A as well as in those amounts and for those Projects identified in subsequent amendments to this agreement. The City may request additional proceeds; however, the County has no obligation to provide proceeds to the City in excess of the amount shown in Exhibit A. The County assumes no obligation for future support of the Project described herein except as expressly set forth in this agreement.

Article VIII. Other Provisions

Section 8.1 -- Hold Harmless and Indemnification.

A. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the City, its employees, contractors or others by reason of this agreement. The City shall protect, indemnify and save harmless the County, its officers, agents and employees from any and all claims, cost and whatsoever occurring or resulting from: 1) the City's failure to pay any compensation, fees, wages, benefits or taxes; and 2) the supplying to the City of works services, materials or supplies by City employees or agents or other contractors or suppliers in connection with or in support of performance of this agreement.

B. The City further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception, which occurs due to the negligent or intentional acts of this agreement by the City, its officer, employees, agent or representatives arising out of the performance of the terms of this agreement.

C. The City shall protect, indemnify and save harmless the County from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the City, its officers, employees or agents in the performance of its obligations under the terms of this agreement. For the purposes of this agreement only, the City agrees to waive the immunity granted it for industrial insurance claims pursuant to Title 51 RCW to the extent necessary to extend its obligations under this paragraph to any claim, demand, or cause of action brought by or on behalf of any employee, including judgments, awards and costs arising therefrom including attorney's fees.

D. To the extent permitted by law, and except to the extent caused by the sole negligence of the County, the City agrees, at its expense, to pay, and to indemnify and hold the County, its officers, employees or agents harmless of, from and against, any and all claims, damages, demands, losses, liens, liabilities, penalties, fines, taxes, lawsuits and other proceedings and costs and expenses (including attorneys' fees) of every conceivable kind, character or nature whatsoever, arising directly or indirectly from or out of, or in any way connected with any examination or audit of any Bond issued to finance or refinance costs of any Bond-financed Project identified in Exhibit A as well as Bond-financed Projects identified in subsequent amendments to this agreement by the Internal Revenue Service, or any determination by the Internal Revenue Service or a court of competent jurisdiction that the interest on any such Bond is or should be subject to federal income taxation; provided, however, that the City shall not be liable for any payment made by the County with respect to any settlement of any such examination or

audit, or of any other proceeding related thereto, entered into without the consent of the City.

Section 8.2 -- Amendment. The parties reserve the right to amend or modify this agreement. Amendments or modifications to disburse proceeds approved by the County Council must be by written instrument signed by the parties substantially in the form of Exhibit C. Other amendments also must be approved by the respective City and County Councils.

Section 8.3 -- Contract Waiver. No waiver by either party of any term or condition of this agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provision of this agreement. No waiver shall be effective unless made in writing.

Section 8.4 -- Entirety. This agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated are excluded. This agreement merges and supersedes all prior negotiations, representations and agreements between the parties relating to the Project and constitutes the entire agreement between the parties. The parties recognize that time is of the essence in the performance of the provisions of this agreement.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below:

KING COUNTY

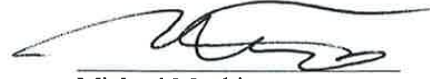

 Dow Constantine
 King County Executive

Date: 12/10/2019
 Acting under the authority of
 Ordinance 18978

Approved as to form:

Amy Eiden for
 Dan Satterberg
 King County Prosecuting Attorney

CITY OF DES MOINES


 Michael Matthias
 City Manager

Date: 11.18.19
 Acting under the authority of
 Ordinance 18978

Approved as to form:

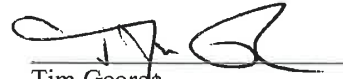

 Tim George
 City Attorney

EXHIBIT A

2020 CONSERVATION FUTURES LEVY CITY OF DES MOINES ALLOCATION

Jurisdiction	Project	Allocation
Des Moines	Midway Park	\$675,900
TOTAL		\$675,900

Project Description:

Project #1136975: Des Moines – Midway Park Expansion

The City of Des Moines' Midway Park Expansion project proposes to add 0.38 acres (parcels 2156400363, 2156400364) on the west side of its existing 1.58 acre park, with a vision to add additional parcels in the future. The proposed additions are a vacant and a developed parcel on the west side. This project was determined to be an opportunity area project eligible for a match waiver (see Section 6.1 of the ILA), so the local funding match requirement was waived. Project funding was authorized in King County Ordinance 18987.

Is this a Bond-financed Project? Yes

EXHIBIT B

Tax Covenants

The City acknowledges that proceeds provided by the County for the Project may be proceeds of Bonds subject to certain requirements of the Tax Code. The City will take all actions with respect to the Project, and proceeds received for the Project, necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds, including but not limited to the following:

(a) Expenditure of Proceeds. The City will expend proceeds of the Bonds received from the County for capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Tax Code. Bond proceeds may be expended to pay, or reimburse the City for, Project capital expenditures or to repay interim indebtedness incurred for capital expenditures of the Project.

(b) Notice. The City will provide notice of action taken or planned to issue any tax-exempt indebtedness, including bonds, bank loans, or other tax-exempt indebtedness, to finance Project costs.

(c) Treatment as Grant.

- (1) The City is a governmental entity possessing substantial taxing, eminent domain and police powers and constituting a political subdivision of the State.
- (2) The City is not acting as an agent of the County.
- (3) The grant of proceeds for the Project does not impose any obligation or condition to directly or indirectly repay any amount to the County (excluding obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer).
- (4) The grant is required to be used for open space as required under Article II but does not impose any conditions relating to the use of the Project or other property of the City by the County or any of its agencies or authorities.
- (5) This agreement is a grant agreement.

(d) Limitations on Disposition of Project. The City will not sell or otherwise dispose of any components of the Project without prior approval by the County and compliance with timeframes for completion of land replacement or cash reimbursement as provided in Section 6.4.

(e) Record Retention. The City will retain its records of all accounting and monitoring it carries out with respect to the Bond proceeds received and with respect to the

Project for at least three years after the Bonds mature or are redeemed as provided in the amendment granting such Bond proceeds to the City.

(f) Cooperation. The City will provide tax certificates when and as requested by the County or County's bond counsel in order to establish or maintain the tax-exempt status of the Bonds. The City will cooperate in any audit of the Bonds by the Internal Revenue Service, including disclosure of any record, contracts and other materials relating to the Bond proceeds received by the City and the Project.

EXHIBIT C

AMENDMENT TO THE CONSERVATION FUTURES INTERLOCAL COOPERATION AGREEMENT BETWEEN KING COUNTY AND THE CITY OF _____ FOR OPEN SPACE ACQUISITION PROJECTS

Preamble

The King County Council, through Ordinance 9128, has established a Conservation Futures Levy Fund and appropriated proceeds to King County and certain cities. This amendment is entered into to provide for the allocation of additional proceeds made available for open space acquisition.

THIS AMENDMENT is entered into between the CITY OF _____ and KING COUNTY, and amends and attaches to and is part thereof of the existing Interlocal Cooperation Agreement entered into between the parties on the _____ day of (Month), (Year), as previously amended.

The parties agree to the following amendment:

The Interlocal Cooperation Agreement is hereby amended by adding Exhibit 1, attached hereto.

In all other respects, the terms, conditions, duties and obligations of both parties shall remain the same as agreed to in the Interlocal Cooperation Agreement as previously amended.

Once fully executed, this Amendment shall be incorporated into the existing Interlocal Cooperation Agreement as if fully set forth, and shall become Amendment ____.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below:

KING COUNTY

CITY OF _____

Dow Constantine
King County Executive

Mayor

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Dan Satterberg
King County Prosecuting Attorney

City Attorney

EXHIBIT 1

**[YEAR] CONSERVATION FUTURES LEVY PROCEEDS
CITY OF _____ ALLOCATION**

Jurisdiction	Project Name (Project Number)	Allocation
[City Name]	[Project Name] ([Project Number])	\$
TOTAL		\$

Project Description:

[Project Number] [City Name] – [Project Name]
 [Project Description used in legislation approving proceeds]

Is this a Bond-financed Project?

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2021-2022 Recycling Program Grant
Funding

FOR AGENDA OF: January 7, 2021

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: December 31, 2020

ATTACHMENTS:

1. Seattle & King County Department of Public Health Local Hazardous Waste Management Program (LHWMP) 2021 - 2022 Grant No. 6052 EHS
2. King County Solid Waste Division Waste Reduction and Recycling (WR/R) 2021-2022 Grant No. 6203476

CLEARANCES:

- ☒ Community Development *Susan M. Coy*
☐ Marina _____
☐ Parks, Recreation & Senior Services _____
☐ Public Works _____

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal /s/ TG
☐ Finance _____
☐ Courts _____
☐ Police _____

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

Purpose and Recommendation

The purpose of this agenda item is to provide information to enable the City Council to take action on the acceptance of two grants for the City's Recycling Program for the service period of 2021-2022. The first grant is the 2021-2022 Seattle-King County Department of Public Health Local Hazardous Waste Management Program (LHWMP) Grant (Attachment 1). The second grant is for the 2021-2022 King County Solid Waste Division Waste Reduction and Recycling (WR/R) Grant (Attachment 2).

Suggested Motion

Motion: I move to accept the Seattle-King County Department of Public Health LHWMP Grant and the King County Solid Waste Division WR/R Grant and authorize the City Manager to sign the grant documents substantially in the form as attached.

Background

Grants

The subject grants will fund, in part, the City's semi-annual Household Waste Collection and Recycling Events for 2021 and 2022. The Washington State Department of Ecology's Local Solid Waste Financial Assistance Agreement (LSWFA) funds the remainder of the program. The current LSWFA grant is effective through June 2021.

Professional Services Contract

Related to these grants is the City's Professional Services Contract with Olympic Environmental Resources (OER) for the 2020-2021 recycling program. No additional action is needed to keep this Professional Services Contract current. OER provides staffing and management for the Spring and Fall Household Collection and Recycling Events at the Des Moines Marina. These are popular events among Des Moines residents as they provide a local site to recycle materials, including some that are not accepted by the curbside recycling program. The Spring 2020 event was canceled due to COVID-19 restrictions and uncertainty. A joint business recycling event with Normandy Park and Burien was held in its place in July 2020. The Fall 2020 event attracted 675 carloads of recyclable material totaling approximately 49 tons.

Discussion

The City uses grant funds to sponsor recycling and collection events for Des Moines residents and businesses. For the 2021-2022 Recycling Program, the City will sponsor two residential recycling collection events per year (i.e. the Fall and Spring events). A portion of the WR/R grant funds will be allocated for the purchase of products made from recycled materials, such as park benches or solid waste container surrounds. New language was added to the LHWMP contract that would allow for grant funds to be used for hazardous waste education should forces outside the City's control prevent a collection event from occurring.

This agenda item seeks City Council approval of the 2021-2022 LHWMP contract and the 2021-2022 WR/R contract. The LHWMP grant will allocate \$32,544.74 for household recycling collection events in 2021-2022. The WR/R grant will allocate \$40,064.00 for household recycling collection events for 2021-2022.

If the City Council accepts the LHWMP and WR/R grants for 2021 and 2022, the City will continue to reduce the amount of hazardous and non-hazardous materials going into the local waste stream at no additional cost to the City. Action/acceptance of these grants must be submitted to the grantor agencies by January/February 2021 in order to secure grant funds and to schedule the Spring 2021 residential recycling event.

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

Alternatives

1. The City Council may accept the 2021-2022 LHWMP Grant No. 6052 EHS between the City of Des Moines and the Seattle-King County Department of Public Health; and the 2021-2022 WR/R Grant No. 6203476 between the City of Des Moines and the King County Solid Waste Division.
2. The City Council may not accept the 2021-2022 LHWMP Grant No. 6052 EHS between the City of Des Moines and the Seattle-King County Department of Public Health; and the 2021-2022 WR/R Grant No. 6203476 between the City of Des Moines and the King County Solid Waste Division and forego LHWMP and/or WR/R grant funds.
3. The City Council may continue this Agenda Item and request that staff provides additional information on the LHWMP and WR/R grant programs. Continuance of this item may result in loss of grant funds for the 2021-2022 grant cycle.

Financial Impact

If the City Council accepts the LHWMP and WR/R grants, there will be no fiscal impact to the City related to Contract Numbers 6052 EHS and 6203476. However, if the City Council does not accept the LHWMP and WR/R grants, then the City will need to use General Fund monies to maintain the City's recycling program.

Recommendation

Staff recommends that the City Council choose Alternative 1, thereby accepting the 2021-2022 Seattle-King County Department of Public Health LHWMP Grant, and the 2021-2022 King County Solid Waste Division Grant substantially in the form as submitted.

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Public Health Seattle & King County 		COMMUNITY SERVICES AGREEMENT – OTHER GOVERNMENT		PHSKC Agreement # 6052 EHS	
This Agreement is between King County and the Recipient identified below. The County department overseeing the work to be performed in this Agreement is the Department of Public Health (PHSKC).					
RECIPIENT NAME City of Des Moines			RECIPIENT FEDERAL TAX ID # 91-6016496		
RECIPIENT ADDRESS 21630 11th Ave. S, Suite "D", Des Moines, WA 98198			RECIPIENT CONTACT & EMAIL ADDRESS Laura Techico; LTechico@desmoineswa.gov		
PHSKC DIVISION EHS			PROJECT TITLE Local Hazardous Waste Management Program		
AGREEMENT START DATE January 01, 2021		AGREEMENT END DATE December 31, 2022		AGREEMENT MAXIMUM AMOUNT \$32,544.74	
FUNDING DETAILS					
<u>Funding Source</u> King County Local Hazardous Waste Management Program		<u>PHSKC Contract #</u> NA		<u>Amount</u> \$32,544.74	
<u>Effective Dates</u> Jan 01 2021 TO Dec 31 2022					
FUNDING SUMMARY FEDERAL: \$0.00		COUNTY: \$32,544.74		STATE: \$0.00	
OTHER: \$0.00					
IS THE RECIPIENT A SUBRECIPIENT FOR PURPOSES OF THIS AGREEMENT? No					
EXHIBITS. The following Exhibits are attached and are incorporated into this Agreement by reference: Exhibit A-Scope of Work; Exhibit B-Budget; Exhibit C-Invoice template.					
In consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties mutually agree that the Recipient shall provide services and comply with the requirements set forth in this Agreement. The parties signing below represent that they have read and understand this Agreement, and have the authority to execute this Agreement. Furthermore, in addition to agreeing to the terms and conditions provided herein, by signing this Agreement, the Recipient certifies that it has read and understands the Agreement requirements on the PHSKC website (http://www.kingcounty.gov/health/contracts), and agrees to comply with all of the Agreement terms and conditions detailed on that site, including EEO/Nondiscrimination, HIPAA, Insurance, and Credentialing, as applicable.					
RECIPIENT SIGNATURE		PRINTED NAME AND TITLE		DATE SIGNED	
_____		_____		_____	
PHSKC SIGNATURE		PRINTED NAME AND TITLE		DATE SIGNED	
_____		_____		_____	

Approved as to Form: OFFICE OF THE KING COUNTY PROSECUTING ATTORNEY
 (This form is available in alternate formats for people with disabilities upon request.)

KING COUNTY TERMS AND CONDITIONS

1. **Agreement Term and Termination**

- A. This Agreement shall commence on the Agreement Start Date and shall terminate on the Agreement End Date as specified on page 1 of this Agreement, unless extended or terminated earlier, pursuant to the terms and conditions of the Agreement.
- B. This Agreement may be terminated by the County or the Recipient without cause, in whole or in part, prior to the Agreement End Date, by providing the other party thirty (30) days advance written notice of the termination. The Agreement may be suspended by the County without cause, in whole or in part, prior to the date specified in Subsection 1.A. above, by providing the Recipient thirty (30) days advance written notice of the suspension.
- C. The County may terminate or suspend this Agreement, in whole or in part, upon seven (7) days advance written notice in the event: (1) the Recipient materially breaches any duty, obligation, or service required pursuant to this Agreement, or (2) the duties, obligations, or services required herein become impossible, illegal, or not feasible. If the Agreement is terminated by the County pursuant to this Subsection 1.C. (1), the Recipient shall be liable for damages, including any additional costs of procurement of similar services from another source.

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

- D. If County or other expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Subsection 1.A., the County may, upon written notification to the Recipient, terminate or suspend this Agreement in whole or in part.

If the Agreement is terminated or suspended as provided in this Section: (1) the County will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination or suspension; and (2) in the case of termination the Recipient shall be released from any obligation to provide such further services pursuant to the Agreement ; and (3) in the case of suspension the Recipient shall be released from any obligation to provide services during the period of suspension and until such time as the County provides written authorization to resume services..

Funding or obligation under this Agreement beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in the Agreement. Should such appropriation not be approved, this Agreement will terminate at the close of the current appropriation year.

- E. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either party may have in the event that the obligations, terms, and conditions set forth in this Agreement are breached by the other party.

2. **Compensation and Method of Payment**

- A. The County shall reimburse the Recipient for satisfactory completion of the services and requirements specified in this Agreement, payable upon receipt and approval by the County of a signed invoice in substantially the form of the attached Invoice Exhibit, which complies with the attached Budget Exhibit.
- B. The Recipient shall submit an invoice and all accompanying reports as specified in the attached exhibits not more than 60 working days after the close of each indicated reporting period. The County shall make payment to the Recipient not more than 30 days after a complete and accurate invoice is received.

- C. The Recipient shall submit its final invoice and all outstanding reports within 90 days of the date this Agreement terminates. If the Recipient's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Recipient of the amounts set forth in said invoice or any subsequent invoice.
- D. If the signature date of this Agreement occurs after the Start Date listed on page 1, the Recipient may seek compensation for activities performed as of the Start Date, provided that such activities and expenses are identified in the Scope of Work and Budget and that such compensation is compliant with all other terms of this Agreement.
- E. When a budget is attached hereto as an exhibit, the Recipient shall apply the funds received from the County under this Agreement in accordance with said budget. The Agreement may contain separate budgets for separate program components. The Recipient shall request prior approval from the County for an amendment to this Agreement when the cumulative amount of transfers among the budget categories is expected to exceed 10% of the Agreement amount in any Agreement budget. Supporting documents necessary to explain fully the nature and purpose of the amendment must accompany each request for an amendment. Cumulative transfers between budget categories of 10% or less need not be incorporated by written amendment; however, the County must be informed immediately in writing of each such change.
- F. Should, in the sole discretion of the County, the Recipient not timely expend funds allocated under this Agreement, the County may recapture and reprogram any such under-expenditures unilaterally and without the need for further amendment of this Agreement. The County may unilaterally make changes to the funding source without the need for an amendment. The Recipient shall be notified in writing of any changes in the fund source or the recapturing or reprogramming of under expenditures.
- G. If travel costs are contained in the attached budget, reimbursement of Recipient travel, lodging, and meal expenses are limited to the eligible costs based on the following rates and criteria.
 - 1. The mileage rate allowed by King County shall not exceed the current Internal Revenue Service (IRS) rates per mile as allowed for business related travel. The IRS mileage rate shall be paid for the operation, maintenance and depreciation of individually owned vehicles for that time which the vehicle is used during work hours. Parking shall be the actual cost. When rental vehicles are authorized, government rates shall be requested. If the Recipient does not request government rates, the Recipient shall be personally responsible for the difference. Please reference the federal web site for current rates: <http://www.gsa.gov>.
 - 2. Reimbursement for meals shall be limited to the per diem rates established by federal travel requisitions for the host city in the Code of Federal Regulations, 41 CFR § 301, App.A. Please reference <http://www.gsa.gov> for the current host city per diem rates.
 - 3. Accommodation rates shall not exceed the federal lodging limit plus host city taxes. The Recipient shall always request government rates.
 - 4. Air travel shall be by coach class at the lowest possible price available at the time the County requests a particular trip. In general, a trip is associated with a particular work activity of limited duration and only one round-trip ticket, per person, shall be billed per trip. Any air travel occurring as part of a federal grant must be in accordance with the Fly America Act.

3. Internal Control and Accounting System

The Recipient shall establish and maintain a system of accounting and internal controls which complies with applicable generally accepted government accounting standards (GAGAS).

4. Debarment and Suspension Certification

Entities that are debarred, suspended, or proposed for debarment by the U.S. Government are excluded from receiving federal funds and contracting with the County. The Recipient, by signature to this Agreement, certifies that the Recipient is not presently debarred, suspended, or proposed for debarment by any Federal department or agency. The Recipient also agrees that it will not enter into a sub-agreement with a Recipient that is debarred, suspended, or proposed for debarment. The Recipient agrees to notify King County in the event it, or a sub-awardee, is debarred, suspended, or proposed for debarment by any Federal department or agency.

5. Maintenance of Records/Evaluations and Inspections

- A. The Recipient shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records as may be deemed necessary by the County to ensure proper accounting for all Agreement funds and compliance with this Agreement.
- B. In accordance with the nondiscrimination and equal employment opportunity requirements set forth in Section 13. below, the Recipient shall maintain the following:
 - 1. Records of employment, employment advertisements, application forms, and other pertinent data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Agreement; and
 - 2. Records, including written quotes, bids, estimates or proposals submitted to the Recipient by all businesses seeking to participate on this Agreement, and any other information necessary to document the actual use of and payments to sub-awardees and suppliers in this Agreement, including employment records.

The County may visit the site of the work and the Recipient's office to review the foregoing records. The Recipient shall provide every assistance requested by the County during such visits. In all other respects, the Recipient shall make the foregoing records available to the County for inspection and copying upon request. If this Agreement involves federal funds, the Recipient shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Agreement documents.

- C. Except as provided in Section 6 of this Agreement, the records listed in A and B above shall be maintained for a period of six (6) years after termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with Revised Code of Washington (RCW) Chapter 40.14.
- D. Medical records shall be maintained and preserved by the Recipient in accordance with state and federal medical records statutes, including but not limited to RCW 70.41.190, 70.02.160, and standard medical records practice. If the Recipient ceases operations under this Agreement, the Recipient shall be responsible for the disposition and maintenance of such medical records.
- E. The Recipient agrees to cooperate with the County or its agent in the evaluation of the Recipient's performance under this Agreement and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.56.
- F. The Recipient agrees that all information, records, and data collected in connection with this Agreement shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

6. Compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The Recipient shall not use protected health information created or shared under this Agreement in any manner that would constitute a violation of HIPAA and any regulations enacted pursuant to its provisions. Recipient shall read and certify compliance with all HIPAA requirements at <http://www.kingcounty.gov/healthservices/health/partnerships/contracts>

7. **Audits**

- A. If the Recipient is a municipal entity or other government institution or jurisdiction, it shall notify the County in writing within 30 days of when its annual report of examination/audit, conducted by the Washington State Auditor, has been completed.
- B. Additional audit or review requirements which may be imposed on the County will be passed on to the Recipient and the Recipient will be required to comply with any such requirements.

8. **Corrective Action**

If the County determines that a breach of Agreement has occurred, that is, the Recipient has failed to comply with any terms or conditions of this Agreement or the Recipient has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:

- A. The County will notify the Recipient in writing of the nature of the breach;
The Recipient shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Agreement into compliance, which date shall not be more than ten (10) days from the date of the Recipient's response, unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;
- B. The County will notify the Recipient in writing of the County's determination as to the sufficiency of the Recipient's corrective action plan. The determination of sufficiency of the Recipient's corrective action plan shall be at the sole discretion of the County;
- C. In the event that the Recipient does not respond within the appropriate time with a corrective action plan, or the Recipient's corrective action plan is determined by the County to be insufficient, the County may commence termination or suspension of this Agreement in whole or in part pursuant to Section 1.C.;
- D. In addition, the County may withhold any payment owed the Recipient or prohibit the Recipient from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed; and
- E. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 1., Subsections B, C, D, and E.

9. **Dispute Resolution**

The parties shall use their best, good-faith efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. Both parties will make a good faith effort to continue without delay to carry out their respective responsibilities under this Agreement while attempting to resolve the dispute under this section.

10. **Hold Harmless and Indemnification**

- A. In providing services under this Agreement, the Recipient is an independent contractor, and neither it nor its officers, agents, employees, or subcontractors are employees of the County for any purpose. The Recipient shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Recipient, its employees, subcontractors and/or others by reason of this Agreement. The Recipient shall protect, indemnify, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or

losses whatsoever occurring or resulting from (1) the Recipient's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Recipient of work, services, materials, or supplies by Recipient employees or other suppliers in connection with or support of the performance of this Agreement.

- B. The Recipient further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act, and/or failure, for any reason, to comply with the terms of this Agreement by the Recipient, its officers, employees, agents, or subcontractors. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Agreement pursuant to the Term and Termination section.
- C. The Recipient shall defend, indemnify, and hold harmless the County, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the Recipient, its officers, employees, sub-awardees and/or agents in its performance or non-performance of its obligations under this Agreement. In the event the County incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Recipient.
- D. The County shall defend, indemnify, and hold harmless the Recipient, its officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of, or in any way resulting from, the negligent acts or omissions of the County, its officers, employees, or agents in its performance or non-performance of its obligations under this Agreement. In the event the Recipient incurs any judgment, award, and/or cost arising therefrom including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the County.
- E. Claims shall include, but not be limited to, assertions that use or transfer of software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.
- F. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Agreement.
- G. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

11. Insurance Requirements

By the date of execution of this Agreement, the Recipient shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Recipient, its agents, representatives, employees, and/or sub-awardees. The costs of such insurance shall be paid by the Recipient or sub-awardee. The Recipient may furnish separate certificates of insurance and policy endorsements for each sub-awardee as evidence of compliance with the insurance requirements of this Agreement. The Recipient is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Recipient, its agents, employees, officers, sub-awardee, providers, and/or provider sub-awardees to comply with the insurance requirements stated herein shall constitute a material breach of this Agreement. Specific coverages and requirements are at <http://www.kingcounty.gov/healthservices/health/partnerships/contracts>; Recipients shall read and provide required insurance documentation prior to the signing of this Agreement.

12. Assignment/Sub-agreements

- A. The Recipient shall not assign or sub-award any portion of this Agreement or transfer or assign any claim arising pursuant to this Agreement without the written consent of the County.

Said consent must be sought in writing by the Recipient not less than fifteen (15) days prior to the date of any proposed assignment.

- B. "Sub-agreement" shall mean any agreement between the Recipient and a sub-awardee or between sub-awardees that is based on this Agreement, provided that the term "sub-awardee" does not include the purchase of (1) support services not related to the subject matter of this Agreement, or (2) supplies.
- C. The Recipient shall include Sections 2.E., 2.G., 3, 4, 5, 6, 10.A., 10.B., 10.G., 12, 13, 14, 15, 16, 17, 23, 24, 27, and the Funder's Special Terms and Conditions, if attached, in every sub-agreement that relates to the subject matter of this Agreement.
- D. The Recipient agrees to include the following language verbatim in every sub-agreement for services which relate to the subject matter of this Agreement:

"Sub-awardee shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of sub-awardee, its officers, employees, and/or agents in connection with or in support of this Agreement. Sub-awardee expressly agrees and understands that King County is a third party beneficiary to this Agreement and shall have the right to bring an action against sub-awardee to enforce the provisions of this paragraph."

13. Nondiscrimination and Equal Employment Opportunity

The Recipient shall comply with all applicable federal, state and local laws regarding discrimination, including those set forth in this Section.

During performance of the Agreement, the Recipient agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification. The Recipient will make equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Additional requirements are at <http://www.kingcounty.gov/healthservices/health/partnerships/contracts>; Recipients shall read and certify compliance.

14. Conflict of Interest

- A. The Recipient agrees to comply with applicable provisions of K.C.C. 3.04. Failure to comply with such requirements shall be a material breach of this Agreement, and may result in termination of this Agreement pursuant to Section II and subject the Recipient to the remedies stated therein, or otherwise available to the County at law or in equity.
- B. The Recipient agrees, pursuant to KCC 3.04.060, that it will not willfully attempt to secure preferential treatment in its dealings with the County by offering any valuable consideration, thing of value or gift, whether in the form of services, loan, thing or promise, in any form to any county official or employee. The Recipient acknowledges that if it is found to have violated the prohibition found in this paragraph, its current Agreements with the county will be cancelled and it shall not be able to bid on any county Agreement for a period of two years.
- C. The Recipient acknowledges that for one year after leaving County employment, a former County employee may not have a financial or beneficial interest in an agreement or grant that was planned, authorized, or funded by a County action in which the former County employee participated during County employment. Recipient shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Agreement. Failure to identify current or former County

employees involved in this transaction may result in the County's denying or terminating this Agreement. After Agreement award, the Recipient is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Agreement any time during the term of the Agreement.

15. Equipment Purchase, Maintenance, and Ownership

- A. The Recipient agrees that any equipment purchased, in whole or in part, with Agreement funds at a cost of \$5,000 per item or more, when the purchase of such equipment is reimbursable as an Agreement budget item, is upon its purchase or receipt the property of the County and/or federal/state government. The Recipient shall be responsible for all such property, including the proper care and maintenance of the equipment.
- B. The Recipient shall ensure that all such equipment will be returned to the County or federal/state government upon termination of this Agreement unless otherwise agreed upon by the parties.

16. Proprietary Rights

The parties to this Agreement hereby mutually agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the party that produces such material or article. If any patentable or copyrightable material or article should result from the work described herein and is jointly produced by both parties, all rights accruing from such material or article shall be owned in accordance with US Patent Law. Each party agrees to and does hereby grant to the other party, irrevocable, nonexclusive, and royalty-free license to use, according to law, any material or article and use any method that may be developed as part of the work under this Agreement.

The foregoing products license shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Recipient which are modified for use in the performance of this Agreement.

The foregoing provisions of this section shall not apply to existing training materials, consulting aids, checklists, and other materials and documents of the Recipient that are not modified for use in the performance of this Agreement.

17. Political Activity Prohibited

None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

18. King County Recycled Product Procurement Policy

In accordance with King County Code 18.20, the Recipient shall use recycled paper, and both sides of sheets of paper whenever practicable, when submitting proposals, reports, and invoices, if paper copies are required.

19. Future Support

The County makes no commitment to support the services awarded for herein and assumes no obligation for future support of the activity awarded herein except as expressly set forth in this Agreement.

20. Entire Agreement/Waiver of Default

The parties agree that this Agreement is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance of the provisions of this Agreement. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement.

unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

21. Amendments

Either party may request changes to this Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement. Changes to the County's Agreement numbering system or fund source may be made unilaterally by the County and without the need for amendment of this Agreement. The Recipient shall be notified in writing of any changes in the Agreement number or fund source assigned by the County; provided, however, that the total compensation allocated by the County through this Agreement does not change.

22. Notices

Whenever this Agreement provides for notice to be provided by one party to another, such notice shall be in writing and directed to the chief executive office of the Recipient and the project representative of the County department specified on page one of this Agreement. Any time within which a party must take some action shall be computed from the date that the notice is received by said party.

23. Services Provided in Accordance with Law and Rule and Regulation

The Recipient and any sub-awardee agree to abide by the laws of the state of Washington, rules and regulations promulgated thereunder, and regulations of the state and federal governments, as applicable, which control disposition of funds granted under this Agreement, all of which are incorporated herein by reference.

In the event that there is a conflict between any of the language contained in any exhibit or attachment to this Agreement, the language in the Agreement shall have control over the language contained in the exhibit or the attachment, unless the parties affirmatively agree in writing to the contrary.

24. Applicable Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue for any action hereunder shall be in the Superior Court for King County, Washington.

25. Electronic Processing and Signatures

The parties agree that this Agreement may be processed and signed electronically, which if done so, will be subject to additional terms and conditions found at <https://www.docusign.com/company/terms-of-use>.

The parties acknowledge that they have consulted with their respective attorneys and have had the opportunity to review this Agreement. Therefore, the parties expressly agree that this Agreement shall be given full force and effect according to each and all of its express terms and provisions and the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

The parties executing this Agreement electronically have authority to sign and bind its represented party to this Agreement.

26. Counterparts and Signatures by Fax or Email

This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement. Further, upon executing this Agreement, either party may deliver the signature page to the other by fax or email and that signature shall have the same force and effect as if the Agreement bearing the original signature was received in person.

27. No Third Party Beneficiaries

Except for the parties to whom this Agreement is assigned in compliance with the terms of this Agreement, there are no third party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any person or entity that is not a party hereto.

END OF COUNTY TERMS AND CONDITIONS

Agreement # 6052 EHS**EXHIBIT A
SCOPE OF WORK****CITY OF DES MOINES
1/1/2021-12/31/2022****Background**

The Local Hazardous Waste Management Plan (hereafter referred to as the “Plan”) as updated in 1997 and 2010, was adopted by the partner agencies (the King County Solid Waste Division, the Seattle Public Utilities, the King County Water and Land Resources Division, and Public Health – Seattle & King County) and the cities located in King County. The Washington State Department of Ecology in accordance with RCW 70.105.220 subsequently approved the Plan. The City is an active and valued partner in the regional Local Hazardous Waste Management Program (hereafter referred to as the “Program”).

The purpose of this Exhibit is to define the relationship associated with the Program’s funding of City activities performed under the auspices of the Plan and as approved by the Program’s Management Coordination Committee (hereinafter referred to as the “MCC”). This Agreement further defines the responsibilities of the City and Public Health - Seattle & King County with respect to the transfer of Program monies.

Scope of Work

The City of Des Moines will organize four citywide household hazardous waste collection and recycling events. At these events, the following materials will be collected and recycled: batteries, CFC appliances and other hazardous materials if determined to be appropriate by the City and the Program’s Contract Administrator.

If an event occurs outside of the City’s control that prevents a hazardous waste collection event from occurring, the City will notify the Program’s Contract Administrator. Upon agreement by both parties, the City may opt to provide hazardous waste education instead of the collection event.

Responsibilities of the Parties**The City**

1. The City shall develop and submit project proposals and budget requests to the Program’s Contract Administrator. Funds provided to the City by the Program pursuant to this Contract shall be used to implement hazardous waste programs and/or services as approved by the MCC.
2. The City shall submit timely reimbursement requests as negotiated with the Contract Administrator. For reimbursement, the City shall submit the following to the Contract Administrator:

- a) An invoice (see Exhibit C). Invoices should be sent to the Contract Administrator for approval and payment.
 - b) A brief description of activity accomplished and funds expended in accordance with the scope of work.
 - c) Copies of invoices for expenditures or a financial statement prepared by the City's finance department. The financial statement should include vendor names, a description of services provided, date paid and a check or warrant number.
 - d) A legible copy of the Hazardous Waste Manifest.
3. The City shall submit to the Contract Administrator no later than December 5th of each year a final invoice or estimate for activities completed in that calendar year.
 4. It is the responsibility of the City to comply with all applicable county, state and/or federal reporting requirements with respect to the collection and transfer of moderate risk wastes. The City shall report to the Contract Administrator the quantity, by type, of moderate risk waste collected using Program funds. The City shall also provide the Contract Administrator with copies of EPA's Non-Hazardous Waste Manifest or similar form, associated with the transport of moderate risk waste collected through Program-funded events.
 5. The City is solely responsible for any and all spills, leaks or other emergencies arising at the facilities associated with the City's events or in any other way associated with activities conducted within the scope of this Agreement. In the event of a spill or other emergency, the City is responsible for complying with all applicable laws and regulations.
 6. The City agrees to appropriately acknowledge the Program in all media produced – in part or in whole – with Program funds. Where feasible, the City will use the Program's logo. The intent of this provision is to further strengthen this regional partnership in the public's mind.
 7. The City agrees to provide the Program with copies of all media material produced for local hazardous waste management events or activities that have been funded by the Program. The City also agrees to allow the Program to reproduce media materials created with Program money provided that the Program credits the City as the originator of that material.
 8. This project shall be administered by Laura Techico at the City of Des Moines, 21630 11th Ave. S, Suite "D", Des Moines, at (206) 870-6595, (ltechico@desmoineswa.gov) or her designee.
 9. Questions or concerns regarding any issue associated with this Exhibit that cannot be handled by the Contract Administrator should be referred to the LHWMP Program Director for resolution.

Public Health – Seattle & King County

1. Public Health – Seattle & King County shall administer, via the attached Agreement, the transfer of Program funds to the City for hazardous waste management events and activities.

2. Within ten (10) working days of receiving a request for reimbursement from the City, the Contract Administrator shall either notify the City of any exceptions to the request which have been identified or shall process the request for payment. If any exceptions to the request are made, this shall be done by written notification to the City providing the reason for such exception. The Contract Administrator will not authorize payment for activities and/or expenditures that are not included in the scope of work, unless the scope has been amended. The Contract Administrator retains the right to withhold all or partial payment if the City's invoices are incomplete (e.g. they do not include proper documentation of expenditures for which reimbursement is being requested) or are not consistent with the submitted scope of work.

Program Contacts

Lynda Ransley
LHWMP Program Director
201 S Jackson St, Ste. 600
Seattle, WA 98104
206-263-8241
lynda.ransley@kingcounty.gov

Joy Carpine-Cazzanti
LHWMP Contract Administrator
401 Fifth Avenue, Suite 1100
Seattle, WA 98104
206-263-0365
jcarpine@kingcounty.gov

**Agreement # 6052 EHS
EXHIBIT B
2021-2022 BUDGET**

LOCAL HAZARDOUS WASTE MANAGEMENT PROGRAM

City of Des Moines
21630 11th Ave S, Suite "D"
Des Moines, WA 98198

Component Description	2019-2020 Budget
Household Hazardous Waste Activities	\$32,544.74
TOTAL	\$32,544.74

Footnote: The 2021-2022 budget can be partly or totally spent in either 2021 and/or 2022 but cannot exceed the budget total in these two years.

INVOICE

Agreement Number: 6052 EHS
Exhibit C
Period of Performance: 1/1/21-12/31/22

City of Des Moines
21630 11th Ave S, Suite "D"
Des Moines WA 98198
Invoice Processing Contact: Laura Techico
(206) 870-6595
ltechico@desmoineswa.gov

Submit signed hardcopy invoice to:
Joy Carpine-Cazzanti
Local Hazardous Waste Management Program
Public Health - Seattle & King County
401 5th Ave., Suite 1100
Seattle, WA 98104
jcarpine@kingcounty.gov

Invoice for services rendered under this
Agreement for the period of:

Start Date	End Date

MM/DD/YY

Project	Organization	Expend Acct	Task	CPA	Amount
1114016	860000	53105	001		

Attach sheet for multiple POETAs

Expenditure Item	2021-22 Budget	Previously Billed	Current	Cumulative	Balance
HHW Activities	\$32,544.74				\$32,544.74
Total	\$32,544.74				\$32,544.74

Materials and quantities collected:

Gallons of motor oil	
Number of motor oil filters	
Gallons of mixed fuel	
Gallons of antifreeze	
Pounds of lead acid batteries	
Pounds of dry batteries	
Number of CFC appliances	
Other (please specify)	

I, the undersigned, do hereby certify under the laws of the State of Washington penalty of perjury, that this is a true and correct claim for reimbursement services rendered. I understand that any false claims, statements, documents, or concealment of material fact may be prosecuted under applicable Federal and State laws. This certification includes any attachments which serve as supporting documentation to this reimbursement request.

Recipient Signed Date

PH Authorization / Approval Date

Print Name

King County Accounts Payable Information	
Purchase Order #	
Supplier Name	City of Des Moines
Supplier #	1270
Supplier Pay Site	Des Moines
Remit to Address	21630 11th Ave S, Suite "D"
	Des Moines WA 98198
Invoice Date	
Invoice #	
Amount to be Paid	
PH Program name/phone	Kristin Painter (206) 477-5470

INVOICE DETAIL

Salaries & Wages- List by Employee	Hours	Rate of Pay/ Hr	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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Subtotal			\$ -	\$ -	\$ -	\$ -	\$ -
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Fringe Benefits	Base	Rate	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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Subtotal			\$ -	\$ -	\$ -	\$ -	\$ -
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Consultant Costs- Itemize by consultant below	Unit of measure	Rate	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
			\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal			\$ -	\$ -	\$ -	\$ -	\$ -

Supplies- Please detail below	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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Subtotal		\$ -	\$ -	\$ -	\$ -	\$ -
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Travel	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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In State Travel		Total # of Miles	Rate
Out of State Travel		# of People	Rate
Per Diem and Lodging	# of People	# of Units	Unit Cost

Subtotal		\$ -	\$ -	\$ -	\$ -	\$ -
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Other Costs- Please detail below	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
	\$ -	\$ -	\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -	\$ -
Subtotal	\$ -	\$ -	\$ -	\$ -	\$ -

Overhead Costs- Please detail below	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal	\$ -	\$ -	\$ -	\$ -	\$ -

	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
Direct Costs Total	\$ -	\$ -	\$ -	\$ -	\$ -

Grand Total		\$ -	\$ -	\$ -	\$ -	\$ -
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Notes regarding this Invoice

CPA # 6203476

INTERAGENCY AGREEMENT FOR 2021 and 2022**Between****KING COUNTY and the CITY OF DES MOINES**

This two-year Interagency Agreement "Agreement" is executed between King County, a Charter County and political subdivision of the State of Washington, and the City of Des Moines, a municipal corporation of the State of Washington, hereinafter referred to as "County" and "City" respectively. Collectively, the County and City will be referred to as "Party" or "Parties."

PREAMBLE

King County and the City of Des Moines adopted the 2019 King County Comprehensive Solid Waste Management Plan (Comp Plan), which includes waste reduction and recycling goals. In order to help meet these goals, the King County Solid Waste Division has established a waste reduction and recycling grant program for the cities that operate under the Comp Plan. This program provides funding to further the development and/or enhancement of local waste reduction and recycling projects and for broader resource conservation projects that integrate with waste reduction and recycling programs and services. This grant program does not fund household hazardous waste collection activities. Program eligibility and grant administration terms are discussed in the Grant Guidelines, attached to this Agreement as Exhibit B and incorporated herein by reference. Grant funding for this program is subject to the budget approval process of the King County Council.

Grant funding approved by the King County Council is available to all King County cities that operate under the Comp Plan. The City will spend its grant funds to fulfill the terms and conditions set forth in the scope of work, which is attached hereto as Exhibit A and incorporated herein by reference. The County expects that any information and/or experience gained through the grant program by the City will be shared with the County and other King County cities.

I. PURPOSE

The purpose of this Agreement is to define the terms and conditions for funding to be provided to the City by the County for waste reduction and recycling programs and/or services as outlined in the scope of work and budget attached as Exhibit A.

II. RESPONSIBILITIES OF THE PARTIES

The responsibilities of the Parties to this Agreement shall be as follows:

A. The City

1. Funds provided to the City by the County pursuant to this Agreement shall be used to provide waste reduction and recycling programs and/or services as outlined in Exhibit A. The total amount of funds available from this grant in 2021 and 2022 shall not exceed **\$40,064**.
2. This Agreement provides for distribution of 2021 and 2022 grant funds to the City. However, grant funds are not available until January 1, 2021.
3. During this two-year grant program, the City will submit a minimum of two (2), but no more than eight (8), progress reports to the County in a form determined by the County. Reports must be signed by a City official. These reports will include:
 - a. a description of each activity accomplished pertaining to the scope of work; and
 - b. reimbursement requests with both a Budget Summary Report Form, which is attached hereto as Exhibit D and incorporated herein by reference, and an Expense Summary Form, which is attached hereto as Exhibit E and incorporated herein by reference, unless the City has a spreadsheet similar to the Expense Summary Form already in use, in which case the City is free to use that spreadsheet instead of the Expense Summary Form. The City will submit the form or similar spreadsheet and not submit backup documentation for grant expenses. If backup documentation is submitted, SWD will not retain it. The City shall maintain this documentation in its records.

If the City chooses to submit up to the maximum of eight (8) progress reports and requests for reimbursement during the two-year grant program, they shall be due to the County on the last day of the month following the end of each quarter (April 30, July 31, October 31, January 31), except for the final progress report and request for reimbursement, which shall be due by March 17, 2023.

If the City chooses to submit the minimum of two progress reports and requests for reimbursement during the two-year grant program, they shall be due to the County by March 18, 2022 and March 17, 2023.

Regardless of the number of progress reports the City chooses to submit, in order to secure reimbursement, the City must provide in writing to the County by the 5th working day of January 2022 and January 2023, the dollar amount of outstanding expenditures for which the City has not yet submitted a reimbursement request.

4. If the City accepts funding through this grant program for the provision of waste reduction and recycling programs and projects for other incorporated areas of King County, the City shall explain the relationship with the affected adjacent city or cities that allows for acceptance of this funding and the specifics of the proposed programs and projects within the scope of work document related thereto.
5. The City shall be responsible for following all applicable Federal, state, and local laws, ordinances, rules, and regulations in the performance of work described herein. The City assures that its procedures are consistent with laws relating to public contract bidding procedures, and the County neither incurs nor assumes any responsibility for the City's bid, award, or contracting process.
6. During the performance of this Agreement, neither the City nor any Party subcontracting under the authority of this Agreement shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the employment or application for employment or in the administration or delivery of or access to services or any other benefits under this Agreement as defined by King County Code, Chapter 12.16.
7. During the performance of this Agreement, neither the City nor any Party subcontracting under the authority of this Agreement shall engage in unfair employment practices as defined by King County Code, Chapter 12.18. The City shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, RCW Chapter 49.60 and Titles VI and VII of the Civil Rights Act of 1964.
8. The City shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Agreement. The City shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical.
9. The City shall maintain accounts and records, including personnel, financial, and programmatic records, and other such records as may be deemed necessary by the County, to ensure proper accounting for all project funds and compliance with this Agreement. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and service provided in the performance of this Agreement.

These records shall be maintained for a period of six (6) years after termination hereof unless permission to destroy them is granted by the Office of the State Archivist in accordance with RCW Chapter 40.14. These accounts shall be subject to inspection, review, or audit by the County and/or by federal or state officials as so authorized by law.

10. The City shall maintain a record of the use of any equipment that costs more than \$1,000 and is purchased with grant funds from King County for a total period of three (3) years. The records shall be compiled into a yearly evaluation report, a copy of which shall be submitted to King County by March 31 of each year through the year 2025.

11. The City agrees to credit King County on all printed materials provided by the County, which the City is duplicating, for distribution. Either King County's name and logo must appear on King County materials (including fact sheets, case studies, etc.), or, at a minimum, the City will credit King County for artwork or text provided by the County as follows: "artwork provided courtesy of King County Solid Waste Division" and/or "text provided courtesy of King County Solid Waste Division."
12. The City agrees to submit to the County copies of all written materials which it produces and/or duplicates for local waste reduction and recycling projects which have been funded through the waste reduction and recycling grant program. Upon request, the City agrees to provide the County with a reproducible copy of any such written materials and authorizes the County to duplicate and distribute any written materials so produced, provided that the County credits the City for the materials.
13. The City will provide the King County Project Manager with the date and location of each Recycling Collection Event provided by the City, as well as copies of any printed materials used to publicize each event, as soon as they are available but no later than thirty (30) days prior to the event. If there is any change in the date or the location of an event, the City will notify the County a minimum of thirty (30) days prior to the event. If the event brochure is required for admission to the City's event, the City is exempt from having to provide the brochure to King County.
14. If the City accepts funding through this grant program for the provision of recycling collection events for adjacent areas of unincorporated King County, the City shall send announcements of the events to all residences listed in the agreed upon areas listed in Exhibit A. The announcements and all other printed materials related to these events shall acknowledge King County as the funding source.
15. This project shall be administered by Laura Techico, Principal Planner, or designee.

B. The County:

1. The County shall administer funding for the waste reduction and recycling grant program. Funding is designated by the city and is subject to the King County Council's budget approval process. Provided that the funds are allocated through the King County Council's budget approval process, grant funding to the City will include a base allocation of \$10,000 per year with the balance of funds to be allocated according to the City's percentage of King County's residential and employment population. However, if this population based allocation formula calculation would result in a city receiving less than \$10,000 per year, that city shall receive an additional allocation that would raise their total grant funding to \$10,000 per year.

2. Within forty-five (45) days of receiving a request for reimbursement from the City, the County shall either notify the City of any exceptions to the request which have been identified or shall process the request for payment. If any exceptions to the request are made, this shall be done by written notification to the City providing the reason for such exception. The County will not authorize payment for activities and/or expenditures which are not included in the scope of work and budget attached as Exhibit A, unless the scope has been amended according to Section V of this Agreement. King County retains the right to withhold all or partial payment if the City's report(s) and reimbursement request(s) are incomplete (i.e., do not include proper documentation of expenditures and/or adequate description of each activity described in the scope of work for which reimbursement is being requested), and/or are not consistent with the scope of work and budget attached as Exhibit A.
3. The County agrees to credit the City on all printed materials provided by the City to the County, which the County duplicates, for distribution. Either the City's name and logo will appear on such materials (including fact sheets, case studies, etc.), or, at a minimum, the County will credit the City for artwork or text provided by the City as follows: "artwork provided courtesy of the City of Des Moines" and/or "text provided courtesy of the City of Des Moines."
4. The County retains the right to share the written material(s) produced by the City which have been funded through this program with other King County cities for them to duplicate and distribute. In so doing, the County will encourage other cities to credit the City on any pieces that were produced by the City.
5. The waste reduction and recycling grant program shall be administered by Lucy Auster, Project Manager, King County Solid Waste Division, or designee.

III. DURATION OF AGREEMENT

This Agreement shall become effective on either January 1, 2021 or the date of execution of the Agreement by both the County and the City, if executed after January 1, 2021, and shall terminate on June 30, 2023. The City shall not incur any new charges after December 31, 2022. However, if execution by either Party does not occur until after January 1, 2021, this Agreement allows for disbursement of grant funds to the City for County-approved programs initiated between January 1, 2021 and the later execution of the Agreement provided that the City complies with the reporting requirements of Section II.A of the Agreement.

IV. TERMINATION

- A. This Agreement may be terminated by King County, in whole or in part, for convenience without cause prior to the termination date specified in Section III, upon thirty (30) days advance written notice.
- B. This Agreement may be terminated by either Party, in whole or in part, for cause prior to the termination date specified in Section III, upon thirty (30) days advance written notice. Reasons for termination for cause may include but not be limited to: nonperformance; misuse of funds; and/or failure to provide grant related reports/invoices/statements as specified in Section II.A.3. and Section II.A.4.
- C. If the Agreement is terminated as provided in this section: (1) the County will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and (2) the City shall be released from any obligation to provide further services pursuant to this Agreement.
- D. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either Party may have in the event that the obligations, terms and conditions set forth in this Agreement are breached by the other Party.

V. AMENDMENTS

This Agreement may be amended only by written agreement of both Parties. Amendments to scopes of work will only be approved if the proposed amendment is consistent with the most recently adopted King County Comprehensive Solid Waste Management Plan. Funds may be moved between tasks in the scope of work, attached as Exhibit A, only upon written request by the City and written approval by King County. Such requests will only be approved if the proposed change(s) is (are) consistent with and/or achieves the goals stated in the scope and falls within the activities described in the scope.

VI. HOLD HARMLESS AND INDEMNIFICATION

The City shall protect, indemnify, and hold harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or issues whatsoever occurring from actions by the City and/or its subcontractors pursuant to this Agreement. The City shall defend at its own expense any and all claims, demands, suits, penalties, losses, damages, or costs of any kind whatsoever (hereinafter "claims") brought against the County arising out of or incident to the City's execution of, performance of, or failure to perform this Agreement. Claims shall include but not be limited to assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

VII. INSURANCE

- A. The City, at its own cost, shall procure by the date of execution of this Agreement and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of work pursuant to this Agreement by the City, its agents, representatives, employees, and/or subcontractors. The minimum limits of this insurance shall be \$1,000,000 general liability insurance combined single limit per occurrence for bodily injury, personal injury, and property damage. If the policy has an aggregate limit, a \$2,000,000 aggregate shall apply. Any deductible or self-insured retentions shall be the sole responsibility of the City. Such insurance shall cover the County, its officers, officials, employees, and agents as additional insureds against liability arising out of activities performed by or on behalf of the City pursuant to this Agreement. A valid Certificate of Insurance and additional insured endorsement is attached to this Agreement as Exhibit C, unless Section VII.B. applies.
- B. If the Agency is a Municipal Corporation or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a written acknowledgement of self-insurance is attached to this Agreement as Exhibit C.
- C. If the Agency is a Municipal Corporation or an agency of the State of Washington and is a member of the Washington Cities Insurance Authority (WCIA), a written acknowledgement/certification of current membership is attached to this Agreement as Exhibit C.

VIII. ENTIRE CONTRACT/WAIVER OF DEFAULT

This Agreement is the complete expression of the agreement of the County and City hereto, and any oral or written representations or understandings not incorporated herein are excluded. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

IX. TIME IS OF THE ESSENCE

The County and City recognize that time is of the essence in the performance of this Agreement.

X. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Agreement is, for any reason, found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

XI. NOTICE

Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent to the King County Solid Waste Division and the City at the addresses provided below:

Lucy Auster, Project Manager, or a provided designee
 King County Solid Waste Division
 Department of Natural Resources and Parks
 Lucy.auster@kingcounty.gov

If to the City:

Laura Techico, Principal Planner, or a provided designee
 City of Des Moines
 21630 11th Avenue South, Suite D
 Des Moines, WA 98198

IN WITNESS WHEREOF this Agreement has been executed by each Party on the date set forth below:

City of Des Moines

 Michael Mattias, City Manager

 Date

King County

BY _____
 Pat D. McLaughlin, Director
 Solid Waste Division

For Dow Constantine, King County Executive

 Date

Exhibit A
King County Waste Reduction and Recycling Grant Program
City of Des Moines
2021/22 Scope of Work

A. Basic Information

1. City of Des Moines
2. Grant project manager: Laura Techico
Principal Planner
City of Des Moines
21630 11th Ave S, Suite “D”
Des Moines, WA 98198
Tel - (206) 870-6595
Fax - (206) 870-6544
Email - ltechico@desmoineswa.gov
3. Contractor name: Olympic Environmental Resources
4715 SW Walker Street
Seattle, WA 98116
TEL - (206) 938-8262
Email – pauldevine@msn.com
4. 2021/22 Budget: \$40,064.00

B. Scope of Work

1. Task One: Recycling Collection Events

A. Schedule - Spring and Fall, 2021/22

B. Task Activities

- Total Number of Recycling Collection Events – Four
- Materials to be collected:
 - Appliances
 - Refrigerators and Freezers+
 - Ferrous Metals
 - Non-ferrous Metals
 - Electronic Equipment
 - Mattresses+
 - Tires+

- Lead Acid Batteries
- Household Batteries
- Porcelain Toilets and Sinks+
- Propane Tanks+
- Mattresses+
- Cardboard
- Reusable Household Goods++
- Textiles++
- Bulky Yard Debris
- Clean Scrap Wood
- +User fees apply
- ++If service provider is available

- The following educational materials may be distributed:
 - Information on City Recycling Programs.
 - Educational Materials produced by King County Department of Natural Resources and Local Hazardous Waste Management Plan.
 - Other educational materials as appropriate.
- Event promotional methods
 - This event will be coordinated with King County and flyers will be sent to Des Moines households via direct mail.
 - By notices in City newsletters (whenever possible).
 - By posting a notice at City Hall and on the City cable channel and City web site (if available).
 - By publicizing the event through the King County Solid Waste Division Promotional Activities.

C) Task evaluation. Event reports will include:

- Number of vehicles attending
- Volume of each material collected
- Event cost by budget category
- Event comments
- Graphic or tabular comparison of 2021/22 volumes and vehicles with prior year's events

D) Task Performance Objectives:

The City plans to send out approximately 8,400 promotional flyers to Des Moines single family households per event and may publicize the events through King County promotional activities, including County websites and telephone assistance. The City anticipates collecting 70-100 tons of material from the local waste stream each year.

The benefits expected by the collection of these materials will be to divert them from the waste stream and process them for recycling. The event will also provide an opportunity to

recycle moderate risk waste. The King County Health Department and Washington State Department of Ecology will pay for event expenses as well.

E) Task Impact Objectives/Evaluation:

By hosting Recycling Collection Events, Des Moines can reduce the amount of recyclable material finding their way to the local landfill. The City of Des Moines has a population of approximately 31,600. The City expects, based on past events, that 800-1,000 households will actively participate each year by bringing recyclable materials to the event for proper disposal and recycling. This will result in 70-100 tons of material diverted from the local waste stream for recycling each year.

In addition to diverting materials from the City waste stream, attracting residents to events provides an opportunity to distribute educational material on City and King County recycling programs. The educational materials can enhance the knowledge of residents and improve behavior in purchase, handling, and disposal of recyclable materials.

2. Task Two: Purchase Products Made From Recycled Materials

A) Task Schedule: 2021/22

B) Task Activities:

In order to support the recycling industry and close the recycling loop, the City would like to purchase products made from recycled materials. Doing so will support recycling collection programs and help ensure the success of the recycling industry. The City will support recycling programs by purchasing items such as recycle content rain barrels/compost bins for distribution and recycled benches for City parks and open space areas. The rain barrels weigh approximately 40-50 pounds each and divert roughly twice that amount of plastic material from the waste stream when produced. Recycle content benches weigh approximately 600-800 pounds and divert roughly twice that amount of plastic material from the waste stream when produced. The City will install the recycled content benches or other items in highly visible areas with a notice that the benches are made from recycled content. The City will promote rain barrel/compost bin distribution to City residents and distribute the rain barrels/compost bins at City Recycling Collection Events.

C) Task Performance and Impact Objectives:

The goal of this program is to help ensure the success of the recycling industry by adding to the demand for products made from recycled materials. By purchasing products made from recycled content, the City will divert recyclable material from the waste stream. The City may distribute rain barrels to City residents and install the recycle content benches in highly visible areas and that will help promote recycled products. The additional benefits of the rain barrels/compost bins are that they will help reduce household water consumption and reuse natural rainwater and recycle household organic material.

Exhibit B**2021-2022 WRR Grant Guidelines - Revised****Program Eligibility:**

The King County Solid Waste Division (SWD) SWD has updated the WRR Recycling Case Studies document (Attachment 3) and created a WRR Case Studies Summary (Attachment 4), which include many creative and innovative project ideas for WRR Grant proposals/scopes of work. These case studies offer ideas for influencing waste prevention and recycling consistent with Title 10 of King County Code, the King County Strategic Climate Action Plan, and the King County 2019 Comprehensive Solid Waste Management Plan, all of which have policies to achieve Zero Waste of Resources by 2030. SWD strongly encourages consideration of these projects in the development of grant proposals and encourages Cities to leverage WRR grant funds with multi-City projects.

Grant funds may be used for a variety of WRR related programs consistent with the Comp Plan. Cities are encouraged to work together to leverage funds and have a greater influence on waste prevention and recycling. Cities may choose to use their funding on one program or a combination of programs. For WRR program ideas, please refer to the Case Studies, which includes the examples below.

Examples of innovative projects:

- City Development of Contracts for “Responsible Recycling.”
- King County Solid Waste Division Market Development for Recycled Materials.
- King County Climate Action Through Low Embodied Carbon Purchasing.
- King County SWD: Multicultural Recycling Outreach - Recicla Mas! Es Fascilísimo.
- Regional Code Development for C&D Diversion.
- Purchase School Milk Dispensers and Reusable Cups to Replace Single-use Milk Cartons.
- City of Auburn Commercial Food Waste Outreach.
- City of Bellevue Recycling Unusual of Bulky Items.
- City of Kirkland Organics Contamination Enforcement – Cart Tagging

Please contact Lucy Auster at 206-477-5268 or lucy.auster@kingcounty.gov if you have questions about specific program eligibility and/or consistency with the Comp Plan.

The following are not eligible for funding:

- Collection of garbage, except for residual garbage related to the collection of recyclables.
- Household Hazardous Waste (HHW) education programs.
- Collection of any household hazardous waste items including, but not limited to:
treated wood, paint, lead acid batteries, oil, gasoline, and antifreeze, fluorescent lights.

Cities should pursue funding for HHW collection or education programs through the King County Hazardous Waste Management Program (Haz Waste) or the Washington State Department of Ecology Local Solid Waste Financial Assistance (LSWFA) Program.

Grant Administration

Requests for Reimbursement:

Cities may submit one request for reimbursement per year during the funding cycle, due no later than March 18, 2022 and March 17, 2023. Alternately, cities may submit requests for reimbursement as frequently as quarterly. A Budget Summary Report Form and an Expense Summary Report Form must be used when submitting requests for reimbursement and will be provided to Cities when the grant agreements are executed.

Accrual Reporting:

By the 5th working days of January 2022 and January 2023, Cities must notify SWD of the amount of their total expenditures for work that has been completed but for which a request for reimbursement has not yet been submitted, so that SWD can accrue the amounts.

Progress Reports

Progress reports describing program activities, accomplishments, and evaluation results must accompany each request for reimbursement. All progress reports must be signed by a City official. Signed reports may be scanned and emailed.

Amendments

Formal amendments to grant Interagency Agreements (IAAs) are unnecessary unless the City wishes to significantly change its scope of work and/or budget. In general, a significant change would be one in which the City wishes to add or delete a task from their scope of work. A minor change, such as moving dollars between tasks, would only require written notification, which may be submitted via e-mail. However, the City should contact SWD when considering changes to their scopes and budgets to determine if a formal amendment is needed.

SWD has streamlined the amendment process to make it easier for Cities to make changes. A City wishing to amend its scope of work will send an email to Lucy Auster with a revised scope of work, including the following:

- A brief description of any new tasks, the amount, and the start and end dates.
- A brief description of additional work you will do in any existing task you wish to move funds into from another task, the amount, and start and end dates.
- A brief description of work currently in your scope that you will not be doing, the amount that will either be going to a new task or moving to an existing task and if so which one, and a start date.

Any work included in the new scope still needs to be consistent with the [Comp Plan](#). Once the new scope of work is approved, SWD will follow up with a unilateral amendment to your agreement, which does not require City signature.



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P.O. Box 88030

Tukwila, WA 98138

Phone: 206-575-6046

Fax: 206-575-7426

www.wciapool.org

10/22/2020

Ref#: 13010

King County Solid Waste Division
Attn: Lucy Auster
201 S. Jackson St. Suite 701
Seattle, WA 98104

Re: City of Des Moines
2021-22 WRR Grants

Evidence of Coverage - Exhibit C

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

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

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

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

Sincerely,

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

Rob Roscoe
Deputy Director

cc: Dan Brewer
Laura Techico
Taria Keane

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BUDGET SUMMARY REPORT FORM

Exhibit D

2021-2022 Waste Reduction & Recycling Grant Program

City: _____ Address: _____ _____ _____ Preparer's Name: _____	Date: _____ Phone: _____ Invoice #: _____ Report Period: _____ Contract #: _____				
Total amount requested this period: _____ Total amount previously invoiced: _____ Original interlocal amount: _____ Total amount charged to date: \$ - Amount remaining for completion of interlocal: \$ -					
Task #	Scope of Work Description (Task/title)	Budget	Current Quarter Costs	Amount Previously Invoiced	Remaining Balance
1					\$ -
2					\$ -
3					\$ -
4					\$ -
5					\$ -
6					\$ -
7					\$ -
	TOTALS	\$ -	\$ -	\$ -	\$ -
For King County Use Contract # _____ 0 _____ Project <u>1126942</u> Org <u>720122</u> Exp.Account <u>54105</u> Task <u>22.000'</u> Purchase Order # _____ Requisition # _____ Receipt _____ Supplier # _____ Supplier Pay Site _____ Invoice # _____ Payment Type _____					
Total charges this period are approved for payment \$ _____ Project Manager: _____ Date _____					

■

King County Waste Reduction Recycling Grant

Contract # _____[illegible]

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Des Moines Marina Maintenance
Dredging Project – Change Order No. 1

ATTACHMENTS:

1. Change Order No. 1
2. Contract for Marina Dredging Project

FOR AGENDA OF: January 7th 2021

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: December 15th, 2020

CLEARANCES:

- ☐ Community Development NA
- ☒ Marina *SW*
- ☐ Parks, Recreation & Senior Services NA
- ☐ Public Works NA

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal TG
- ☒ Finance *Boyd*
- ☐ Courts NA
- ☐ Police NA

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *Ward*

Purpose and Recommendation

The purpose of this agenda item is to request City Council's approval of a change to the contract between the City and American Construction Co., Inc. for the Marina Entrance Channel dredging project

Suggested Motion

Motion: "I move to approve Change Order No. 1 to the contract with American Construction Company for an additional \$924.00 to the previously authorized amount of \$137,272.68 and authorize the City Manager to sign the Change Order substantially in the form as attached."

Background

At the January 23, 2020 meeting, the City Council approved a contract with American Construction Company from Tacoma, Washington for performing maintenance dredging in the Marina's entrance channel. American Construction's bid for the work, including the additive alternate for waiting until November to do the work was \$137,272.68. The City's consulting engineering firm, Anchor QEA reviewed the bid and recommended that the City award a contract to American Construction for the job.

Discussion

When Anchor QEA started the design and permitting effort in early 2019 they relied on a survey done in April of 2019 to estimate the volume of material that would need to be removed to restore the original dimensions of the entrance channel. At that time, Anchor estimated the volume at 4,160 cubic yards, (CY). That estimated volume included approximately 3,300 CY of material that needed to be removed to restore the original channel dimensions and approximately 900 CY of "payable over dredge". What that means is that the City set the contract up to pay the contractor to dredge the channel up to 1 foot deeper than the design depth of -13 ft. to make sure that the channel was at least 13 feet deep everywhere at a zero tide. In a typical job, a contractor will end up taking somewhat less than the "total payable volume", usually about 90% of the total.

Because the project permits were delayed for so long, staff expected that more material would have been deposited in the channel. The pre-dredge survey done by the contractor confirmed that there was about 250 CY more material in the channel than discovered by the 2019 survey. 250 CY corresponds to the natural rate of sediment accumulation in the channel. At the start of the project the engineers and the staff expected the "final pay volume" to be over the original estimate by some small amount. Comparing the pre and post-dredge survey shows that the "payable volume" is 4,238 CY an increase of about 80 CY over the original estimated amount.

Financial Impact

The authorized expenditure for this project is \$137,272.68. Change Order No. 1 will add \$924.00 to the current authorized amount of \$137,272.68 for a new authorized amount of \$138,196.68. The additional authorization will be enough to pay for removing the relatively small amount of additional material.

Alternatives

1. The Council can approve Change Order No. 1 or:
2. The Council can decline to approve the Change Order and give staff further direction (not recommended).

Recommendation

The Marina staff and Anchor QEA believe that American Construction Company diligently performed the work in a timely manner, especially considering the weather and they returned the channel to its original configuration. Staff and Anchor QEA recommend that the Council approve the Change Order and direct staff to pay American Construction Company the total payable amount.

Concurrence

Finance, and Legal concur with this recommendation.

Change Order 1

Page 1 of 2

Project Name: City of Des Moines Marina Maintenance
Dredging Project

Change Order Number: **1**

Prime Contractor: American Construction Company

☒ Ordered by the City of Des Moines

☐ Change proposed by Contractor

Original Contract Amount	\$137,272.68
Current Contract Amount	\$137,272.68
Estimated Net Change This Order	\$924.00
Estimated Contract Total After Change	\$138,196.68
Original Contract Duration 20 working days	20
Current Contract Duration	20
Additional Contract Days This Order	0.0
Proposed Contract Duration	0.0

☐ Approval Recommended ☐ Approved	☐ Approval Recommended ☐ Approved
Project Engineer – Anchor QEA _____ Date	American Construction Company _____ Date
☐ Approval Recommended ☐ Approved	Other Approval When Required
Owner _____ Date	Signature _____ Date _____ _____ Representing - Surety

Change Order 1

All work, materials, and measurements to be in accordance with the provisions of the Standard Specifications and Special Provisions contained in the contract.

This contract is revised as follows:

Description of Change: This change order adds 80 CY to the estimated quantity of material to be dredged from the Marina's entrance channel. Some extra material accumulated in the channel since the original design survey was done in April of 2019 and the pre-dredge survey was done in November of 2020.

Materials N/A

Construction Requirements

No change to Construction Requirements.

Measurement

Bid Item No.3 – Dredging and Open Water Disposal – Increase Est. Quantity to 4,240 CY

Bid Item No. 3A - Dredging and Open Water Disposal (Additive) – Increase Est. Quantity to 4,240 CY

Payment

Payment for the additional dredged material will be by the Unit Bid item price for the corresponding Bid items listed in this change order

Time Statement

N/A

CHANGE ORDER ACCOUNTING

ESTIMATED INCREASE IN CONTRACT ITEMS AT CONTRACT PRICES

Item No.	Item Description	Quantity	Unit	Unit Price	Estimated Amt. Change
3	Dredging & Open Water Disposal	80	CY	\$10.00	\$800.00
3A	Dredging & Open Water Disposal (Additive)	80	CY	\$0.50	\$40.00
				Estimated Increase	\$840.00
				WSST	\$ 84.00
					\$924.00

Change Order 1

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American Construction Co., INC.
RECEIVED

FEB 07 2020

SPB KC BL PS
RG NA DD

CONTRACT DOCUMENTS

CITY OF DES MOINES MARINA MAINTENANCE DREDGING PROJECT

FEBRUARY 2020



CONTRACTOR
AMERICAN CONSTRUCTION
COMPANY, INC.
TACOMA, WA



PUBLIC WORKS CONTRACT
Between the
City of Des Moines and

American Construction Company, Inc.

THIS CONTRACT is made and entered into this _____ day of February, 2020, by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and **American Construction Company, Inc.** organized under the laws of the State of Washington, located and doing business at 1501 Taylor Way, Tacoma, WA, 98421 (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

Contractor shall perform the services for the City as specifically described below:

Dredge approximately 4,160 cubic yards of sediments from the Marina Entrance Channel and dispose of the material at a DNR open-water disposal site as per the plans and specifications developed by Anchor QEA, LLC, dated December 2019, and all applicable permits and authorizations required for the project, all of which are attached to this document and by reference, made part of this agreement.

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 Standard Plans for Road, Bridge and Municipal Construction (as prepared by the WSDOT/APWA current edition);
- (iv) 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 Contractor shall complete the in-water work described in Section I during the allowable 2020-2021 in-water work window. The parties agree that specific dates within the allowable work window will be confirmed following further coordination with the American Construction Company and that work on the tasks described in Section I above and more specifically detailed in the plans, specifications and permits attached hereto will begin immediately upon receiving the "Notice to Proceed" from the City. If said work is not completed within the time mutually agreed to, the Contractor agrees to pay the City the sum specified in Section VI - Liquidated Damages of this contract.

III. COMPENSATION. The City shall pay the Contractor a total amount not to exceed, **One Hundred Thirty-Seven Thousand Two Hundred Seventy-Two Dollars and 68 Cents, (\$137,272.68)**, 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. 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 Planning, Building and 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 **\$625.00 per** day 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. The Contractor certifies that, within the three-year period immediately preceding this Project, the Contractor 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.

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 two (2) 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 \$3,000,000 each occurrence, \$3,000,000 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. Pursuant to Chapter 39.08 RCW, the Contractor shall, prior to the execution of the Contract, furnish a performance and payment bond to the City in the full amount of the bid with a surety company as surety, ensuring 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 bond 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 bond 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.

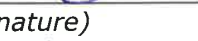
I. Records Retention and Audit. During the progress of the Work and for a period not less than three (3) years from the date of completion of the Work or for the retention period required by law, whichever is greater, records and accounts pertaining to the Work and accounting therefore are to be kept 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.

IN WITNESS, the parties below execute this Contract, and certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. This contract shall become effective on the last date entered below.

CONTRACTOR:	CITY OF DES MOINES:
By: <u></u> (signature)	By: <u></u> (signature)
Print Name: <u>KEVIN CULBERT, PRESIDENT</u>	Print Name: <u>Michael Matthais</u>
Its _____ (Title)	Its <u>City Manager</u> (Title)
DATE: <u>2/10/2020</u>	DATE: <u>2-7-2020</u>

Approved as to Form:


City Attorney

DATE: 2/7/2020

NOTICES TO BE SENT TO: CONTRACTOR: Kevin Culbert American Construction Co., Inc. 1501 Taylor Way Tacoma, WA 9842 (253) 254-0118 (telephone) kevinc@americanconstco.com (e-mail)	NOTICES TO BE SENT TO: CITY OF DES MOINES: Scott Wilkins, Harbormaster City of Des Moines Marina 22307 Dock Avenue S. Des Moines, WA 98198 (206) 824-5700 (telephone) swilkins@desmoineswa.gov (e-mail)
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