

AGENDA

DES MOINES CITY COUNCIL REGULAR MEETING City Council Chambers VIA ZOOM

Thursday, February 11, 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

CORRESPONDENCE

[Council Correspondence](#)

COMMENTS FROM THE PUBLIC VIA ZOOM/WRITTEN PUBLIC COMMENT

PRESIDING OFFICER'S REPORT

STEVEN J UNDERWOOD MEMORIAL SCHOLARSHIP

ADMINISTRATION REPORTS

COVID UPDATE

[Covid Update](#)

BANNER PROGRAM

CONSENT CALENDAR

APPROVAL OF MINUTES

Motion is to approve the January 21, 2021 City Council Regular Meeting Minutes.

[Consent Item 1](#)

VETS AND SENIORS AND HUMAN SERVICES LEVY (VSHSL)
GRANT

Motion is to accept the King County Veterans Seniors and Human Services Levy (VSHSL) grant funding in the amount of \$329,094 for the African Diaspora Senior Hub, and authorize the City Manager to sign the grant agreement substantially in the form as submitted.

[Consent Item 2](#)

INTERGOVERNMENTAL LAND TRANSFER AGREEMENT BETWEEN
KING COUNTY AND THE CITY OF DES MOINES FOR THE
TRANSFER OF PROPERTIES, DRAINAGE FACILITIES AND
EASEMENTS

Motion is to approve the Intergovernmental Land Transfer Agreement between the City of Des Moines and King County, and further authorize the City Manager to sign said Intergovernmental Agreement substantially in the form as submitted.

[Consent Item 3](#)

BLACK HISTORY MONTH PROCLAMATION

Motion is to approve the Proclamation recognizing February as Black History Month.

[Consent Item 4](#)

WASHINGTON STATE FUTURE CITY REGIONAL COMPETITION

Motion is to approve the Proclamation recognizing the achievements of

the Pacific Middle School students in the virtual Washington State Future City Regional Competition.

[Consent Item 5](#)

LODGING TAX ADVISORY COMMITTEE APPOINTMENT

Motion is to confirm the Mayoral appointment of Courtney Antram to the Lodging Tax Advisory Committee effective immediately.

[Consent Item 6](#)

COMPENSATION FOR NON-REPRESENTED EMPLOYEES

Motion is to adopt Draft Resolution No. 21-105 regarding compensation for non-represented employees from February 16, 2021 through December 31, 2021, which provides wage increases that are equitable and sustainable within the current 2021 City of Des Moines budget.

[Consent Item 7](#)

NEW BUSINESS

WESLEY HOMES PEDESTRIAN BRIDGE AT 216TH STREET

Staff Presentation: Public Works Director Brandon Carver

[New Business Item 1](#)

NORTH MARINA PARKING LOT BULKHEAD AND RESTROOM REPLACEMENT – ENVIRONMENTAL MITIGATION BANKING; EXELTECH CONSULTING DESIGN CONTRACT SUPPLEMENT AGREEMENT #2 AND #3

Staff Presentation: Transportation & Engineering Services Manager Andrew Merges

[New Business Item 2](#)

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

(4 minutes per Councilmember) - 30 minutes

EXECUTIVE SESSION

NEXT MEETING DATE

February 18, 2021 City Council Regular Meeting

ADJOURNMENT

Bonnie Wilkins

From: Tim Irwin <tim.lirwin@gmail.com>
Sent: Thursday, February 11, 2021 12:19 PM
To: _CityCouncil; Matt Pina
Subject: Des Moines Creek-West development

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

Mayor Matt Pina and City Council Members,

I live in the neighborhood directly west of this area and am absolutely appalled at this proposal! How can this go through without public consent? This project will reshape the fabric of our neighborhood, decrease home values that directly border this area, and negatively impact the environment. There needs to be public input on how this project moves forward to mitigate the impact to our neighborhood, home values, and the environment.

Thank you,

Tim

--

Thank you,

Tim Irwin

Bonnie Wilkins

From: Rick Michaels <michaelsdigital77@protonmail.com>
Sent: Tuesday, January 26, 2021 9:27 AM
To: _CityCouncil
Subject: Info block

Follow Up Flag: Follow up
Flag Status: Flagged

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

Council you should be ashamed for letting the city manager who is YOUR employee withhold information to council members. Do things differently OR it's time to replace the council and bring on NEW city manager.

Enough IS enough.

Bonnie Wilkins

From: Sandra D Mock <saundram@me.com>
Sent: Tuesday, January 26, 2021 9:07 AM
To: _CityCouncil
Subject: Fwd: Withholding Information from council

Follow Up Flag: Follow up
Flag Status: Flagged

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

>
> To all of you on the city council including & Michael, the city
> manager, Why are you withholding information from ANY OF OUR COUNCIL?! These are elected officials and you have
no reason legal or otherwise to do so.
> This gridlock in our own little town has to stop and the city manager had better start acting like he's the employee at
the councils leisure, instead of the boss!
> Michael, people are sick and tired of your looking down your nose at council you don't agree with! Now I need to see
some cooperation OR, I will personally start a campaign to see all of you removed and the manager fired! I'm sick of this!
I'm sick of hearing about this!
> Grow the hell up and start cooperating (all of you on council) or Michael, you need to look for other work and you on
council supporting this? You need to rethink who the hell you are working for(spoiler alert; it isn't MM) and If you can't
play nice, go away! We are tired of you ALL and your BS!
> Get along or GET OUT! It's really that simple!
> Sincerely,
>
> Sandra Mock
> 206-818-1042
> Sent from my iPhone

Bonnie Wilkins

From: noreply@civicplus.com
Sent: Tuesday, February 9, 2021 8:22 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

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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	Wesley
Last Name	Partch
Address1	1654 South 250th Street
City	Des Moines
State	WA
Zip	98198
Phone	4065704145
Email	wespartch@gmail.com
Subject	Dangerous Intersection at 250th St. & 16th Ave.
Comment	I live on South 250th Street in Des Moines, near the corner of 16th Ave. This is a dangerous four-way stop intersection. It is high volume, and many of the vehicles going through the intersection do not stop at all. What's worse, many of the vehicles approaching the intersection are traveling between 50 and 60 miles per hour down the hill along 250th Street, including commercial trucks, which rattle the house. The speed limit along 250th Street is 25 mph, but much of the traffic coming down the hill from Kent are traveling twice that or more. This makes it dangerous for me to simply pull out of my driveway. Many people walk in this neighborhood, being so close to the state park. There needs to be some kind of measure taken to incentivize safer driving, such as speed

cameras or speed bumps. The Des Moines police department does not have an appropriate form to submit complaints about this, and I do not generally see DMPD in our neighborhood, so they are missing this high incident area. Once again, this is a dangerous intersection. Speed limits and stop signs are being completely ignored by a large share of traffic. That shows there is a problem with either the efficacy of the signage or the habits of drivers in general. These can easily be fixed with speed bumps or speed cameras. Please consider our lesser-served neighborhood. Thank you very much.

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: Chuck Riess <chuckriess@msn.com>
Sent: Sunday, January 31, 2021 3:03 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.

Please don't take any action that will allow this grand old structure to be demolished. There are many uses for this old building, not sure why it has just sat.

Remodeled to a hotel.

Remodeled to a transition house to house homeless that have already gone thru the process of substance abuse. They are ready to get back to living just need transition housing.

I am sure there are many other uses. It would be a shame to let this beautiful building crumble.

Chuck Riess
206-940-5532
Riess Insurance Agency
DMYC Commodore 2020

Bonnie Wilkins

From: Alena <rogers.alena@gmail.com>
Sent: Tuesday, January 26, 2021 7:03 AM
To: _CityCouncil; Michael Matthias
Subject: Blocking questions and more

Follow Up Flag: Follow up
Flag Status: Flagged

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

Good morning Council and Michael,

Not sure why I've put this off as I've been meaning to make public comment about some of the things I've been seeing play out since Councilmembers Harris and Martinelli took their seats.

I don't know y'all's history, or factors that may explain things regarding the manner in which the newer council members have been treated by the rest of you, but especially Michael, Matt Pina, and Matt Mahoney. And do you know what? It doesn't really matter if I did know the why's, because at the end of the day the rest of the general public only has what I have currently: a view of a council doing nothing to forge a professional working relationship with the new members for the good of the people in the City - like big kids - and not only doing nothing to develop a working relationship frequently doing things to undermine it. Such as your little comment to Martinelli, Pina - the snide little "sorry you didn't have time to study" when Martinelli asked for additional time to consider the candidates. It was a reasonable request - it's an important thing! That was outrageous...were you so petty and undiplomatic to CM AM because the decision was already made and it was a convenient deflection? (and my gosh I hope somebody apologized to the candidates who put their hearts and time into that show of farce).

The petty little comments, the cutting people off, the acting like mean girls table in the High School cafeteria who say "you can't sit with us!" - it's pathetic. You don't like em? So what? Nobody cares, just do your job. And let the new members do theirs.

Which brings me to:

"this is the forty seventh (47) time [CM Harris] have gotten a refusal to answer a simple question like this. That's about one every two weeks. Sometimes they even come with a bonus letter from the City Attorney.

This must change. All Councilmembers deserve to be able to fully do the job as described by the law. And you should ask my colleagues why they think it's OK that any Councilmember be denied a 5-minute reply from staff to reasonable questions concerning research and oversight."

Why is this happening so often?

You know what? You guys treat JC like shit. Just absolute shit. Even if I didn't like the guy 1 iota, I'd be cringing at the amount of stuff you all sling at him. You block him from asking questions of staff, you don't provide the orientation or training others received, etc. And it doesn't make him look bad - at least not to me and a lot of other people. No, it makes you all look bad. It makes you look as if you lean into prejudices, bullying, excluding, othering. It makes folks pretty suspicious about what you, Michael, have to lose if someone with

thoughts that don't align with yours comes along - there's this let me turn my followers against him so that they don't catch any of his ideas vibe, and it's unsettling. And it all makes it look as if you can't handle being in a role in which there are times you need to roll up your sleeves, agree to disagree, and just move forward together in the best interest of those you were voted into your seats to represent. It would be bad enough if it were just "no I refuse! I'm not going to work with the new guy. pfffft!" But then you add the obvious disdain, petty little comments, scoldings from the dias and published in the Waterland Blog, and the little clique of the group-thinkers and it becomes pretty embarrassing to witness, tbh. But also just extremely concerning that our City is being represented by folks who are modeling to everyone that bullying is okay. If someone has thoughts that are a different than ours - bullying is okay. If they wear a hat when no one else does - bullying is okay.

I'm sick of it. If you can't work with people who have views that are different from yours - do the people a favor and get out of politics.

But while you're still here, in the seats you're in: I sure hope that you remember that you were voted in by the people - not Michael Matthias. I hope you apply critical thought and play all sides of the coin with every single thing that comes before you from here forward, because I've heard a few of you regurgitate verbatim words I've heard Michael say, and that makes me worry that you are just taking everything he says as true and just and best for all; that is not wise anywhere.

I mean, not one of you has bothered to check in with Patrice and Sue to hear their side of things. that right there seems to be evidence that you all are not doing thorough investigative work for the decisions you make about really important stuff.. like whether a City Manager should be given carte blanche to drag multiple-decade City employees through the mud, over and over with those releases that never say anything new, just that they "committed criminal acts" ...but, no charges ☐ who, outside their full-time work (and raising adopted girls and earning an MPH, and always being a source of cheer for the seniors and...) volunteered all over town, encouraged many others to do the same (☹), and started and operated a non-profit foundation from scratch, you know, in all their spare time, because they love the people in Des Moines and wanted to make sure all people could participate in the activities offered by the City over what I believe could turn out to be no more than a lack of communication between one administration and another..

Which brings me back to CM Harris: Michael isn't a fan because Harris is friendly with Legacy.

What's your guy's excuses?

So I shouldn't even have to say this to grown people but you all are aware that people have many differences, yes? Some people don't have sight, some people have cerebral palsy, some people are neurodiverse, some people have hearing issues. And some people just vibe to the rhythm of their own drum and couldn't care less about what is supposedly "in" fashion-wise and whatnot.

Now imagine the autistic teen sitting at home watching the council meetings, thinking about possibilities for running in the future... And then notices how cold you all treat CM Harris; teen wonders: it because he wears that hat?

just imagine that somebody sees the maltreatment - somebody maybe just a little off of center from mainstream - sees you laughing at his comments about admiring Mr. Rogers and decides "I can't do it, it's hard enough for me to transition into new settings with new people I definitely wouldn't be able to handle it if they were mean to me and laughed at me."

The behavior you model is important.

You know, I've had the pleasure of getting to know CM Harris since meeting him at the garden build a few years ago. Have any of you tried to get to know him? From the small amount I know, he's had quite an interesting life!

I encourage you all to consider setting up some time to just sit down and get to know each other, a little bit at least. What Michael or anyone else shares about one of your fellow CM's - I mean come on guys do you even consider things like motive for sowing dissention? I hope that you do and that if you haven't been you start and that you start making efforts - all of you - to find things about each other that foster respect.

And even with that, on those days when you and another council member just cannot get to a common ground, you're frustrated don't understand why in the world they would think the way they do - I hope that you come to the realization that the perspective you can't stand is the perspective of residents, at least some. And if you love the people of Des Moines, you'd be grateful that there were people among you who represent folks who have differing perspectives than you.

I'm not even going to proof this.. I know it's probably rough and it was probably blunt but these are my feelings and I'm tired of watching you guys act like petty children, hearing about the imbalances of who gets blocked when asking staff questions and who doesn't, and all the rest. And as a constituent who voted for CM Harris - I want him to be able to do his job. He's one of the few maybe the only one, who digs into issues and does thorough research. He's not just skimming whatever presentation Michael throws together - he digs. And residents need someone up there that does that.

I'm bet some folks might feel really threatened by digging ..

Best,
Alena Rogers

Bonnie Wilkins

From: ali tanner <alisterbalister@hotmail.com>
Sent: Wednesday, January 27, 2021 2:05 PM
To: _CityCouncil
Subject: RE: Sound Transit Project.

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

Dear City Council.

We, Ali and Al Tanner, just wanted to thank you all so much for your interest in the Pacific Ridge area – and protecting our property and value as Sound Transit came barreling in.

We feel that your studies, (noise, light etc.) and support, really helped our negotiations with Sound Transit as to their responsibility to the neighborhood.

They called to inform us that we are going to have a fifteen foot wall along our property – We should not see the train or lights! Nor will they be able to see us. And this should significantly cut down on the I-5 freeway noise.!!

Thank you again!!!

Ali and Al Tanner
3040 S 224th St.

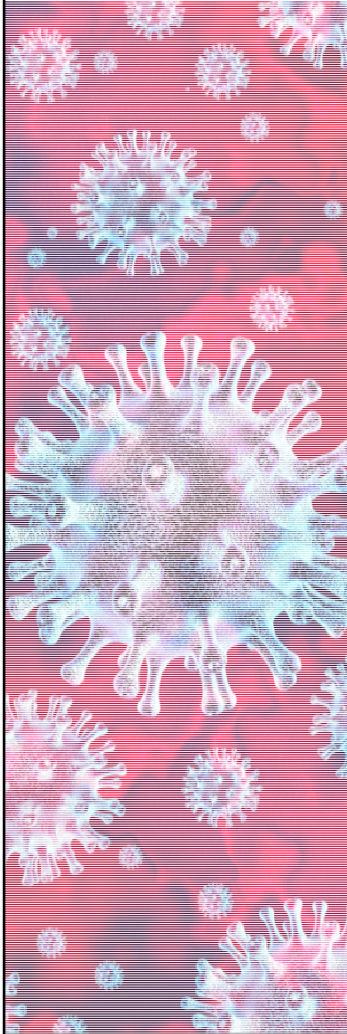
Two proud Des Moines residents.

Sent from [Mail](#) for Windows 10



COVID-19 Update

Shannon Kirchberg – Emergency Preparedness Manager



COVID-19 Statistics

- As of February 11, 2021

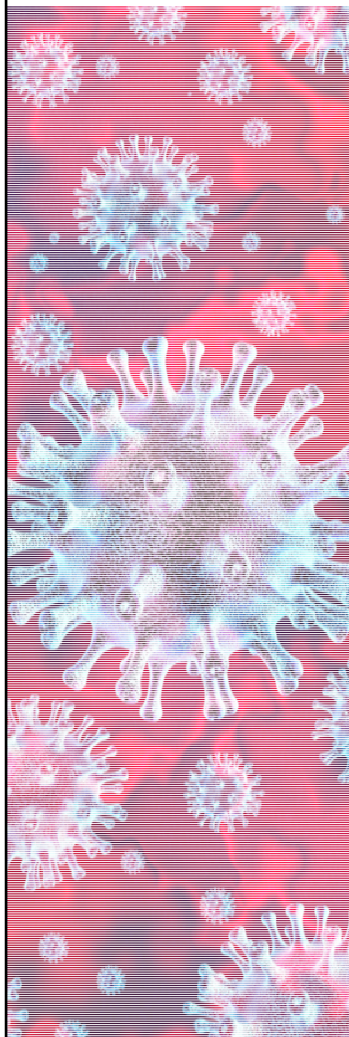
- **Confirmed Cases** **Increase in 24 Hours**

• United States	27,906,565	99,886
• WA State	327,933	873
• King County	79,167	186
• Des Moines	1,807	7

- **Deaths** **Increase in 24 Hours**

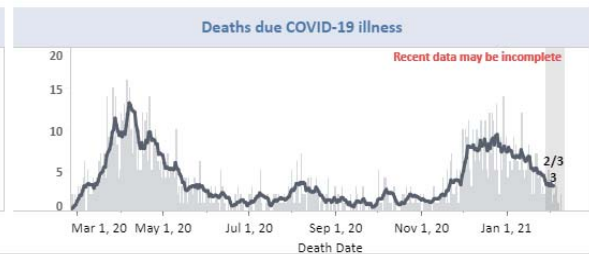
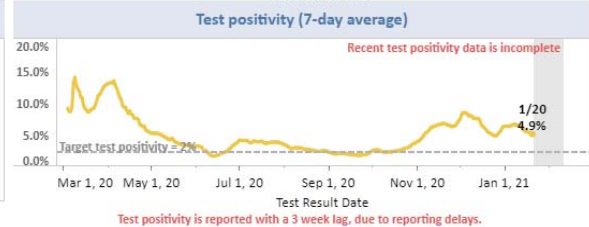
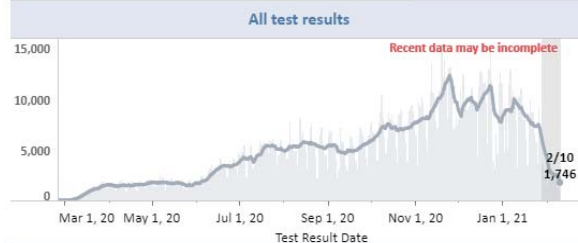
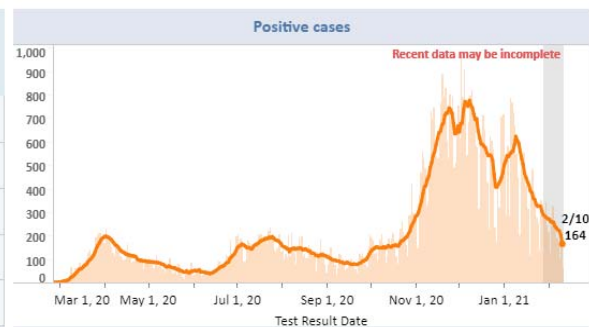
• United States	483,487	3,590
• WA State	4,685	39
• King County	1,305	5
• Des Moines	20	0

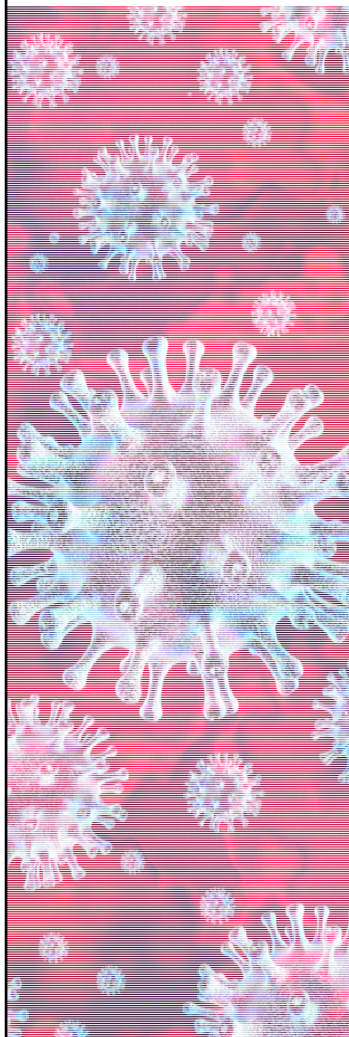
- Total Tested: 867,433 up 4,167 in 24 hours



COVID-19 Statistics

	Count	Overall New since Yesterday	Percent	Past 14 days	
				Count	Percent
Positives	79,233	66	4.6% of all tests	2,950	!
Hospitalizations	4,958	16	6.3% of all positive cases	168	5.7%
Deaths due to COVID-19 illness	1,305	0	1.6% of all positive cases	31	1.1%
All test results	1,731,237	854	!	31,782	
People tested	867,522	89		11,404	





Vaccination Statistics

Doses administered to King County residents:

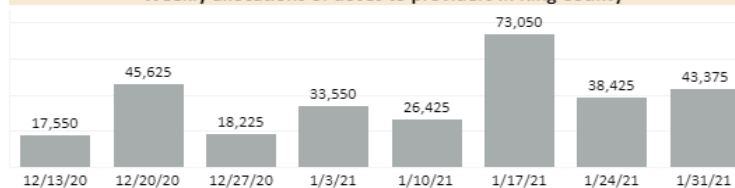
	Total doses	Percent of KC population
People who have received at least 1 dose	239,774	13.0%
People who have been fully vaccinated with 2 doses	68,472	3.7%

2020 King County population estimates include all residents 16 years or older.

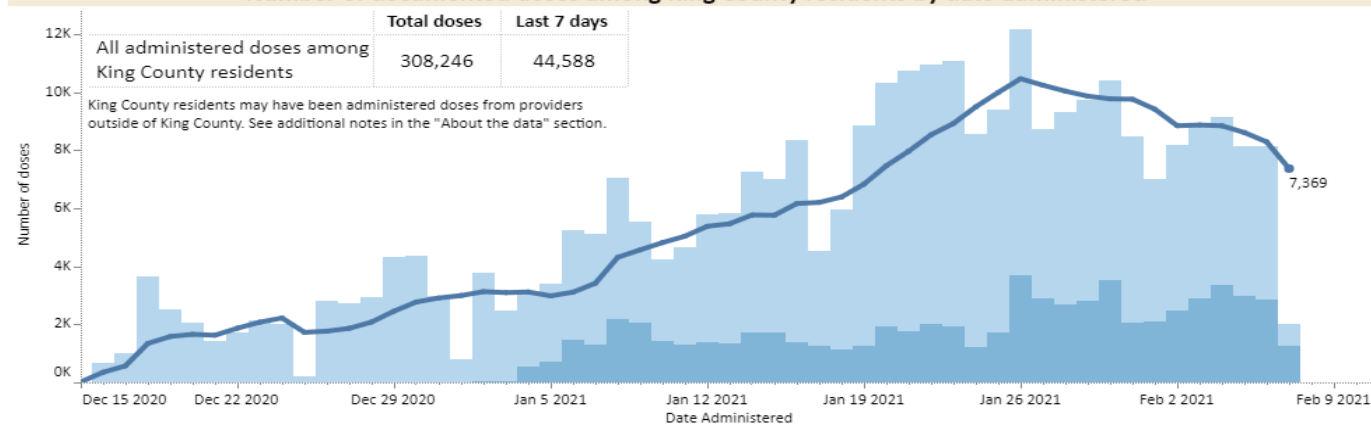
Allocations of doses to providers in King County (Will update 2/9)

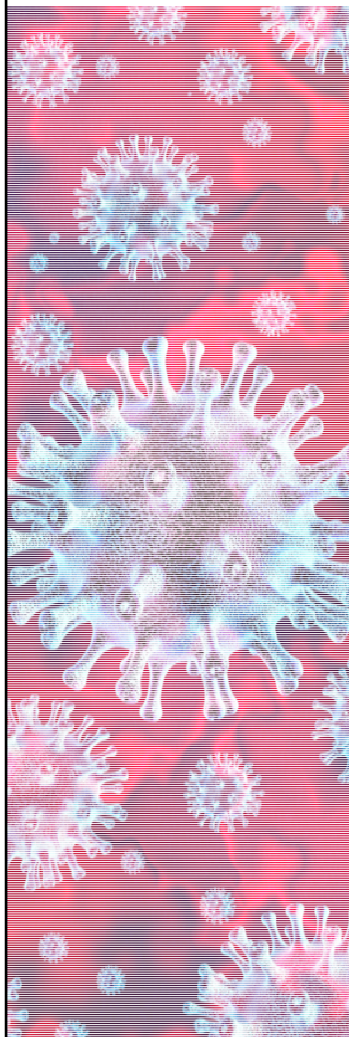
As of 1/31, Washington State has been allocated 1,144,450 doses, including doses allocated to federal pharmacy programs and Tribal partners (214,975 doses). King County has received **296,225** doses; 25.9% of total doses or 31.9% of doses excluding allocations to pharmacy programs and Tribal partners. The number of doses allocated to Federal pharmacy programs and Tribal partners is not available by county.

Weekly allocations of doses to providers in King County



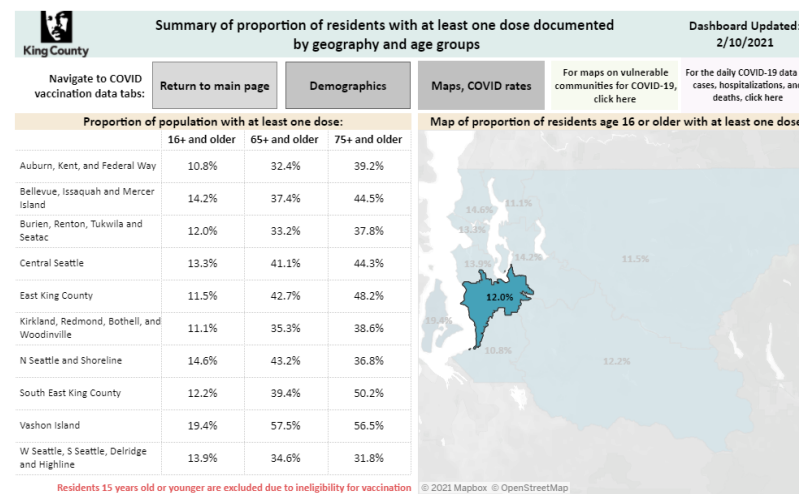
Number of documented doses among King County residents by date administered





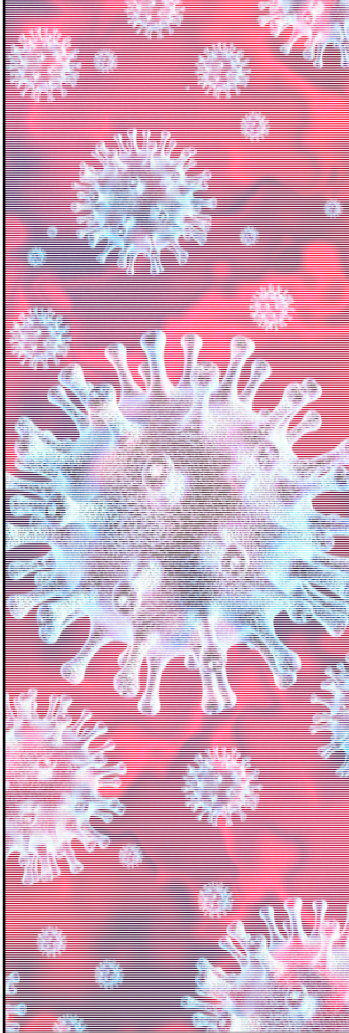
Local Vaccination Update

- City of Des Moines Actions
 - Offered the following Facilities as vaccination sites
 - Des Moines Marina Lot
 - Des Moines Senior Activity Center
- Walgreens and Safeway Pharmacies
 - Met with Store Managers and Pharmacy Managers
 - Ensured we are here to help



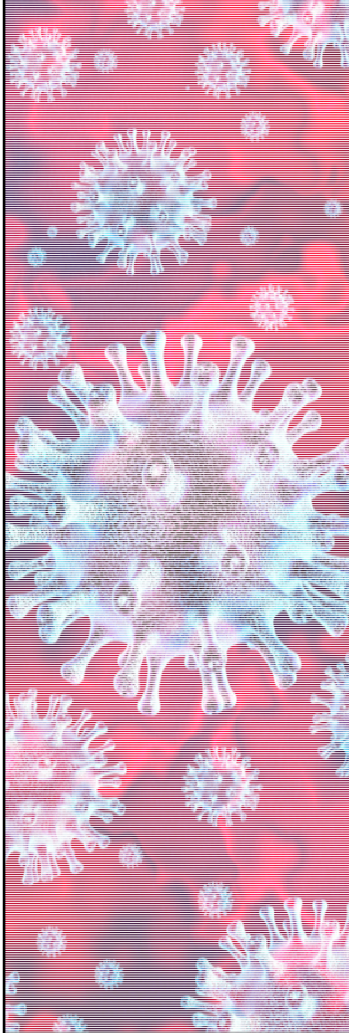
Burien, Des Moines, Renton, SeaTac and Tukwila

- Ages 16 and older
- 1 dose; 25,151
- Total Population 209,533
- 12% have received 1st dose



Roadmap to Recovery – King County

- Cases continue to decline.
- Prevention remains critical:
 - Avoid gathering indoors
 - Wear masks
 - Increase ventilation
 - Stay six feet apart
 - Get tested at the first sign of illness or close contact of a known case.
- Most common exposures
 - household transmission
 - Non health-care workplaces
 - Health-care settings
 - Community & social gatherings.
- Supply of vaccine remains very limited
 - Johnson and Johnson under review
 - Approval anticipated by Friday 02-12-2021

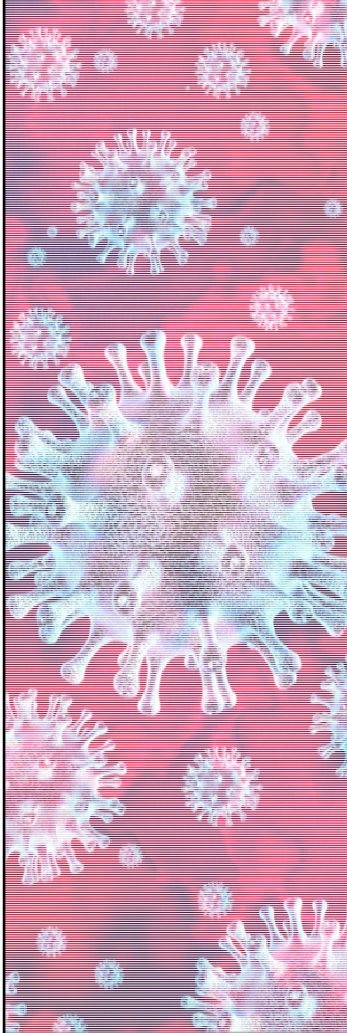


Roadmap to Recovery – King County

Regions are required to meet 3 out of 4 of the metrics outlined in the Roadmap to Recovery plan in order to move into and stay in Phase 2. The four metrics include:

- Trend in 14-day rate of new COVID-19 cases per 100k population
- Trend in 14-day rate of new COVID-19 hospital admissions per 100k population
- Average 7-day percent occupancy of ICU staffed beds
- 7-day percent positive of COVID-19 tests

DOH will now calculate regions metric to determine phase status every two weeks.
Next update 02-12-2021



Vaccinations in King County

- **Who is eligible now:**

- Workers at risk in healthcare
- Staff and residents in long-term care (Phase 1A)
- People 65+ years
- 50+ years and older who live in multigenerational households and meet certain risk criteria (Phase 1B).

- **How to get vaccinated if you're eligible:**

- Contact your healthcare provider
- [FindYourPhaseWA.org](https://www.findyourphasewa.org)

- **Expanding vaccination:**

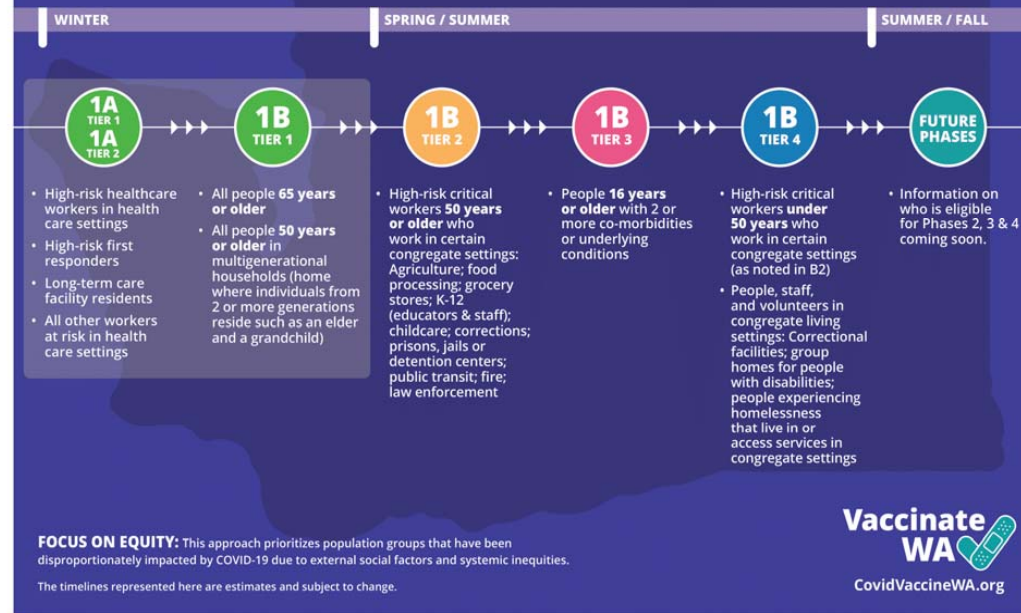
- High-volume vaccination sites opened February 1 in Kent and Auburn.
- Mobile strike teams for adult family homes and senior living. **Ability to expand vaccination strike teams will depend on vaccine supply.**

Know your Phase WA State

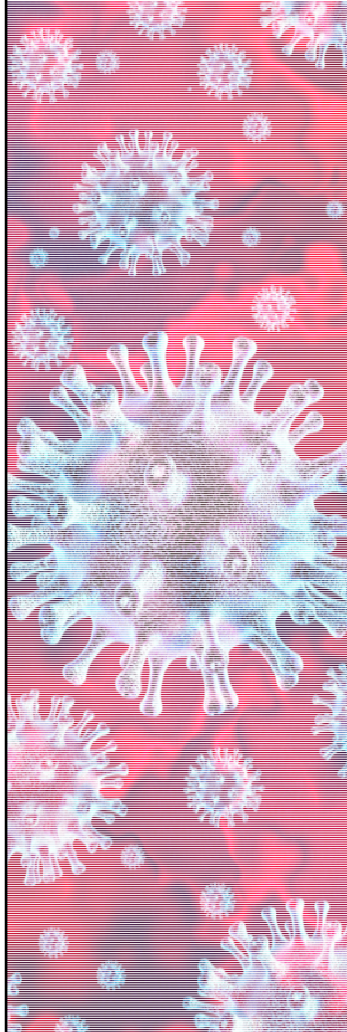
WASHINGTON'S COVID-19 VACCINE PHASES

Phase 1 Estimated Start Dates (Tiers A and B)

Find out if it's your turn at [FindYourPhaseWA.org](https://www.findyourphases.org)



WA State Department of Health



doh.wa.gov/Emergencies/COVID19

se.com Advanced Tools | P... Learning Stream... Google Google Dog for Adoption... belisfair mall movie... Dogs for Adoption... Novel Coronavirus... COVID-19 data des... https://www.hazwa... Business Tool Kit... Gmail

Washington State Department of Health

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You and Your Family Community and Environment Licenses, Permits and Certificates Data and Statistical Reports Emergencies For Public Health and Healthcare Providers

Emergencies > COVID-19

COVID-19

Care Connect Washington

Case Investigations and Contact Tracing +

Cloth Face Coverings and Masks +

Contact Us

Data Dashboard

Frequently Asked Questions

Healthcare Providers +

Local Health Jurisdictions

Resources and Recommendations

2019 Novel Coronavirus Outbreak (COVID-19)

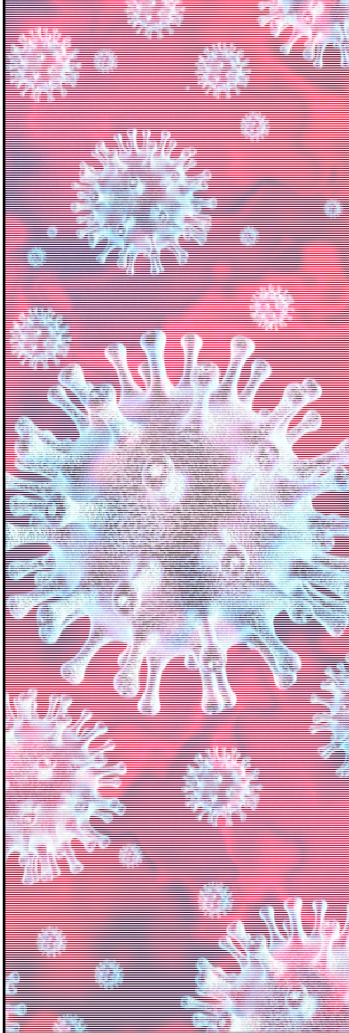
Vaccine Phase Finder Vaccine Locations

American Sign Language (ASL) | 中文 – Chinese | 日本語 – Japanese | 한국어 – Korean | ਪੰਜਾਬੀ – Punjabi | Русский – Russian | Af-soomaali – Somali | Español – Spanish | Українська – Ukrainian | Tiếng Việt – Vietnamese

Additional Languages

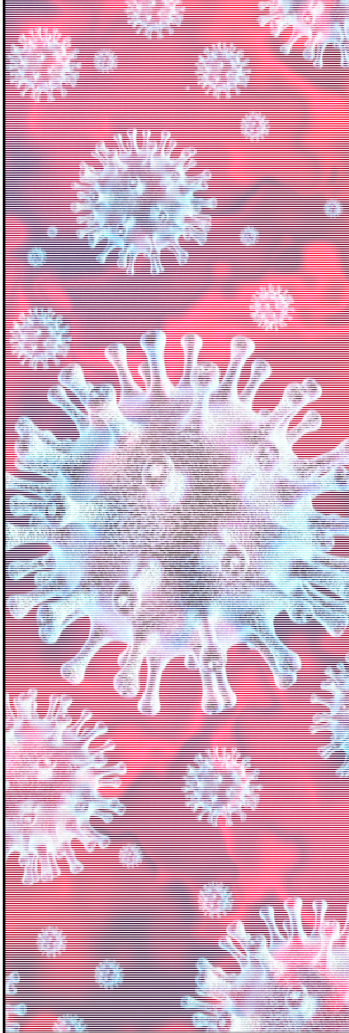
Cloth Face Coverings & Masks COVID-19 Vaccine Testing Information Testing Locations

COVID-19 questions?



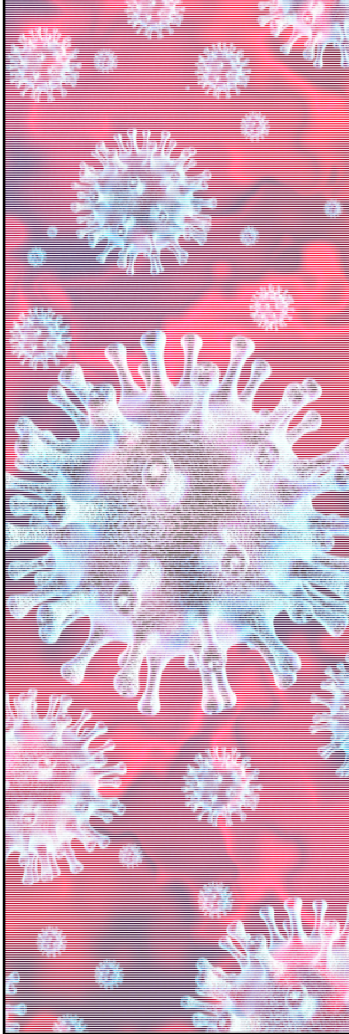
Vaccination Appointments

- Appointments are required and can be made at:
 - [Kingcounty.gov/vaccine](https://kingcounty.gov/vaccine)
- For help registering by phone or with interpretation, call:
 - 1-800-525-0127 and press # for help with registration by phone.
 - For language interpretation state your preferred language when you are connected.
- Vaccine supply and appointments are limited. You may experience delays due to the very high volume of inquiries.
- If your Dr. or provider does not have the vaccine go to:
 - www.FindYourPhaseWA.org



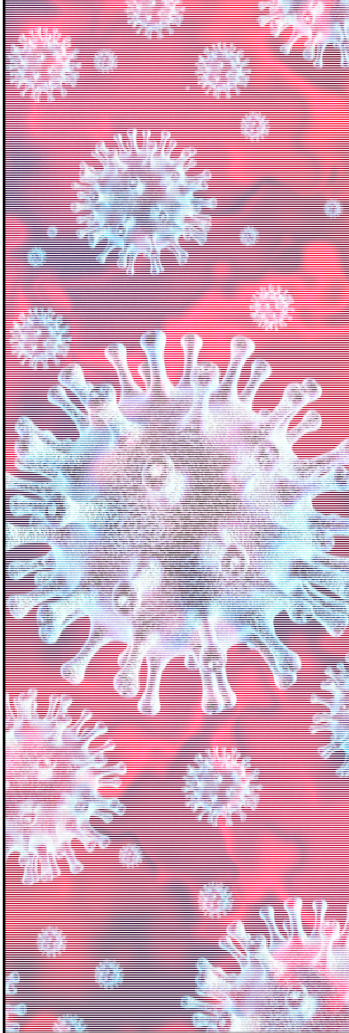
Covid-19 Variants

- UK Variant – B.1.1.7
 - 33 States; 690 cases; Doubling in the United States every 10 days
- South African Variant - B.1.351 in 30 countries including the US
 - Identified in 3 states; 6 cases
- Brazilian Variant – P.1
 - 2 States; 3 cases
- Spreads more easily
- Variant strains spread in the same ways as other COVID strains, it's just better at it.
- Protect Yourself with the **3 W's**. **W**ear a Mask; **W**ash your Hands; **W**atch your Distance.



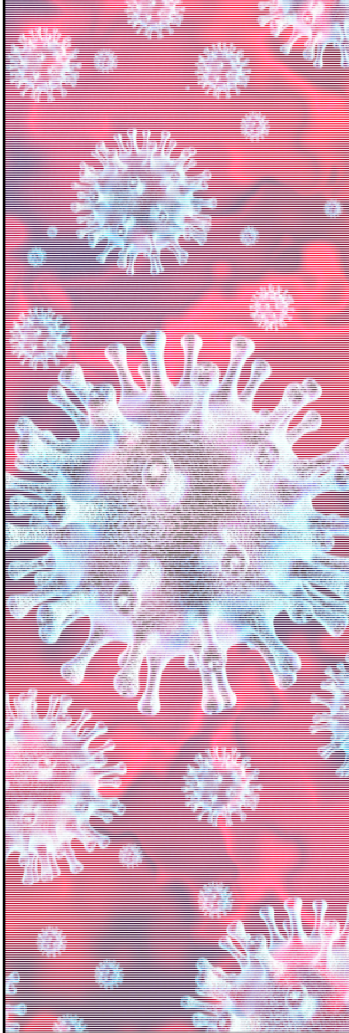
City Updates

- All Facilities are closed to public access
- Preparing for reopening with implementation of Safety Measures subject to pandemic dynamics.
 - Health Screens
 - PPE for Staff
 - Office Reconfiguration
 - Employee Information Blog



On-Going Coordination with EOC

- Ongoing reliance on our Emergency Proclamation.
- Weekly status updates:
 - Des Moines Emergency Operations Center (EOC)
 - Seattle King County Public Health and King County Emergency Operations Center (EOC)
 - Greater Federal Way Emergency Management Meetings
 - Sound Cities Association COVID-19 Updates
- Consultation regarding possible City Actions in the face of the pandemic.
- The City of Des Moines is committed to upholding the most strict precautions as recommended by the State of Washington Department of Health and Center for Disease Control (CDC).



Web Site to Follow

- WA State Department of Health: www.DOH.WA.Gov
 - Vaccination Information
 - <https://www.doh.wa.gov/Emergencies/COVID19/vaccine>
 - Dash Boards
 - <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard>
- King County Public Health: <https://kingcounty.gov/depts/health.aspx>
 - COVID-19 Resources
 - <https://kingcounty.gov/depts/health/covid-19.aspx>
 - Data Dash Boards
 - <https://kingcounty.gov/depts/health/covid-19/data.aspx>
- CDC COVID-19 Information: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- Department of Health and Human Services: <https://www.hhs.gov/>

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
VIA ZOOM
January 21, 2021 – 5:00 p.m.**

CALL TO ORDER

Mayor Pina called the meeting to order at 5:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Mayor Pina.

ROLL CALL

Council present: Mayor Matt Pina

Deputy Mayor Matt Mahoney; Councilmembers Luisa Bangs, Traci Buxton, JC Harris, Anthony Martinelli, and Jeremy Nutting attended the meeting via Zoom.

Staff present: City Clerk/Communications Director Bonnie Wilkins

City Manager Michael Matthias; Chief Operations Officer Dan Brewer; City Attorney Tim George; Chief Strategic Officer Susan Cezar; Finance Director Beth Anne Wroe; Human Resource Director Adrienne Johnson-Newton; Harbormaster Scott Wilkins; Chief of Police Ken Thomas; Assistant Police Chief Mark Couey; Public Works Director Brandon Carver; Transportation & Engineering Services Manager Andrew Merges; Judge Lisa Leone; Court Administrator Jennefer Johnson; Probation Officer Melissa Patrick; Assistant Director of Parks, Recreation and Senior Services Nicole Nordholm; Emergency Preparedness Manager Shannon Kirchberg; Associate Events and Facilities Manager Ashley Young; Legislative Advocate Anthony Hemstad; Deputy City Clerk Taria Keane attended the meeting via Zoom.

CORRESPONDENCE

- William Kennedy, Masonic Home
- Chad Rawlinson, Municipal Fiber Broadband
- Stephanie Hahn-Wagner, Mayors for Guaranteed Income
- Joanne Welty, Landmark on the Sound aka The Masonic Home at Zenith
- Joanne and Many, Many Others, EATS Program

COMMENTS FROM THE PUBLIC via Written Comment

- There were no public comments

ADMINISTRATION REPORT

Item 1: HOMELESSNESS

City Manager Matthias, Police Chief Thomas, Judge Leone and Assistant Parks, Recreation & Senior Services Director Nordholm gave Council an update on Homelessness.

CONSENT CALENDAR

- Item 1: APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers and payroll transfers through January 15, 2021 in the attached list and further described as follows:
- | | | |
|---|----------------|----------------|
| Total A/P Checks/Vouchers | #161859-161951 | \$1,356,413.47 |
| Voided Checks | # 1503-1503 | \$ (61,419.50) |
| Electronic Wire Transfers | # 1580-1580 | \$ 1,643.76 |
| Electronic Wire Transfers | # 1584-1592 | \$ 453,580.23 |
| Payroll Direct Deposit | # 19394-19395 | \$ 5,508.77 |
| Payroll Checks | # 10001-10143 | \$ 370,218.28 |
| Total Checks and Wires for A/P and Payroll: | | \$2,125,945.01 |
- Item 2: APPROVAL OF MINUTES
Motion is to approve the November 12, December 03, 2020 and the January 07, 2021 City Council Regular Meeting Minutes, and minutes from the December 03, 2020 Special Meeting.
- Item 3: ACQUISITION OF KING COUNTY PROPERTIES
Motion is to approve the purchase of tax parcels 9536600590 and 2922049053 from King County and authorize the City Manager to sign the Agreement substantially in the form as attached.
- Item 4: ARTS COMMISSION APPOINTMENT
Motion is to confirm the Mayoral appointment of Josh Wainscott to a 3 year term on the City of Des Moines Arts Commission effective immediately and expiring on December 31, 2023.
- Item 5: HUMAN TRAFFICKING AWARENESS MONTH
Motion is to approve the Proclamation recognizing January as Human Trafficking Awareness Month.
- Item 6: 2021 WASPC MENTAL HEALTH FIRST RESPONSE TEAM GRANT ACCEPTANCE
Motion is to approve the 2021 Mental Health Field Response Team grant administered by the Washington Association of Sheriffs and Police Chiefs in the amount of \$234,588.00 and to direct the City Manager to sign the attached grant agreement substantially in the form as attached.
- Direction/Action**
Motion made by Councilmember Nutting to approve the Consent Calendar; seconded by Councilmember Bangs.
 Motion passed 7-0.
- Mayor Pina read the Human Trafficking Awareness Proclamation Summary into the record.

NEW BUSINESS

Item 1: DISCUSSION OF 2021 CITY COUNCIL LEGISLATIVE PRIORITIES
Staff Presentation: City Manager Matthias

Legislative Advocate Hemstad gave a PowerPoint Presentation to Council.

Direction/Action

Motion made by Mayor Pina to approve the 2021 City Council Legislative Priorities as presented; seconded by Deputy Mayor Mahoney.
Motion passed 7-0.

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS – (4 minutes per Councilmember) - 30 minutes

Councilmember Martinelli

- State and Local Aide
- Broadband

Councilmember Bangs

- Environment Committee Meeting
- Senior Services Advisory Committee Meeting
- Des Moines Arts Commission Meeting

Councilmember Nutting

- No Report

Councilmember Harris

- Air Quality Monitoring meeting with Representative Orwall and Senator Keiser
- EATS Program
- Complimented Engineering Staff
- Community Clean Up
- Urged the Community to Get Vaccinated

Councilmember Buxton

- Commented on Consent Calendar Items #4, #5, and #6
- Fly In Meeting with Congressman Adam Smith
- Community Clean Up

Deputy Mayor Mahoney

- Community Clean Up
- G.R.O. Program
- Transportation Committee Meeting
- Wear Purple to Build Community

PRESIDING OFFICER'S REPORT

- Environmental Committee Meeting
- Broadband

NEXT MEETING DATE

February 11, 2021 City Council Regular Meeting

ADJOURNMENT**Direction/Action**

Motion made by Councilmember Nutting to adjourn; seconded by Councilmember Bangs.

The motion passed 7-0.

The meeting adjourned at 6:32 p.m.

Minutes Approved at the _____ Council Meeting.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Vets Seniors and Human Services
Levy (VSHSL) Grant

ATTACHMENTS:

1. 2021-2023 VSHSL Grant Agreement

FOR AGENDA OF: February 11, 2021

DEPT. OF ORIGIN: Parks, Recreation and Senior
Services

DATE SUBMITTED: February 4, 2021

CLEARANCES:

☐ Community Development _____

☐ Marina _____

☒ Parks, Recreation & Senior Services 

☐ Public Works _____

CHIEF OPERATIONS OFFICER: _____

☒ Legal /s/ TG

☒ Finance 

☐ Courts _____

☐ Police _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to request City Council approval of the second portion of the 5 year King County Veterans Seniors and Human Services Levy (VSHSL) Grant for the African Diaspora Cultural Hub in the amount of \$329,094 for 2021-2023. The African Diaspora Cultural Hub is an ongoing partnership between our Des Moines Senior Activity Center and the Central Area Senior Center. The total award for Des Moines over the 5 year period (2019-2023) will be \$514,395. (Council approved acceptance of \$185,300 for 2019-2020 in November 2019)

Suggested Motion

Motion: "I move to accept the King County Veterans Seniors and Human Services Levy (VSHSL) grant funding in the amount of \$329,094 for the African Diaspora Senior Hub, and authorize the City Manager to sign the grant agreement substantially in the form as submitted."

Background:

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

Discussion:

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

King County's goal in this VSHSL funding was to support senior centers in becoming hubs that expand outreach to isolated seniors and support opportunities of engagement for the diversity of seniors.

The partnership: DMAC & CASC's partnership remains focused on promoting cultural programming and activities between our centers. The manner in which this has been accomplished has had to shift, due to the COVID 19 pandemic. Providing meals has proven to not only be an essential function during current quarantine, but remains crucial in engaging with isolated seniors and ensuring they remain connected and supported during these trying times. Our DMAC quickly and seamlessly pivoted to a drive up meal service, and through our African Diaspora Hub, was able to provide African inspired cuisine twice monthly. DMAC was also able to utilize some VSHSL funds in support of the successful EATS program.

We continue the implementation of this grant, and King County has been quite supportive in allowing the necessary shift in services. We participate in regular planning meetings with our CASC partner, and have creative ideas for the remainder of this grant – to include highlighting Des Moines area restaurants, education through a variety of culture's foods, adding cultural outreach services, and virtual engagement through exercise, education, and crafts until we are able to safely gather in person.

Alternatives:

Reject grant funding. (Not recommended).

Financial Impact:

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

Recommendation:

Staff recommends approval of this grant agreement as presented.

KING COUNTY COMMUNITY AND HUMAN SERVICES CONTRACT – 2021/2022

Contractor Des Moines-Normandy Park Senior Activity Center
 Project Title ASD Contracted Services
 Contract Amount \$ 329,094
 Contract Period From: 01/01/2021 To 12/31/2023
 DUNS No. (if applicable) 79270443 SAM No. (if applicable) _____

THIS CONTRACT No. 6204654 is entered into by KING COUNTY (the "County"), and Des Moines-Normandy Park Senior Activity Center (the "Contractor") whose address is 2045 S 216th, Des Moines, WA 98198.

FUNDING SOURCES	FUNDING LEVELS	EFFECTIVE DATES
COUNTY	\$329,094	01/01/2021 - 12/31/2023
TOTAL	\$329,094	01/01/2021 - 12/31/2023

WHEREAS, the County has been advised that the foregoing are the current funding sources, funding levels and effective dates, and

WHEREAS, the County desires to have certain services performed by the Contractor as described in this Contract,

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties mutually agree as follows:

1. Contract Services and Requirements, and Incorporated Exhibits.

The Contractor shall provide services and meet the requirements included in this Contract and in the following attached exhibits, each of which is incorporated herein by this reference:

EXHIBIT NAME	EXHIBIT NUMBER
Des Moines Normandy Park Senior Activity Center - Senior Hubs - VSHSL - SE3	Exhibit I

2. Contract Term

- A. This Contract shall begin on 01/01/2021, and shall terminate on 12/31/2023, unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

3. Compensation and Method of Payment

A. Compensation:

The County shall compensate the Contractor for satisfactory completion of the services and requirements as specified in this Contract and its attached exhibit(s).

B. Invoicing:

The Contractor shall submit invoices and all accompanying reports as specified in the attached exhibit(s), including its final invoice and all outstanding reports. The County shall endeavor to make payment not more than 30 days after a complete and accurate invoice is received.

C. Final Invoice:

The Contractor shall submit its final invoice and all outstanding reports as specified in this contract and its attached exhibit(s). If the Contractor's final invoice and reports are not submitted as required, the County will be relieved of all liability for payment to the Contractor of the amounts set forth in the final invoice or any later invoice.

D. Reimbursement for Travel:

The Contractor will not be reimbursed for travel unless otherwise specified within an Exhibit.

4. Internal Control and Accounting System

The Contractor shall establish and maintain a system of accounting and internal controls that complies with the generally accepted accounting principles issued by the Financial Accounting Standards Board (FASB), the Governmental Accounting Standards Board (GASB), or both as is applicable to the Contractor's form of doing business.

5. 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 Contractor, by signature to this Contract, certifies that the Contractor is not currently debarred, suspended, or proposed for debarment, by any Federal department or agency. The Contractor also agrees that it will not enter into a subcontract with a person or entity that is debarred, suspended, or proposed for debarment. The Contractor will notify King County if it, or a subcontractor, is debarred, suspended, or proposed for debarment, by any Federal department or agency. Debarment status may be verified at <https://www.sam.gov/>.

6. Maintenance of Records

A. Accounts and Records:

The Contractor shall maintain for a period of six years after termination of this Contract accounts and records, including personnel, property, financial, and programmatic records and other such records the County may deem necessary to ensure proper accounting and compliance with this Contract.

B. Nondiscrimination and Equal Employment Records:

In accordance with the nondiscrimination and equal employment opportunity requirements set forth in Section 17. below, the Contractor shall maintain the following for a period of six years after termination of this Contract:

- i. Records of employment, employment advertisements, application forms, and other data, records and information related to employment, applications for employment or the administration or delivery of services or any other benefits under this Contract; and
- ii. Records, including written quotes, bids, estimates or proposals, submitted to the Contractor by all entities seeking to participate in this Contract, and any other information necessary to document the actual use of and payments to subcontractors and suppliers in this Contract, including employment records.

The County may visit the site of the work and the Contractor's office to review these records. The Contractor shall provide all help requested by the County during such visits and make the foregoing records available to the County for inspection and copying. At all reasonable times, the Contractor shall provide to the County, the state, and/or federal agencies or officials access to its facilities—including those of any subcontractor assigned any portion of this Contract in order to monitor and evaluate the services provided under this Contract. The County will give reasonable advance notice to the Contractor in the case of audits to be conducted by the County. The Contractor shall comply with all record keeping requirements of any applicable federal rules, regulations or statutes included or referenced in the contract documents. If different from the Contractor's address listed above, the Contractor shall inform the County in writing of the location of its books, records, documents, and other evidence for which review is sought, and shall notify the County in writing of any changes in location within 10 working days of any such relocation.

7. Evaluations and Inspections

A. Subject to Inspection, Review, or Audit:

The records and documents with respect to all matters covered by this Contract shall be subject at all time to inspection, review, or audit by the County and/or federal/state officials authorized by law during the performance of this Contract and for six years after termination hereof, unless a longer retention period is required by law.

B. Medical Records:

If applicable, medical records shall be maintained and preserved by the Contractor in accordance with state and federal medical records statutes, including but not limited to Revised Code of Washington (RCW) [70.41.190](#), [70.02.160](#), and standard medical records practice. The Contractor shall also be responsible for the maintenance and disposal of such medical records.

C. Contract Performance Monitoring:

The Contractor and the County shall engage in monitoring visits to assess the Contractor's compliance with reasonably expected levels of performance, quality, and practice. The County will execute monitoring visits in accordance with the applicable frequency, as prescribed by the controlling Exhibit under this Contract. The Contractor shall cooperate with the County and its agents to assess the Contractor's performance under this Contract and to make available all information reasonably required by any such performance measurement and evaluation processes. At the request of the County, the Contractor shall implement a plan to remedy any items of noncompliance identified during the monitoring process.

The results and records of these processes shall be maintained and disclosed in accordance with [RCW Chapter 42.56](#).

D. Unauthorized Disclosure:

The Contractor agrees that all information, records, and data collected in connection with this Contract shall be protected from unauthorized disclosure in accordance with applicable state and federal law.

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

The Contractor shall not use protected health information created or shared under this Contract in any manner that would constitute a violation of HIPAA and any regulations enacted pursuant to its provisions. Contractor shall read and maintain compliance with all HIPAA requirements at <https://www.kingcounty.gov/depts/community-human-services/contracts/requirements.aspx>.

9. **Financial Report Submission**

The Contractor is required to submit a financial reporting package as described in A through C below. All required documentation must be submitted by email to DCHSContracts@kingcounty.gov by the stated due date.

- A. If the Contractor is a Non-Federal entity as defined in 2 CFR Part 200.69, and expends \$750,000 or more in Federal awards during its fiscal year, then the Contractor shall meet the audit requirements in 2 CFR Part 200 Subpart F. Audit packages are due to the County within nine months after the close of the Contractor's fiscal year.
- B. If the Contractor is a local government in the State of Washington and is not subject to the requirements in subsection A, the Contractor shall submit audited financial statements that are in accordance with the Washington State Auditor's Office requirements. Financial statement audits are due to the County within 150 days after the close of the Contractor's fiscal year end as required by RCW 43.09.230.
- C. If the Contractor is not subject to the requirements in subsection A or B, the following apply:

Entity Type	Non-Profit		For Profit	
Gross Revenue	Gross Revenue Under <u>\$3M</u> on	Gross Revenue Over <u>\$3M</u> on	Gross Revenue Under <u>\$3M</u> on	Gross Revenue Over <u>\$3M</u> on

	average in the previous three fiscal years.	average in the previous three fiscal years.	average in the previous three fiscal years.	average in the previous three fiscal years.
Required Documentation	- Form 990 within 30 days of its being filed; and - A full set of annual internal financial statements	Audited financial statements prepared by an independent Certified Public Accountant or Accounting Firm	- Income tax return; and - A full set of annual internal financial statements	Audited financial statements prepared by an independent Certified Public Accountant or Accounting Firm
Due Date	Within 30 calendar days from the forms being filed.	Within nine months following the close of the Contractor's fiscal year.	Within 30 calendar days from the forms being filed.	Within nine months following the close of the Contractor's fiscal year.

D. Waiver:

A Contractor that is not subject to the requirements in subsection A may, in extraordinary circumstances, request, and in the County's sole discretion be granted, a waiver of the audit requirements. Such requests are made to the County at:

DCHSContracts@kingcounty.gov for review. If approved by the County, the Contractor may substitute for the above requirements other forms of financial reporting or fiscal representation certified by the Contractor's Board of Directors, provided the Contractor meets the following criteria:

- i. Financial reporting and any associated management letter show no reportable conditions or internal control issues; and
- ii. There has been no turnover in key staff since the beginning of the period for which the financial reporting was completed.

10. Corrective Action

If the County determines that the Contractor has failed to comply with any terms or conditions of this Contract, or the Contractor has failed to provide in any manner the work or services (each a "breach"), and if the County determines that the breach warrants corrective action, the following procedure will apply:

A. Written Notification:

The County will notify the Contractor in writing of the nature of the breach.

B. Contractor's Corrective Action Plan:

The Contractor shall respond with a written corrective action plan within ten working days of its receipt of such notification unless the County, at its sole discretion, extends in writing the response time. The plan shall indicate the steps being taken to correct the specified breach and shall specify the proposed completion date for curing the breach. This date shall not be more 30 days from the date of the Contractor's response, unless

the County, at its sole discretion, specifies in writing an extension to complete the corrective actions.

C. County's Determination of Corrective Action Plan Sufficiency:

The County will determine the sufficiency of the Contractor's proposed corrective action plan, then notify the Contractor in writing of that determination. The determination of sufficiency of the Contractor's corrective action plan shall be at the sole discretion of the County.

D. Termination or Suspension:

If the Contractor does not respond within the appropriate time with a corrective action plan, or the Contractor's corrective action plan is determined by the County to be insufficient, the County may terminate or suspend this Contract in whole or in part pursuant to Section 12.

E. Withholding Payment:

In addition, the County may withhold any payment to the Contractor or prohibit the Contractor from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed; and

F. Non-Waiver of Rights:

Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section 12, Subsections B, C, D, and E.

11. Dispute Resolution

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

12. Termination

A. Termination for Convenience:

This Contract may be terminated by the County without cause, in whole or in part, at any time during the term specified in Subsection 2. above, by providing the other party 30 calendar days advance written notice of the termination. The Contract may be suspended by the County without cause, in whole or in part, at any time during the term specified in Subsection 2. above, by providing the Contractor 30 calendar days advance written notice of the suspension.

B. Termination for Default:

The County may terminate or suspend this Contract, in whole or in part, upon seven business days advance written notice if: (1) the Contractor breaches any duty, obligation, or service required pursuant to this Contract and either (a) the corrective action process described in Section 10 fails to cure the breach or (b) the County determines that requiring a corrective action plan is impractical or that the duties, obligations, or services

required herein become impossible, illegal, or not feasible. If the Contract is terminated by the County pursuant to this Subsection 12.B., the Contractor shall be liable for damages, including any additional costs of procuring similar services from another source.

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

C. Termination for Non-Appropriation:

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth above in Subsection 2., the County may, upon seven business days advance written notice to the Contractor, terminate or suspend this Contract in whole or in part.

If the Contract 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 Contract for services rendered prior to the effective date of termination or suspension; and (2) the Contractor shall be released from any obligation to provide such further services pursuant to the Contract as are affected by the termination or suspension.

Funding or obligation under this Contract beyond the current appropriation year is conditional upon appropriation by the County Council and/or other identified funding source(s) of sufficient funds to support the activities described in the Contract. If such appropriation is not approved, this Contract will terminate at the close of the current appropriation year. The current funding sources associated with this Contract are specified on page one.

If the Contract is suspended as provided in this Section, the County may provide written authorization to resume activities.

D. Non-Waiver of Rights:

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

13. Hold Harmless and Indemnification

A. Duties as Independent Contractor:

In providing services under this Contract, the Contractor is an independent contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The Contractor 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 Contractor, its employees, and/or others by reason of this Contract.

The Contractor shall protect, indemnify, defend 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 Contractor's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Contractor of work, services, materials, or supplies by Contractor employees or other suppliers in connection with or support of the performance of this Contract.

B. Contractor's Duty to Repay County:

The Contractor 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 Contract, by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay the County shall not be diminished or extinguished by the termination of the Contract.

C. Contractor Indemnifies County:

To the maximum extent permitted by law, the Contractor shall protect, defend, indemnify, and save 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 Contractor, its officers, employees, subcontractors and/or agents, in its performance or non-performance of its obligations under this Contract. The Contractor agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Contractor, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under any industrial insurance act, including [Title 51 RCW](#), other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the County and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to its indemnity obligation; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. [Title 51 RCW](#). If the County incurs any judgment, award, and/or cost arising therefrom including reasonable attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Contractor.

D. County Indemnifies Contractor:

To the maximum extent permitted by law, the County shall protect, defend, indemnify, and save harmless the Contractor, 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, and/or agents, in its performance and/or non-performance of its obligations under this Contract. The County agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the County, by mutual negotiation, hereby waives, as respects the Contractor only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of [Title 51 RCW](#). In the event the Contractor incurs any judgment, award, and/or cost arising therefrom including reasonable attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the County.

E. Intellectual Property Infringement:

For purposes of this section, 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.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

14. Insurance Requirements

Contractor shall provide evidence of the insurance required under this Contract, including a proof of coverage letter including full coverage and policy limits within 10 business days of signing the contract. Evidence of Insurance shall be submitted by email to DCHSContracts@kingcounty.gov. The Contractor may request additional time to provide the required documents by emailing DCHSContracts@kingcounty.gov. Extensions will be granted at the sole discretion of DCHS.

The costs of such insurance shall be paid by the Contractor or subcontractor. The Contractor may furnish separate certificates of insurance and policy endorsements for each subcontractor as evidence of compliance with the insurance requirements of this Contract. Any provision in any Contractor or subcontractor insurance policy that restricts available limits of liability in a written agreement or contract shall not apply. The Contractor is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Contractor, its agents, employees, officers, subcontractors, providers or provider subcontractors to comply with the insurance requirements stated herein shall constitute a material breach of this Contract. Specific coverage types and limit requirements can be found by visiting <https://www.kingcounty.gov/depts/community-human-services/contracts/requirements/insurance.aspx>.

15. Assignment

Contractor shall not assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the County. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party upon the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

16. Subcontracting

A. Written Consent of the County:

The Contractor shall not subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the County. The County's consent must be sought in writing by the Contractor not less than 15 days prior to the date of any proposed subcontract.

The rejection or approval by the County of any Subcontractor or the termination of a Subcontractor will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the County.

In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to the County for any breach in the performance of Contractor's duties.

The County has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

B. "Subcontract" Defined:

"Subcontract" shall mean any agreement between the Contractor and a subcontractor or between subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (1) support services not related to the subject matter of this Contract, or (2) supplies.

C. Required Clauses for Subcontracts:

The Contractor shall include Section 4, 5, 6, 7, 8, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28 and 29, in every subcontract or purchase agreement for services that relate to the subject matter of this Contract.

D. Required Language for Subcontracts:

The Contractor shall include the following language verbatim in every subcontract for services which relate to the subject matter of this Contract:

"Subcontractor 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 subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that King County is a third-party beneficiary to its Contract with Contractor and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph."

17. Nondiscrimination and Payment of a Living Wage

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

B. Nondiscrimination:

During performance of the Contract, the Contractor shall not discriminate against any employee or applicant for employment because of the employee's 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 Contractor will make equal employment opportunity efforts to ensure that applicants and employees are treated equitably, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Contractor shall additionally read and comply with all additional requirements set forth at:

<https://www.kingcounty.gov/depts/community-human-services/contracts/requirements.aspx>.

C. Payment of a Living Wage:

In accordance with [King County Living Wage Ordinance 17909](#), for contracts for services with an initial or amended value of \$100,000 or more, the Contractor shall pay, and require all Subcontractors to pay, a living wage to employees for each hour the employee performs a Measurable Amount of Work on this Contract. The requirements of the ordinance, including payment schedules, are detailed at <https://www.kingcounty.gov/depts/finance-business-operations/procurement/about-us/Living-Wage.aspx>.

Violations of this requirement may result in disqualification of the Contractor from bidding on or being awarded a County contract for up to two years; contractual remedies including, but not limited to, liquidated damages and/or termination of the Contract; remedial action as set forth in public rule; and other civil remedies and sanctions allowed by law.

18. Conflict of Interest

Entering into this Contract with the County requires that the Contractor agree to abide by certain provisions of the King County Employee Code of Ethics, including those relating to conflicts of interest and the employment of current or former County employees.

A. Compliance with King County Code of Ethics:

The Contractor shall comply with applicable provisions of [King County Code \(KCC\) 3.04](#). Failure to comply with such requirements shall be a material breach of this contract, and may result in termination of this Contract and subject the Contractor to the remedies stated in this contract, or otherwise available to the County at law or in equity.

B. Penalties:

The Contractor 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 Contractor acknowledges that if it is found to have violated the prohibition found in this paragraph, its current contracts with the county will be cancelled and it shall not be able to bid on any County contract for a period of two years.

C. Former King County Employees:

The Contractor acknowledges that, for one year after leaving County employment, a former County employee may not have a financial or beneficial interest in a contract or grant that was planned, authorized, or funded by a County action in which the former County employee participated during County employment. Contractor 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 Contract. Failure to identify current or former County employees involved in this transaction may result in the County's denying or terminating this Contract. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

19. Equipment Purchase, Maintenance, and Ownership

A. Equipment Maintenance:

The Contractor agrees that when Contract funds are used to pay for all or part of the purchase costs of any equipment that costs \$5,000 or more per item, and the purchase of such equipment is identified in an exhibit to this Contract, such equipment is, upon the purchase or receipt, the property of the County and/or federal/state government. The Contractor shall be responsible for all proper care and maintenance of the equipment, including securing and insuring such equipment.

B. Equipment Ownership:

The Contractor shall ensure that all such equipment is returned to the County or federal/state government upon termination of this Contract unless otherwise agreed upon by the parties.

20. Proprietary Rights

A. Ownership Rights of Materials Resulting from Contract:

Except as indicated below or as described in an Exhibit, the parties to this Contract hereby 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 County. To the extent that any rights in such materials vest initially with the Contractor by operation of law or for any other reason, the Contractor hereby perpetually and irrevocably assigns, transfers and quitclaims such rights to the County. The County agrees to and does hereby grant to the Contractor a perpetual, irrevocable, nonexclusive, and royalty-free license to use and create derivative works, according to law, any material or article and use any method that may be developed as part of the work under this Contract.

B. Ownership Rights of Previously Existing Materials:

The Contractor shall retain all ownership rights in any pre-existing patentable or copyrightable materials or articles that are delivered under this Contract, but do not originate from the work described herein. The Contractor agrees to and does hereby grant to the County a perpetual, irrevocable, nonexclusive, and royalty-free license to use and create derivative works, according to law, any pre-existing material or article and use any method that may be delivered as part of the work under this Contract.

C. Continued Ownership Rights:

The Contractor shall sign all documents and perform other acts as the County deems necessary to secure, maintain, renew, or restore the rights granted to the County as set forth in this section.

21. Political Activity Prohibited

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

22. King County Recycled Product Procurement Policy

If paper copies are required, in accordance with [KCC 18.20](#), the Contractor shall use recycled paper, and both sides of sheets of paper whenever practicable, when submitting proposals, reports, and invoices.

23. Future Support

The County makes no commitment to support contracted services and assumes no obligation for future support of the contracted activity(-ies), except as expressly set forth in this Contract.

24. Entire Contract

The parties agree that this Contract is the complete expression of the described subject matter, 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 this Contract.

25. Contract Amendments

Either party may request changes to this Contract. Proposed changes that are mutually agreed upon shall be incorporated only by written amendments to this Contract.

26. Notices

Whenever this Contract provides for notice by one party to another, such notice shall be in writing and directed to each party's contact representative indicated within the contract exhibits. Any time within which a party must take some action shall be computed from the date that any associated required notice is received by that party.

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

The Contractor and any subcontractor 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 Contract, all of which are incorporated herein by reference.

If there is an irreconcilable conflict between any of the language contained in any exhibit or attachment to this Contract, the language in the Contract shall control over the language contained in the exhibit or the attachment, unless the exhibit provision expressly indicates that it controls over inconsistent contract language. If there is conflict among requirements set forth in exhibits, language contained in the lower numbered exhibit shall control unless the higher numbered exhibit provision expressly indicates that it controls over inconsistent lower numbered exhibit language.

28. Applicable Law

This Contract 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.

29. No Third-Party Beneficiaries

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

30. Non-Waiver of Breach

Waiver of any default shall not be deemed to be a waiver of any subsequent default. No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County modify the terms of the Contract or constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

31. Force Majeure

"Force Majeure" means an event or events beyond the parties' reasonable control, incurred not as a product or result of the negligence of the afflicted party, and which have a materially adverse effect on the ability of such party to perform its obligations as detailed in this Contract. Force Majeure events may include, but are not limited to: Acts of God or Nature; war; civil, military, public, or industrial disturbances; acts or threats of terrorism; epidemics, fire, flood or other casualty; labor difficulties, shortages of labor or materials or equipment; government regulations; delay by government or regulatory agencies; shutdowns for purpose of emergency repairs, and/or unusually severe weather.

A. No Breach if Force Majeure Applies:

Neither party shall be considered in breach of this Contract to the extent that performance of their respective obligations is prevented by a Force Majeure event upon giving notice and reasonably full particulars to the other party.

B. Duty to Minimize Disruption and Give Notice:

Parties maintain an express duty to minimize the disruption caused by Force Majeure, and shall, as soon as reasonably practicable, give notice to the other party of the nature and impact of the Force Majeure. Irrespective of any extension of time, if the effect of an event or series of events continues for a period of 180 days, either the County or the Contractor may give to the other a notice of suspension or termination.

C. Extension of Time:

Should Force Majeure events delay the Contractor's completion of the deliverables and performance commitments, the Contractor may be entitled to an extension for the time for completion. Any extension must be approved in writing by the County.

D. Suspending Performance:

Should a Force Majeure event prevent the Contractor from completing deliverables or performing commitments in this Contract, the completion or performance shall be suspended only for the time and to the extent commercially practicable to restore normal operations. Further, the Contractor and the County shall endeavor to continue to perform

their contractual obligations to the extent reasonably practicable and will work to adjust deliverables or performance commitments as needed to continue the provision of services during the Force Majeure event. Contractor may be reimbursed for any costs incurred mitigating adverse impacts of the Force Majeure and may be compensated for any partial work that has been completed.

32. Emergency Response Requirements

Within three months of the execution of this Contract, the Contractor shall prepare and make available to the County upon request, the necessary plans, procedures and protocols to:

- A. Respond to and recover from a natural disaster or major disruption to Contractor operations such as a work stoppage.
- B. Continue operations during a prolonged event such as a pandemic.

If the Contractor does not have any such plan as of the start of this Contract, the Contractor may request (i) an extension of the time needed to create a plan, and (ii) for assistance from the County in preparing such a plan.

At a minimum, any plans, procedures, or protocols described in this section must include how the Contractor plans to continue to provide the services described in or funded by this Contract.

33. Contractor Certification

By signing this Contract, the Contractor certifies that, in addition to agreeing to the terms and conditions provided herein, it has read and understands the contracting requirements on the DCHS website at <https://www.kingcounty.gov/depts/community-human-services/contracts/requirements.aspx> and agrees to comply with all of the contract terms and conditions detailed on that site, including applicable Emergency Response , EEO/Nondiscrimination, HIPAA, Insurance, and Credentialing requirements.

IN WITNESS WHEREOF, the parties hereby agree to the terms and conditions of this Contract:

KING COUNTY

DES MOINES-NORMANDY PARK
SENIOR ACTIVITY CENTER

FOR

King County Executive

Signature

Date

Name (Please type or print)

Date

EXHIBIT I
DES MOINES NORMANDY PARK SENIOR ACTIVITY CENTER
VSHSL SOCIAL ENGAGEMENT STRATEGY 3:
AFRICAN DIASPORA SENIOR HUB
EXHIBIT PERIOD: JANUARY 1, 2021 – DECEMBER 31, 2023

I. WORK STATEMENT

The Contractor shall provide oversight, coordination and implementation of the AFRICAN DIASPORA SENIOR HUB. The total amount of reimbursement pursuant to this Exhibit shall not exceed \$329,094 for the Exhibit Period noted above as shown in the funding table below. Funding for investment in this program is provided by the King County Veterans, Seniors and Human Services Levy (VSHSL) and is managed by the Adult Services Division (ASD) of the King County Department of Community and Human Services (DCHS), which has the responsibility for achieving and monitoring the overall outcomes. Ongoing funding for the full period of the Exhibit and the award period as outlined in the award letter shall be contingent on the Contractor's implementation of the program as described, timely achievement of the contract milestones outlined below, continued funding availability and other contractual requirements contained in the Exhibit.

ASD Result Area Alignment	Funding Period	Fund Source	Funding Allocation
Social Engagement	01/01/2021 – 12/31/2021	2021 VSHSL Fund - Seniors	<u>\$81,803</u>
		2021 VSHSL Fund - Veterans	<u>\$22,258</u>
	01/01/2022 – 12/31/2022	2022 VSHSL Fund - Seniors	<u>\$85,428</u>
		2022 VSHSL Fund - Veterans	<u>\$25,788</u>
	01/01/2023 – 12/31/2023	2023 VSHSL Fund - Seniors	<u>\$87,147</u>
		2023 VSHSL Fund - Veterans	<u>\$26,670</u>
Not to Exceed			<u>\$329,094</u>

II. PROGRAM DESCRIPTION

King County's overarching goal is to ensure that all people, regardless of who they are and where they live, have the opportunity to thrive, with full and equal access to opportunities, power and resources. ASD, in its partnership with DES MOINES NORMANDY PARK SENIOR ACTIVITY CENTER, shares a commitment to contributing to community-level change and individual-level impact in the division's five result areas:

- Financial Stability
- Healthy Living
- Housing Stability
- Service System Access and Improvement
- Social Engagement.

Accordingly, the parties will work together to perform and report the services funded under this Exhibit in a manner that contributes to the equity goals of the County described herein.

As community gathering places that provide older adults with opportunities for social engagement, provide resources and assistance, and offer participants a sense of belonging, senior centers offer an antidote to social isolation for older adults and caregivers in our communities. However, lack of flexible funding and long-term cuts to available senior centers have prevented them from fully realizing a vision of becoming strategic places of social engagement from which to holistically deploy strategies for financial stability, housing stability, human service system access, and healthy living.

Based on the growing scientific understanding of the risks of isolation, King County seeks to support senior centers in becoming vibrant and inclusive Senior Hubs that expand outreach to isolated seniors and support opportunities for engagement among King County's diverse community of seniors. This strategy promotes belonging where systems, biases, miscommunications and/or cultural differences too often isolate.

A. Program Activities

The Contractor shall serve as a partner in the AFRICAN DIASPORA SENIOR HUB ("Senior Hub"), providing opportunities for seniors and/or their caregivers and senior veterans and military servicemembers and their respective families who live in the greater Des Moines and Normandy Park communities, and seniors in the African Diaspora ("Focus Population"), to experience social engagement and connection, engage in activities that promote healthy aging, and access resources that support seniors to live in their communities of choice.

1. The Contractor shall operate as a **Senior Center** as follows:
 - a. Senior Centers shall provide at least three of the following services:
 - i. Food and nutrition programs, and/or congregate (shared) meals;

- ii. Social activities;
 - iii. Information and assistance that connects individuals to aging networks and services;
 - iv. Educational opportunities for enrichment and life-planning;
 - v. Celebratory events for holidays, birthdays, cultural experiences, etc.; and/or
 - vi. Health promotion, wellness and fitness.
- b. Senior Center services shall be ongoing and offered on a regular basis, but do not need to be at the same location every day. The Contractor's senior center may meet or provide services at different locations on different days, as long as there is a consistent schedule easily accessed by intended, eligible participants and community organizations who can depend upon the Contractor to host a senior center at a specified location on any specific day.
 - c. The Contractor shall staff programs as needed to support delivery of services.
 - d. The Contractor shall exercise all due care and diligence and take all reasonable steps to ensure the values, conduct, and associations of any subcontractors or third parties delivering services to participants do not conflict with the VSHSL Levy's Guiding Principles, the work described in this Exhibit, or King County's prioritization of racial equity and social justice.
2. The Contractor shall operate as a **Senior Hub** by providing the following services:
- a. Provide Senior Center services named in Section II.A.1.a. above at least five (5) days a week as a Senior Hub.
 - b. Cultural competency: In order to effectively operate and provide services with cultural competency, a contractor maintains a defined set of values and principles, and demonstrates behaviors, attitudes, policies, and structures that enable said contractor to work in cross-cultural situations. As such, the three following components must exist:
 - i. Accessibility: the Contractor evaluates and modifies the way in which its services are accessible (language, location, delivery style) to populations whose modes of engagement are different than the majority population.
 - ii. Relevance: the Contractor identifies specific culturally-based needs of populations and modifies the services delivered in order to meet those needs, including acquiring and institutionalizing cultural knowledge.

- iii. Commitment: the Contractor periodically conducts a self-assessment and reviews its cultural competency, including obtaining input from participants and non-participant culturally diverse populations and key stakeholders and uses this feedback in policy making, contractor administration, and service delivery.
- c. Culturally responsive and reflective: An approach and/or programming that honors and engages the history, beliefs, traditions, and values of those whom are served; implements the approach and programming with staffing that share same cultural, racial, and/or ethnic background of those whom are served.
- d. Conducting culturally competent focus population-specific outreach to increase participation and provide opportunities for inclusive social engagement for seniors who might otherwise remain isolated or disengaged.
- e. Conducting culturally competent outreach to increase participation and provide opportunities for inclusive social engagement for senior veterans, military servicemembers and their respective families.
- f. Conducting culturally competent outreach to increase participation and provide opportunities for inclusive social engagement for senior veterans, military servicemembers and their respective families.
- g. Providing guided coordination, connections, and active navigation of referrals between the Senior Hub and King County Veterans Program with offices located in Seattle and Tukwila for senior veterans, military servicemembers and their respective families.
- h. Providing guided coordination, connections, and active navigation of referrals between the Senior Hub and King County Veterans Program with offices located in Seattle and Tukwila for senior veterans, military servicemembers and their respective families.
- i. Engaging with isolated seniors who may otherwise choose not to visit the physical space(s) where the Senior Hub is located.
- j. Providing guided connections and active navigation of referrals between the Senior Hub and other specified VSHSL-funded service providers, as appropriate and as agreed upon on a case-by-case basis in partnership with King County.

- k. Actively collaborate and coordinate with members of the Senior Hub Collaborative to share resources, including but not limited to web-access resources and outreach tools.
 - l. Coordinating with other community organizations to expand the services available through the Senior Hub.
 - m. Increasing knowledge of and/or participation in Community Living Connections.
 - n. Representing the voice of the seniors served by the Senior Hub in other human service collaboratives, on issues such as transportation, food access and housing, as appropriate and as agreed upon on a case-by-case basis in partnership with King County.
 - o. Prioritize participation in racial equity trainings and other trainings in partnership with and as directed by King County.
 - p. Share and present at Senior Hubs Learning Collaborative meetings on identified area(s) of respective hub expertise, as identified by the Contractor.
3. Contractor shall collaborate with the other partners of the AFRICAN DIASPORA HUB **Senior Hub** to expand the services and supports available to seniors within the geographic or population area of focus, including:
- a. Participating with the other partners in the following AFRICAN DIASPORA SENIOR HUB **Senior Hub** activities (same for all partners):
 - i. Programming and outreach specific to the needs of seniors from the African Diaspora and their caregivers to provide services, resources, and social engagement.
 - ii. Sharing of staff between hub partners.
 - iii. Collaborative program development and implementation; joint marketing and outreach.
 - iv. Developing agreements that outline services, resources, coordination, and connection between the African Diaspora Senior Hub and African-focused community-based organizations.
4. As a **Senior Hub partner**, the Contractor shall take the lead on the following Senior Center activities:
- a. Programming and outreach specific to the needs of senior veterans and military servicemembers and their respective families to ensure low barrier access to Senior Hub services, resources, and activities.
 - b. Provide options for seniors in the community to participate in programming and receive outreach services.

- c. Meal programming that includes meals developed that reflect the needs and expectations of seniors from the various cultures of the African Diaspora, including a chef that specializes in African cuisine.
 - d. Outreach and engagement with multicultural, multilingual senior African Diaspora populations.
 - e. Implementation of social work services to senior African Diaspora populations.
- 5. The Contractor shall participate in the Senior Hubs Learning Collaborative, with representation by at least one staff member at each of the scheduled meetings.
 - 6. The Contractor shall plan and adjust for long-term program structures and delivery with DCHS review and approval that adhere to current public health guidance and government orders meant to stop the spread of the COVID-19 virus, understanding many program participants are in the high-risk category of susceptibility to the virus. Best efforts shall be made to engage isolated seniors and respond to their diverse needs.
 - 7. The Contractor shall work with King County staff to create a referral protocol (the "Referral Protocol") with an appropriate entity when identified for the purpose of providing referrals for affordable housing for seniors. The Referral Protocol may be changed upon mutual written agreement of the parties.
 - 8. The Contractor shall work with King County staff to develop a method to collect client satisfaction data ("Client Satisfaction Collection Method").

B. Participant Eligibility

Eligible participants for services are seniors and/or their caregivers and senior veterans, military servicemembers, and their respective families throughout King County meeting the VSHSL's definitions, especially those in the African Diaspora community (Focus Populations).

C. Definitions

- 1. DCHS web-referenced definitions for the following terms used within this Exhibit can be found at <https://kingcounty.gov/VSHSL-definitions>.
 - a. Caregiver
 - b. Implementation Plan
 - c. Military Servicemember
 - d. Resilient Communities
 - e. Senior
 - f. Veteran

- g. Veteran Family
- 2. Definitions for the following terms used within this Exhibit can be found in the VSHSL Implementation Plan at <https://kingcounty.gov/VSHSL-Implementation-Plan>.
 - a. Financial Stability
 - b. Healthy Living
 - c. Housing Stability
 - d. Service System Access and Improvement
 - e. Social Engagement
- 3. Definitions for other terms used within this Exhibit:
 - a. Senior Center

For the purposes of this Exhibit, a “**senior center**” is an entity that hosts a dedicated space (physical or web-based) for seniors (persons 55 and older) to gather in order to access services that promote healthy aging and to experience life enrichment, empowerment, belonging, and enjoyment. The space defined as the senior center may be a stand-alone, dedicated building or be part of a larger or shared center that has multiple purposes. That space may also include a series of spaces or locations.
 - b. Senior Hub

For the purposes of this Exhibit, a “**Senior Hub**” is a senior center, or set of partnering senior centers, with the staffing, programmatic, and systems capacity to serve as the recognized resource center on aging services and supports for a focused geographic area and/or specific cultural group(s), including but not limited to the Focus Population. If the Senior Hub consists of partnering senior centers, the times and locations of services may be spread between the partnering centers in order to achieve the level of access required to be considered a Senior Hub. Services need not be equal between each partner and may be structured so as to capitalize on the strengths that each partner brings to the partnership as well as on the needs of the portion of the Focus Population each partner seeks to serve.
 - c. Senior Hubs Learning Collaborative

For the purposes of this Exhibit, the “**Senior Hubs Learning Collaborative**” means a structured forum for supporting best practices and shared learning among the awarded Senior Hubs. All Senior Hub partners will participate. Frequency and format of meetings will be determined in collaboration with all Senior Hubs and King County staff.

D. Contract Milestones

The Contractor shall meet the following milestones during program years 2021-2023:

1. 2021 Milestones

In collaboration with the other partners in the **Senior Hub**, complete the following milestones (same for all partners):

- a. By January 31, 2021: The Performance Measurement and Evaluation (PME) Plan shall be fully developed and formally accepted for the AFRICAN DIASPORA SENIOR HUB. See Section III., PERFORMANCE MEASUREMENT AND EVALUATION.
- b. By February 28, 2021: The Referral Protocol should be agreed upon and be in place through mutual email agreement between King County staff and DES MOINES NORMANDY PARK SENIOR ACTIVITY CENTER staff.
- c. By a timeline to be determined by King County within the PME Plan, the Contractor shall administer the Client Satisfaction Collection Method.
- d. By March 31, 2021:
 - i. Identify community-based or faith-based organizations with which to pursue agreements related to reaching isolated seniors. and begin planning for a workshop for faith-based community collaborators providing information on services, supports, resources available through the Senior Hub.
- e. By September 30, 2021:
 - i. Complete training program(s) between Central Area Senior Center (CASC), and other partners: "Bridging Cultures" training webinar.
- f. By December 31, 2021:
 - i. Complete scheduled programming for Senior Fitness Dance and Card & Game sessions, and other joint activities.
 - ii. Complete scheduled hub partner convenings.
 - iii. Complete planned outreach efforts, communications, and introductions within the community to foster shared commitment to the community.

As a **Senior Hub partner**, complete the following milestones specific to the Contractor:

- g. By December 31, 2021 the Contractor will:
 - i. Complete recruitment for Cultural Outreach Coordinator.

- ii. Complete planned Social Worker programming to provide services to new and existing clients and support Des Moines current volunteer social worker.
- iii. Complete planning for MySeniorCenter software implementation.
- iv. Complete planning and implementation of Ramadan meal program.
- v. Complete planning and implementation of Kwanzaa Cultural Event/programming.
- vi. Complete scheduled activities for: Mystery Dinner, Out to Lunch/take-out dining groups, Senior Fitness Dances and education seminars.

2. 2022 Milestones

In collaboration with the other partners in the **Senior Hub**, complete the following milestones (same for all partners):

- a. By June 30, 2022: Develop 2023 milestones in partnership with King County.
- b. By a timeline to be determined by King County within the PME Plan, the Contractor shall administer the Client Satisfaction Collection Method.
- c. By December 31, 2022:
 - i. Complete scheduled programming for Senior Fitness Dance and Card & Game sessions, and other joint activities.
 - ii. Complete scheduled hub partner convenings.
 - iii. Complete planned outreach efforts, communications, and introductions within the community to foster shared commitment to the community.

As a **Senior Hub partner**, complete the following milestones specific to the Contractor:

- d. By December 31, 2022 the Contractor will:
 - i. Complete planning and implementation of Ramadan meal program.
 - ii. Complete planning and implementation of Kwanzaa Cultural Event.
 - iii. Cultural Outreach Coordinator will complete planning for robust programming, activities surrounding African culture, educational

seminars, and continuous quality improvement for outreach efforts.

- iv. Complete evaluation of programming and analyze participant demographic data.

3. 2023 Milestones

In collaboration with the other partners in the **Senior Hub**, complete the following milestones (same for all partners):

- a. By a timeline to be determined by King County within the PME Plan, the Contractor shall administer the Client Satisfaction Collection Method.
- b. By December 31, 2023:
 - i. Complete scheduled programming for Senior Fitness Dance and Card & Game sessions, and other joint activities.
 - ii. Complete scheduled hub partner convenings.
 - iii. Complete planned outreach efforts, communications, and introductions within the community to foster shared commitment to the community.

As a **Senior Hub partner**, complete the following milestones specific to the Contractor:

- c. By December 31, 2023 the Contractor will:
 - i. Complete planning and implementation of Kwanzaa Cultural Event.
 - ii. Complete planning and implementation of Ramadan meal program.
 - iii. Complete evaluation of programming and analyze participant demographic data.

III. PERFORMANCE MEASUREMENT AND EVALUATION

A. Performance Measurement and Evaluation Planning Process

The Contractor shall name a person who will lead performance measurement, evaluation, and continuous quality improvement activities for this Exhibit. A Performance Measurement and Evaluation (PME) Plan shall be co-developed and is intended to provide the Contractor and King County with useful information for decision-making, planning and program management. The Contractor and King County staff shall work collaboratively to identify relevant measures of service delivery, quality and program results and determine the mechanisms by which required information will be collected, managed and reported. King County is responsible for providing a first draft of the PME plan. The PME Plan shall be

considered final after written acceptance is received by both parties. Email communication is sufficient.

B. Performance Measures

Performance measures shall be measured using individual-level and/or aggregate-level data submitted pursuant to this Exhibit. Specific data elements and reporting mechanisms shall be defined in the PME Plan. If deemed necessary, additional evaluation activities, such as focus groups, surveys or more rigorous evaluation projects, may also be included in the PME Plan.

At least one of each type of performance measure (below) shall be included in the final PME Plan. Where there are multiple contractors working on a related program or strategy, the PME Plan may also include at least one strategy-level performance measure.

1. Quantity of service provided: How much did we do?

For example, number of seniors and/or their caregivers served by the Senior Hub each quarter.

2. Quality of service provided: How well did we do it?

For example, percent of Senior Hub participants who identify with the target population for the senior center.

3. How seniors have been impacted: Is anyone better off?

For example, percent of Senior Hub participants who indicate that they feel more connected to their community (from survey or focus group).

Once developed and accepted by each party, the Contractor shall be required to adhere to and perform the reporting and other services described in the PME Plan; provided, however, that the Contractor's failure to meet any specific performance targets or other metrics outlined in the PME Plan shall not constitute a breach of this Contract or this Exhibit.

C. Modification of the PME Plan

Either party may suggest revisions to the PME Plan. The party requesting revisions to the PME Plan (the "Requesting Party") shall submit the suggested changes in writing to the other party (the "Receiving Party").

Within five business days of receipt, the Receiving Party shall review the revised PME Plan. Prior to the expiration of such period, the Receiving Party shall provide a written response to the Requesting Party that the Receiving Party either (i) accepts the revised PME Plan as provided by the Requesting Party, or (ii) makes additional changes to the PME Plan.

If modifications have been requested by the Receiving Party, then the parties shall discuss in good faith the original and subsequent modifications until an acceptable PME Plan has been developed and each party has provided the other with written acceptance of such plan.

IV. PARTNERSHIP AND REPORTING REQUIREMENTS

A. Partnership Activities

1. The Contractor shall work with King County staff to coordinate and align services with other VSHSL-funded organizations and system partners in order to effectively and efficiently administer a set of services that clients may be seeking to access.
2. The Contractor shall participate in regular meetings of levy-funded organizations, if and when these are convened, to improve system connection and coordination of existing services and support best practices and shared learning.
3. The Contractor shall engage in any levy competency trainings offered by King County. These training opportunities shall be offered at no cost to VSHSL-funded providers to help providers attain and maintain key skills and concepts that will support the VSHSL's goals of effectiveness, efficiency and equity.
4. The Contractor shall include an attribution to the VSHSL with the use of the VSHSL logo and/or a statement such as "This program receives funding from the King County Veterans, Seniors and Human Services Levy" in all program marketing materials, digital or hardcopy, developed during this contract period.

B. Reporting Activities

1. The Contractor shall participate in monthly check-ins with King County staff either in person or by phone. Check-ins may be reduced or increased in frequency based on program needs and King County needs to ensure program accountability and the provision of adequate support for the program.
2. The Contractor shall submit a monthly summary of services and progress towards milestones as applicable. This summary shall be submitted with the submission of each invoice provided to King County.
3. Starting on January 1, 2021, the Contractor shall collect individual-level and/or aggregate-level data about services and client outcomes and report to King County on a quarterly basis. Reports are due within ten business days following the end of each quarter of the calendar year. The format and reporting mechanisms for this report shall be provided by King County and be outlined in the PME Plan.
4. The Contractor shall submit an annual narrative progress report to King County on January 15 following each program year. The report shall cover the activities of the previous year (January – December). The format and questions for the annual narrative progress report shall be provided by King County.

5. By the date outlined in the PME Plan, the Contractor shall submit client satisfaction data gathered through the Client Satisfaction Collection Method to King County.
6. The Contractor shall complete a VSHSL-funded wage study in the spring of 2021 and in 2023 to help inform understanding of prevailing wages among nonprofit providers, and how compensation may be contributing to staff satisfaction, turnover and client outcomes. Results of the survey shall be made available to all VSHSL-funded providers.
7. King County reserves the right to request additional supporting documentation or information, as needed, and between reporting periods. A minimum of three business days' notice shall be provided to the Contractor. If the Contractor believes such notice is inadequate to prepare the report, it shall work with King County to adjust the due date for additional requested information.

V. COMPENSATION AND METHOD OF PAYMENT

Regular payment for activities covered by this Exhibit shall be based on (1) meeting the deliverables outlined in the table below, and (2) the Contractor incurring periodic costs and expenses in performing such services as described in Section II.A., PROGRAM DESCRIPTION: Program Activities of this Exhibit greater than or equal to the periodic payment listed in the table below. Also, by entering into the contract, the Contractor is agreeing to make concerted efforts to meet the program activities and contract milestones as outlined in Section II., PROGRAM DESCRIPTION and program and reporting requirements as outlined in Section IV., PARTNERSHIP AND REPORTING REQUIREMENTS. The Contractor is further required to engage in continuous quality improvement as outlined in the PME Plan in partnership with King County staff. If, through analysis of the required reports and data or through conversations with the Contractor, it is determined that the program model, as described in this Exhibit, is not successfully or sufficiently serving the King County African Diaspora community, the Contractor agrees to work with King County to re-envision the program model, make changes to the PME Plan and pivot, using learnings to improve service delivery. Such adjustments will be documented in an amendment to this Exhibit signed by both parties.

If the Contractor does not meet the agreed upon program activities, deliverables and/or contract milestones during two quarters of the Contract and/or if the Contractor fails to engage with the King County staff to re-envision the program model or make necessary adjustments in order to better serve King County African Diaspora, King County reserves the right to request specified corrective action in writing or, either before such a request is issued or if such a request is unheeded or does not produce improved engagement toward quality improvement, to reduce the contract amount, withhold payment, or terminate the contract in line with notice requirements in this contract's boilerplate.

A. Billing Invoice Package

The Contractor shall submit a Billing Invoice Package (BIP) monthly that consists of a signed invoice statement and other reporting requirements as stated in Section IV., PARTNERSHIP AND REPORTING REQUIREMENTS of this Exhibit in a format approved by King County. The BIP is due within ten business days following the end of each payment period. The total amount of payments to the Contractor for each year of

this Exhibit shall not exceed the yearly funding allocation as noted in the funding table in Section I., WORK STATEMENT, unless otherwise approved by King County in writing.

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

Date Due	Payment Period	Payment / Fund Source		Deliverable
February 12, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable 3. Finalized PME Plan
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
March 12, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
April 14, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Individual-level and/or aggregate level data 3. Summary of services and progress towards milestones as applicable
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
May 14, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
June 14, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
July 15, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of:

Date Due	Payment Period	Payment / Fund Source		Deliverable
		\$6,816	VSHSL Fund - Seniors	1. Accurate invoice 2. Individual-level and/or aggregate level data 3. Summary of services and progress towards milestones as applicable
		\$8,670	Total	
August 13, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
September 15, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
October 14, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Individual-level and/or aggregate level data 3. Summary of services and progress towards milestones as applicable
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
November 15, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
December 14, 2021	Preceding month	\$1,854	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$6,816	VSHSL Fund - Seniors	
		\$8,670	Total	
January 14, 2022	Preceding month	\$1,864	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice
		\$6,827	VSHSL Fund - Seniors	

Date Due	Payment Period	Payment / Fund Source		Deliverable
		\$8,691	Total	2. Individual-level and/or aggregate level data 3. Annual narrative progress report 4. Summary of services and progress towards milestones as applicable
February 14, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
March 14, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
April 14, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Individual-level and/or aggregate level data 3. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
May 13, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
June 14, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
July 15, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of:

Date Due	Payment Period	Payment / Fund Source		Deliverable
		\$7,119	VSHSL Fund - Seniors	1. Accurate invoice 2. Individual-level and/or aggregate level data 3. Summary of services and progress towards milestones as applicable
		\$9,268	Total	
August 12, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
September 15, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
October 14, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Individual-level and/or aggregate level data 3. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
November 15, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
December 14, 2022	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,119	VSHSL Fund - Seniors	
		\$9,268	Total	
January 16, 2023	Preceding month	\$2,149	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice
		\$7,119	VSHSL Fund - Seniors	

Date Due	Payment Period	Payment / Fund Source		Deliverable
		\$9,268	Total	2. Individual-level and/or aggregate level data 3. Annual narrative progress report 4. Summary of services and progress towards milestones as applicable
February 14, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
March 14, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
April 14, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Individual-level and/or aggregate level data 3. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
May 12, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
June 14, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
July 17, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of:

Date Due	Payment Period	Payment / Fund Source		Deliverable
		\$7,262	VSHSL Fund - Seniors	1. Accurate invoice 2. Individual-level and/or aggregate level data 3. Summary of services and progress towards milestones as applicable
		\$9,484	Total	
August 14, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
September 15, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
October 13, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Individual-level and/or aggregate level data 3. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
November 15, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
December 14, 2023	Preceding month	\$2,222	VSHSL Fund - Veterans	On-time completion / submission of: 1. Accurate invoice 2. Summary of services and progress towards milestones as applicable
		\$7,262	VSHSL Fund - Seniors	
		\$9,484	Total	
January 15, 2024	Preceding month	\$2,228	VSHSL Fund - Veterans	On-time completion or submission of: 1. Accurate invoice
		\$7,265	VSHSL Fund - Seniors	

Date Due	Payment Period	Payment / Fund Source	Deliverable
		\$9,493 Total	2. Individual-level and/or aggregate level data 3. Annual narrative progress report 4. Summary of services and progress towards milestones as applicable

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Intergovernmental Land Transfer Agreement Between King County and the City of Des Moines for the transfer of properties, drainage facilities, and easements

ATTACHMENTS:

1. Intergovernmental Land Transfer Agreement between King County and the City of Des Moines
2. Property Transfer List

FOR AGENDA OF: February 11, 2021

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: February 4, 2021

CLEARANCES:

- [] Community Development __N/A__
[] Marina __N/A__
[] Parks, Recreation & Senior Services __N/A__
[X] Public Works R. [Signature]

CHIEF OPERATIONS OFFICER: _____

- [X] Legal /s/ TG
[X] Finance [Signature]
[] Courts __N/A__
[] Police __N/A__

APPROVED BY CITY MANAGER

FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is to request City Council approval of the Intergovernmental Land Transfer Agreement between King County and the City of Des Moines (Attachment 1).

The Agreement sets forth the process by which King County will transfer five properties via quit claim deed, in perpetuity, to the City of Des Moines (Attachment 2). The properties are a combination of drainage tracts, open space tracts, and road related tracts that are currently owned by King County and are located within the Des Moines City limits. These properties should have been included in the original annexation. The following motion will appear on the Consent Calendar:

Suggested Motion

Motion: "I move to approve the Intergovernmental Land Transfer Agreement between the City of Des Moines and King County, and further authorize the City Manager to sign said Intergovernmental Agreement substantially in the form as submitted."

Background

In 1984, “South Des Moines” was annexed by King County to the City and within this incorporation exists the Des Moines Trace Plat. Two tracts, an open space tract and a drainage tract, associated with this Plat were not included in the original annexation property transfer to the City and remained under King County ownership.

The North Fork McSorely Creek Diversion project is a Surface Water Management Capitol Improvement Project that is currently in design. A section of the new diversion storm line will need to be installed across these tracts of Des Moines Trace. City staff contacted King County in an effort to transfer these tracts to the City, as they should have been included in the original annexation. King County agreed to the transfer and prepared the attached Intergovernmental Agreement.

In addition to the Des Moines Trace tracts, King County made it known there are three additional properties in the City that missed their transfer during annexations. In 1995, “North Hill III” was annexed to the City and the Forest Meadows drainage tract was missed in the transfer. In addition, in 1997 “Woodmont/Redondo” was annexed to the City and two road-related tracts along the Redondo Beach Boardwalk were missed as well.

Discussion

With the use of a Quit Claim Deed, the City would assume full and complete ownership of and responsibility for the operation, maintenance, repairs, and any subsequent improvements to the Transferred Property Interests. The City of Des Moines has maintained these properties since their annexations and both City staff and King County believe that it is in the best interest of the public that King County transfer ownership of these properties. This would ensure public properties and public drainage facilities located within Des Moines boundaries are both owned and managed by the same Jurisdiction.

Financial Impact

The properties and tracts will be transferred to the City of Des Moines via Quit Claim Deed at no cost to the City. In addition, because the City has been maintaining and operating these facilities since annexation there would be no additional realized costs after the transfer of ownership.

Alternatives

Council could choose not to approve the proposed motion. This would allow the properties to remain at their status quo. This is not recommended because of the lost benefit of having ownership to conduct Capital Improvement Projects on these properties and finishing the original transfers that should have been made during the annexations.

Recommendation/Conclusion

Staff recommends approval of the proposed motions.

Concurrence

Legal, Public Works and the Finance Departments concur.

**INTERGOVERNMENTAL LAND TRANSFER AGREEMENT BETWEEN KING
COUNTY
AND THE CITY OF DES MOINES FOR THE TRANSFER
OF PROPERTIES, DRAINAGE FACILITIES, AND EASEMENTS**

This Agreement is entered into between the City of Des Moines ("Des Moines" or "City") and King County (the "County") (collectively "the Parties"), to transfer from King County to the City ownership of and responsibility for properties, drainage facilities, and/or easements annexed to the City of Des Moines as legally described in the attached exhibits ("Transferred Property Interests").

WHEREAS, the Parties want to ensure a smooth transfer of County properties and responsibility for property maintenance; and

WHEREAS, Des Moines has an established program of services to address the management of storm and surface water runoff, and

WHEREAS, the City and the County believe that it is in the best interest of the public that King County transfer ownership of and/or responsibility for properties, drainage facilities, and easements located within Des Moines boundaries to the City to be managed under its surface water program, and

WHEREAS, the City and the County further believe that it is in the best interest of the public for the City to take over ownership and responsibility for the operation, safety, and maintenance of certain properties associated with roads and open space; and

WHEREAS, pursuant to RCW 39.33, the Intergovernmental Disposition of Property Act, the parties are each authorized to enter into an agreement for cooperative action;

NOW THEREFORE, the parties agree as follows:

I. Purpose of the Agreement

The purpose of this Agreement is to set forth the process by which King County will transfer to Des Moines, in perpetuity, all of King County's ownership, maintenance, operation, and repair rights and obligations for properties, drainage facilities, and easements within the Des Moines city limits.

II. Administration

- A. The Parties shall each appoint a representative to manage activities covered under this Agreement and to resolve any conflicts that arise ("Administrator") and shall each notify the other in writing of its designated Administrator. The Administrators shall meet as needed. Either Administrator may call a meeting with a minimum of ten (10) calendar days' written notice to the other.
- B. Any conflict that is not resolved by the Agreement Administrators within ten (10) working days of the meeting held to discuss the conflict shall be referred for resolution to the City of Des Moines Public Works Director or designee, and the King County Water and Land Resources (WLR) Division Manager. If the conflict cannot be resolved by the City of Des Moines Public Works Director and the WLR Division Manager, it shall be resolved by the City Manager, or designee, and the Director of the King County Department of Natural Resources (DNR).

III. Identification of Property Interests to be Transferred.

- A. Transferred Property Interests identified by this agreement refer to the following: Drainage Facility Related Properties, Roads Related Properties, and Open Space Properties described in Exhibit One.

IV. Responsibilities of the Parties

- A. Des Moines Responsibilities
 - 1. On the effective date of this Agreement, the City shall assume full and complete ownership of and responsibility for the operation, maintenance, repairs, and any subsequent improvements to the Transferred Property Interests. Responsibilities include all financial responsibilities, including but not limited to financial

responsibility for materials, construction, personnel, payroll, and purchasing costs incurred by the City of Des Moines. The Parties acknowledge that, prior to the execution of this Agreement, the City of Des Moines assumed operation and maintenance responsibility for the Transferred Property Interests when the annexation into the City became effective.

2. The City shall abide by and enforce all terms, conditions, reservations, restrictions, and covenants to title.
3. The City will provide the County access to all relevant information that is maintained by the City in connection with the Transferred Property Interests following transfer if legal action is brought or threatened against the County or the Parties jointly with regard to the Transferred Property Interests.
4. The City will consult with the County before the destruction of any documentation associated with the Transferred Property Interests for a period of seven (7) years.
5. Except for Environmental Claims, the City accepts the Transferred Property Interests "as is." The County makes no warranty concerning such property interests other than as set forth in this Agreement. The City assumes full and complete responsibility for all operations, maintenance, repairs, and improvements for the properties conveyed in this Agreement.

B. King County Responsibilities

1. No later than 90 days after the effective date of this Agreement, the County will convey to the City by quit-claim deed the County-owned properties listed in Exhibit One. A copy of the proposed form of the deed is attached Exhibit Two.
2. No later than 90 days after the effective date of this Agreement, King County will provide the City known and available copies of all warranties, maps, titles, "as built," maintenance logs and records, maintenance and performance standards, and all other records related to the Transferred Property Interests.
3. King County will provide Des Moines access to all relevant information that is maintained by the County in connection with the Transferred Property Interests following transfer if legal action is brought or threatened against the City of Des Moines or the Parties jointly with regard to the Transferred Property Interests.

C. Both Parties

1. Both parties will make staff available to identify and review any additional County-owned properties, drainage facilities, and/or easements to be transferred to the City. Additional County-owned properties, drainage facilities, or easements will be transferred to the City pursuant to this Agreement upon County approval. Documentation of additional facilities, properties, or easements to be transferred will be memorialized by an amendment to this Agreement, pursuant to Section V.B. The County agrees to prepare any additional deeds or transfer documents necessary for the transfer.
2. The records related to matters covered by this Agreement are subject to inspection, review, or audit by either Party at the requesting party's sole expense. The records will be made available for inspection during regular business hours within a reasonable time of the request.

V. General Conditions

- A. This Agreement is effective upon the last date signed by the Parties.
- B. This Agreement may be amended, altered, or clarified only by written agreement of the Parties.
- C. This Agreement is a complete expression of the agreement between the Parties, and any oral or written representations or understandings not incorporated in this Agreement are excluded.
- D. Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement will not be deemed to be a waiver of any other or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless the parties amend this Agreement.

VI. Indemnification and Hold Harmless

- A. Regarding the Transferred Property Interests, except for Environmental Claims, as defined below, King County will indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages for injuries to persons or property damage ("Claims") arising out of the negligent acts or omissions of the County that occurred before the date those Transferred Property Interests were annexed by the City.

- B. Regarding the Transferred Property Interests, except for Environmental Claims, the City will indemnify and hold harmless the County and its elected officials, officers, agents or employees, or any of them, from and against any and all Claims arising out of the negligent acts or omissions of the City that occurred after the date the Transferred Property Interests were annexed by the City.
- C. With respect to Environmental Claims relating to the Transferred Property Interests, nothing in this Agreement is intended to transfer, assign, eliminate, or modify any liability either Party may have to each other or to any other person, or to waive any statutory contribution, cost recovery, or other Claim that either Party may have against the other or against any other person. If the City is notified by the state Department of Ecology, the Environmental Protection Agency, or other regulatory agency on or after the effective date of this Agreement about potential liability, remedial action obligations or other Environmental Claims related to Transferred Property Interests that may implicate or involve the County, the City will promptly notify the County in writing. If the City chooses to conduct an independent remedial action, as defined in MTCA, for which the City may seek contribution or cost recovery from the County, the City will provide the County with a minimum of thirty (30) days advanced written notice prior to incurring any remedial action costs (including investigation costs) and ninety (90) days advanced written notice prior to incurring remedial actions costs for which it may seek reimbursement from the County. For all other Environmental Claims relating to the Transferred Property Interests, each Party agrees to provide the other with a minimum of ninety (90) days advanced written notice prior to asserting an Environmental Claim against the other party. The Parties agree to meet during this notice period to discuss potential remedial actions and resolution of any Claim.
- D. “Environmental Claims” means all Claims arising under any of the following as now or hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq; the Model Toxics Control Act (MTCA), RCW 70.105D; the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq.; or any other federal, state, or local law, including ordinances, rules and regulations, that relates to protection of human health and the environment, and that provides for strict liability and joint and several liability.

- E. For a period of three (3) years following transfer, each Party to this Agreement will notify the other within ten (10) working days of all claims, actions, losses or damages that arise or are brought against that Party relating to the Transferred Property Interests.
- F. Nothing in Section V. shall supersede or modify any existing agreements between the Parties.

VI. Notice

Any notice required to be given under this Agreement will be directed to the Party at the address below. Notice will be considered effective upon receipt or twenty-four hours after mailing, whichever is earlier.

King County:

Department of Natural Resources and Parks
Water and Land Resources Division
201 S. Jackson St., Suite 600
Seattle, WA 98104
Attn: _____

City of Des Moines:

Brandon Carver, Public Works Director
21650 11th Ave S
Des Moines, WA 98198
Attn:
Email: bcarver@desmoineswa.gov

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the _____ of _____, 2020.

KING COUNTY**CITY OF DES MOINES**

Dow Constantine, King County Executive

Michael Matthias, City Manager

Approved as to Form:

Approved as to Form:

Deputy Prosecuting Attorney

Xxxx xxxx, City Attorney

EXHIBIT ONE

Properties To Be Conveyed to the City of Des Moines

King County-Owned Drainage Tracts

Tract B, Des Moines Trace, as per plat recorded in Volume 121 of Plats, pages 91 through 92, records of King County, Washington
(Tax Account No. 201100-0420)

Tract A, Forest Meadows, as per plat recorded in Volume 166 of Plats, pages 94 through 97, records of King County, Washington
(Tax Account No. 259716-0460)

King County-Owned Open Space Tracts

Tract A, Des Moines Trace, as per plat recorded in Volume 121 of Plats, pages 91 through 92, records of King County, Washington
(Tax Account No. 201100-0410)

King County-Owned Roads related Tracts

Redondo Beach Division #1, as per plat recorded in Volume 16 of Plats, page 40, records of King County, Washington, portion described as follows:
 Portion Government Lot 4 lying NWly of Redondo Beach Drive South and lying south of north line of south 30 ft. of Lot 10, Block 5, extended, said plat and lying north of south line of Roosevelt Avenue extended.
(Tax Account No. 720360-0390. Title was transferred to King County by Deed with recording #920228-2084.)

Undivided 2/10 interest in the portion of Government Lot 5, STR 32-22-04, W.M., in King County, Washington, describes as follows:
 Beginning at a stone monument at the intersection of the C/L of Beach Drive with the westerly line of Redondo Beach Div. #1, according to the plat thereof recorded in Vol. 16 of Plats, page 40, in King County, Washington; thence N 13-41-30 W, 16.95 feet to the NWly line of the County Road (Beach Drive South) and the True Point of Beginning (TPOB); thence continuing N 13-41-30 W 65.06 feet, more or less, to the NWly line of said Government Lot; thence S 54-31-10 W along said NWly line 351.73 feet; thence S 13-41-30 E 51.80 feet to the SWly line of said County Road; thence NEly along said NWly line 347.40 feet, more or less to the TPOB;

EXHIBIT ONE continued.

TOGETHER WITH AN undivided 2/10 interest in the Second Class tidelands to the line of mean low tide on the following description of Government meander line:

Beginning at a point on the meander line of Government Lot 5 of STR 32-22-4, W. M, in King County, Washington, distance N 41-57-00 E 198.30 feet from the south meander corner of said Government Lot; thence N 55-00-00 E along said meander line 351.73 feet.

(**Tax Account No. 322204-9126.** Title was transferred to King County by Warranty Deed with recording #951227-1321.)

EXHIBIT TWO**AFTER RECORDING RETURN TO:**

Public Works Director, Brandon Carver
21650 11th Ave S
Des Moines, WA 98198

QUIT CLAIM DEED**GRANTOR – King County, Washington****GRANTEE – City of Des Moines, Washington****LEGAL – [REDACTED]****TAX NO. – [REDACTED]**

The Grantor, **KING COUNTY**, a political subdivision of the State of Washington, for and in consideration of mutual benefits, conveys and quitclaims to Grantee, **CITY OF DES MOINES**, a State of Washington municipal corporation, the real property and easements described in EXHIBIT A including after acquired title. The City of Des Moines covenants that it shall have full and complete responsibility for the operation, maintenance, repairs and any subsequent improvements to the drainage facilities and/or properties listed in EXHIBIT A for drainage purposes in perpetuity, which covenant is intended to be a running covenant burdening and benefiting the land of the respective Parties and Parties' successors and assigns.

GRANTOR – KING COUNTY

BY: _____

TITLE: Director, Facilities Management Division

DATE:

Approved as to Form:

BY: _____

Senior Deputy Prosecuting Attorney

NOTARY BLOCKS APPEAR ON NEXT PAGE

NOTARY BLOCK FOR KING COUNTY

STATE OF WASHINGTON)
) SS
 COUNTY OF KING)

On this _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ANTHONY O. WRIGHT, to me known to be the Director, Facilities Management Division, and who executed the foregoing instrument and acknowledged to me that HE was authorized to execute said instrument on behalf of KING COUNTY for the uses and purposes therein mentioned.
 WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the
 State of Washington, residing
 at _____
 City and State

 Signature

 Printed Name

My appointment expires _____

**EXHIBIT A
To Quit Claim Deed**

LEGAL DESCRIPTION

Tract B, Des Moines Trace, as per plat recorded in Volume 121 of Plats, pages 91 through 92, records of King County, Washington. **(Tax Account No. 201100-0420)**

Tract A, Forest Meadows, as per plat recorded in Volume 166 of Plats, pages 94 through 97, records of King County, Washington. **(Tax Account No. 259716-0460)**

Tract A, Des Moines Trace, as per plat recorded in Volume 121 of Plats, pages 91 through 92, records of King County, Washington. **(Tax Account No. 201100-0410)**

Redondo Beach Division #1, as per plat recorded in Volume 16 of Plats, page 40, records of King County, Washington, portion described as follows:
Portion Government Lot 4 lying NWly of Redondo Beach Drive South and lying south of north line of south 30 ft. of Lot 10, Block 5, extended, said plat and lying north of south line of Roosevelt Avenue extended. **Tax Account No. 720360-0390.** (Title was transferred to King County by Deed with recording #920228-2084.)

Undivided 2/10 interest in the portion of Government Lot 5, STR 32-22-04, W.M., in King County, Washington, describes as follows:
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TOGETHER WITH AN undivided 2/10 interest in the Second Class tidelands to the line of mean low tide on the following description of Government meander line:
Beginning at a point on the meander line of Government Lot 5 of STR 32-22-4, W. M, in King County, Washington, distance N 41-57-00 E 198.30 feet from the south meander corner of said Government Lot; thence N 55-00-00 E along said meander line 351.73 feet. **Tax Account No. 322204-9126.** (Title was transferred to King County by Warranty Deed with recording #951227-1321.)

Des Moines Trace Tracts A & B

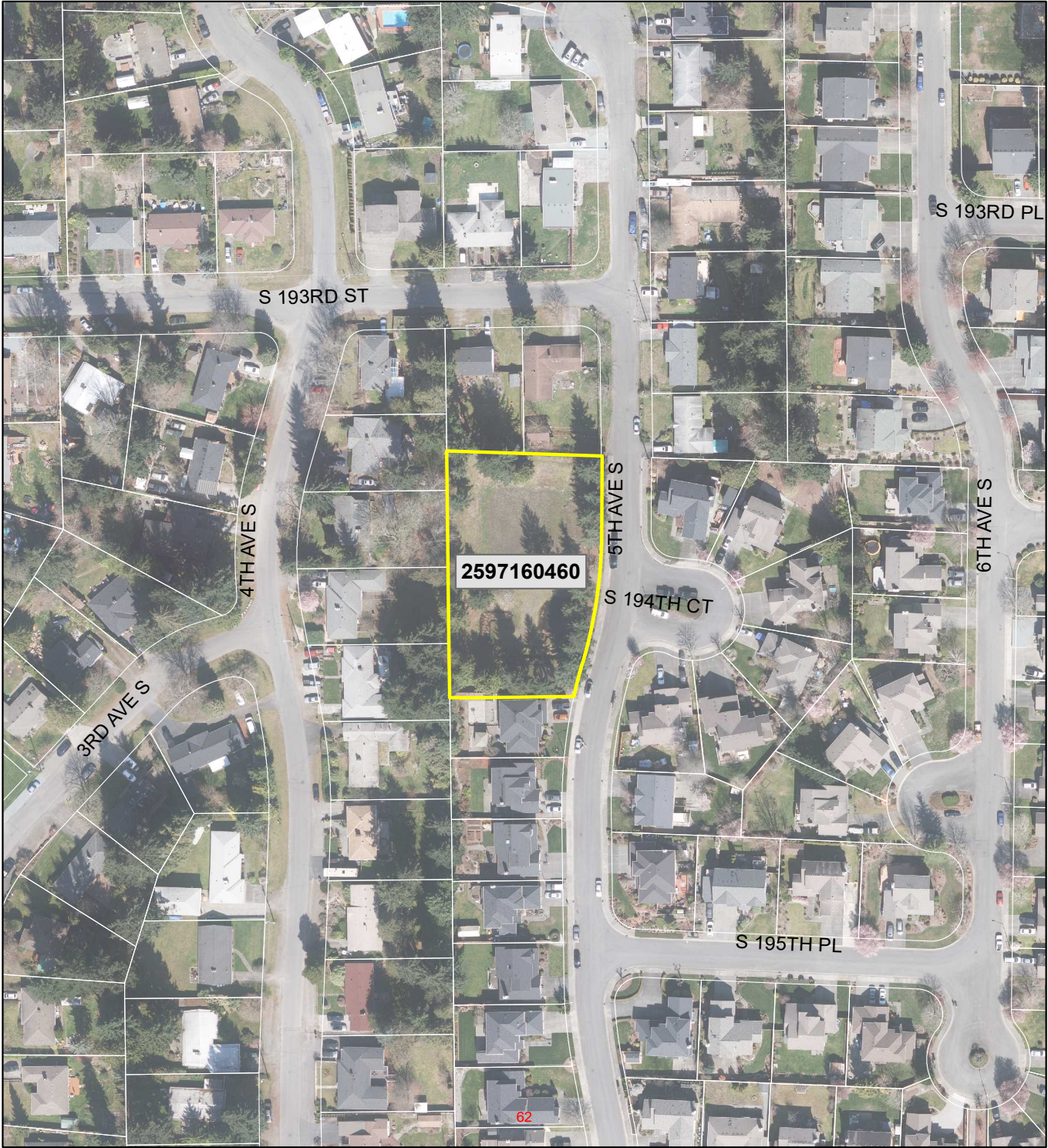
Attachment #2
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Parcels 2011000410 and 2011000420



Forest Meadows
Tract A
Parcel 2597160460

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Redondo Beach Road-related Tract

Parcel 3222049126

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Redondo Beach Road-related Tract

Parcel 7203600390

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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: Black History Month Proclamation

FOR AGENDA OF: February 11, 2021

DEPT. OF ORIGIN: Administration

ATTACHMENTS:

DATE SUBMITTED: February 4, 2021

1. Proclamation

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

- ☐ Legal _____
- ☐ Finance _____
- ☐ Courts _____
- ☐ Police _____
- ☐ City Clerk _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this item is for the Council to approve a proclamation recognizing February as Black History Month,

Suggested Motion

Motion: "I move to approve the Proclamation recognizing February as Black History Month."

Background

The roots of Black History Month began with African American scholar Carter Woodson. Throughout his academic studies in the early 20th century, Woodson witnessed how Black people were underrepresented in books and scholarship that shaped the study of American history. To respond to this, Woodson and Jesse E. Moorland founded what would become known as the Association for the Study of African Life and History. Woodson famously asserted that “If a race has no history, it has no worthwhile tradition, it becomes a negligible factor in the thought of the world, and it stands in danger of being exterminated.”

In 1926, Woodson and his organization launched “Negro History Week” to highlight the need to teach Black History. They chose the second week of February since it encompassed the birthdays of both Frederick Douglass and Abraham Lincoln.

Throughout the Civil Rights Movement of the 1960’s, the celebration of the week was adopted by many Freedom Schools in the South, and then that week was adopted and expanded into “Black History Month” on college campuses. President Gerald Ford proclaimed Black History Month a national observance in 1976.



City of Des Moines

ADMINISTRATION
21630 11TH AVENUE SOUTH, SUITE A
DES MOINES, IOWA 50319-6398
(206) 878-4595 T.D.D.: (208) 824-6024 FAX: (206) 870-6540

Attachment #1

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Proclamation

PREAMBLE

"History, despite its wrenching pain, cannot be unlived; but if faced with courage, need not be lived again." [Maya Angelou, author]. One's history is a fundamental aspect of one's cultural experience. To deny one's history, or to have others deny one's history creates a falsehood as to the nature of one's experience. "Defining myself, as opposed to being defined by others, is one of the most difficult challenges I face." [Carol Moseley-Braun, first black female U.S. Senator].

The celebration of Black History Month is a recognition across this country of the experience and events occurring in the lives of African Americans and those whose roots run deep through the African Diaspora. "For I am my mother's daughter, and the drums of Africa still beat in my heart." [Mary McLeod Bethune, educator]. Acknowledgement of Black History points out that no one culture, no one race, possesses claims to be the dominant history of our nation. It is a shared history, seen through many different eyes.

In these days that have presented the challenge of America accepting the truth that Black Lives Matter, it is all the more important to honor Black History and the innumerable contributions made by African Americans. History, seen through the eyes of people of color reveals an America that engenders hope for justice, but also retains strong currents of endemic racism.

WHEREAS, Black History Month is celebrated in recognition of achievements and contributions made by African Americans and all people of African descent in the United States; and

WHEREAS, Black History Month affords special opportunity to become more knowledgeable about black heritage, and to honor the many black leaders who have contributed to the progress of our nation; and

WHEREAS, such knowledge can strengthen the insight of all our citizens regarding the issues of human rights, the great strides that have been made in the crusade to eliminate barriers of equality, and the continuing struggle against racial discrimination, injustice and poverty; and

WHEREAS, the City of Des Moines embraces its diversity and acknowledges the invaluable contributions of its African American residents and visitors as we celebrate Black History Month; and

NOW THEREFORE, THE DES MOINES COUNCIL HEREBY PROCLAIMS and recognizes the month of February as **BLACK HISTORY MONTH** and urges our citizens to join together in making this period of rededication to the principles of justice and equality for all people.

SIGNED this day 11th of February, 2021



Matt Pina, Mayor

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Washington State Future City Regional
Competition

ATTACHMENTS:
1. Proclamation

AGENDA OF: February 11, 2021

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: February 2, 2021

CLEARANCES:

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is to recognize and congratulate Pacific Middle School students for demonstrating excellence in the virtual Washington State Future City Regional Competition which was held Saturday, January 30, 2021.

Suggested Motion

MOTION: "I move to approve the Proclamation recognizing the achievements of the Pacific Middle School students in the virtual Washington State Future City Regional Competition.

Background:

Pacific Middle School teams competed in the virtual Washington State Future City Regional Competition on Saturday, January 30, 2021. The competition is a national competition which is part of National Engineering Week held in February of each year. Team Kaskazini won third place in the regional competition. Pacific Middle School has competed in this competition over the past 14 years, and this is the tenth time they have placed in the competition.

Due to the COVID Pandemic students had 25 days to build their models on their own at home, video tape their presentations on Zoom and share it with the judges. Students endured grueling question and answer sessions each night from 4:00-7:00, Monday-Thursday. Prior to COVID students had 2 ½ months to work together on their model.

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City of Des Moines

CITY COUNCIL
21630 11th AVENUE S, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D: (206) 824-6024 FAX: (206) 870-6540



Proclamation

WHEREAS, Future City is a national competition, held as part of National Engineering week in February of each year, in which teams of middle school students design and build models of cities set at least 150 years in the future, and

WHEREAS, the City of Des Moines recognizes that this competition introduces students to Science, Technology, Engineering and Math (STEM) concepts, as well as the Career and Technical Education aspect of working successfully in groups, time management and communication skills, that build essential future job skills for our community and our nation, and

WHEREAS, the City of Des Moines is pleased to observe that the students must plan for and model the basic services and features of a city, such as zoning, infrastructure, and city location, thus preparing them for the duties of future citizenship, and

WHEREAS, the City of Des Moines applauds the participating teams from Pacific Middle School, and their instructor, for participating this year during a pandemic and placing 3rd place overall at the virtual Washington State Future City Regional Competition; now therefore

THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS that the following Pacific Middle School students, along with their Instructor Sandy Gady, have demonstrated excellence in the Washington State Future City Regional Competition, and invites all citizens to join in congratulating them:

Team "KEPLER"	Maddie Fannin, Elishah Jones, Capri Renaldi and Alyssa White, <i>Students</i>
Team "XENOLITH"	Shou Blank, Melinda Nguyen, Brandon Raught and Tristan Hand, <i>Students</i>
Team "PACIFIC SELENE"	Oden Ivy, <i>Students</i>
Team "KASKAZINI"	Veta Cramer and Leah Easterling, <i>Students</i>



SIGNED this 11th day of February, 2021.

Matt Pina, Mayor

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Lodging Tax Advisory Committee
Appointment

FOR AGENDA OF: January 21, 2021

DEPT. OF ORIGIN: Admin

DATE SUBMITTED: January 12, 2021

ATTACHMENTS:

1. Application

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to recommend City Council approval of the Mayor's appointment to the Lodging Tax Advisory Committee.

Suggested Motion

Motion 1: "I move to confirm the Mayoral appointment of Courtney Antram to the Lodging Tax Advisory Committee effective immediately."

Background

The City of Des Moines adopted Ordinance No. 1319 on March 27, 2003 which became effective April 26, 2003 for the purpose of establishing a Lodging Tax Advisory Committee. A Committee of at least five members is required for the collection of Des Moines' legal share of Hotel/Motel Tax. The tax must be used solely for paying for tourism promotion and for the acquisition and/or operation of tourism related facilities as specified in RCW 67.28.180.

Discussion

The committee shall consist of at least five members, appointed by the mayor and confirmed by a majority of the City Council. The committee membership shall include at least two members who are representatives of businesses required to collect tax under RCW 67.28.180, at least two members who are persons involved in activities authorized to be funded by revenue received under RCW 67.28.180 and one member who shall be a member of the City Council and who shall serve as Chair of the committee. This agenda requests Council approval of the appointment of Courtney Antram, Director of Sales at The Four Points Sheraton to fill the vacancy left by former committee member, Gianni Fontanoza, Front Office Manager of the Four Points Sheraton.

Alternatives

None provided.

Recommendation

Des Moines Administration recommends the Mayoral appointment of Courtney Antram to a term on the Lodging Tax Advisory Committee.



CITY OF DES MOINES
APPLICATION FOR LODGING TAX ADVISORY COMMITTEE
21630 11th Avenue South
Des Moines, WA 98198

NAME: Courtney Antray / Fair Points by Sheraton Seattle Airport
ADDRESS: 22106 Pacific Blvd
CITY, ZIP: Des Moines WA, 98158
Contact Information - PHONE: Home _____ Work _____
Cell 2062281111 Fax _____ E-Mail Courtney.Antray@airmhp.com

EMPLOYMENT/VOLUNTEER SUMMARY LAST FIVE YEARS:

Seattle Airside Center 2016 - 2018

Are you related to anyone presently employed by the City or a member of a City Board? No
If yes, explain: _____

Do you currently have an owning interest in either real property (other than your primary residence) or a business in the Des Moines? _____ If so, please describe: _____

Ownership / Work for Fair Points

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Specify the group you represent:

☐ Local Lodging Industry

☒ Business/Organization Providing Programs & Services to Promote Tourism in Des Moines

Provide Details of this Representation: Director of Sales & Marketing

2. What problems, programs or improvements are you most interested in? _____

For tourism

3. Please list any Des Moines elective/appointive offices you have run/applied for previously.

None

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Compensation for
Non-represented Employees

FOR AGENDA OF: February 11, 2021

DEPT. OF ORIGIN: Human Resources

ATTACHMENTS:

DATE SUBMITTED: February 5, 2021

1. Draft Resolution No. 21-005:
Compensation for Non-Represented
Employees

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: _____

☒ Legal /s/ TG

☒ Finance *Colleen Wilson*

☐ Courts _____

☐ Police _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is for City Council to consider the proposed Resolution regarding compensation for regular, non-represented employees to provide wage increases which are equitable and sustainable within the current 2021 City of Des Moines budget.

Suggested Motion

Motion 1: "I move to adopt Draft Resolution No. 21-005 regarding compensation for non-represented employees from February 16, 2021 through December 31, 2021, which provides wage increases that are equitable and sustainable within the current 2021 City of Des Moines budget."

Background

The City's regular non-represented employees fall into three groups; the General Employees, who are eligible for overtime compensation under the Fair Labor Standards Act (FLSA); the Exempt Employees, who are exempt under the FLSA; and the Directors. In December 2016, both the Exempt and General Employee groups formally acknowledged that they are not labor/union units, expressing their preference to work with management in a collaborative, advisory capacity, without being bound by the constraints of RCW 41.56. The City Council sets salary rates and benefits for non-represented employees by resolution and has ordained a policy to treat the General and Exempt employees and Directors equitably in relation to those represented by labor unions, per DMMC 2.12.010.

Discussion

At the onset of the coronavirus, the City of Des Moines took a number of measures to ensure continuity of services in response to the pandemic. We immediately began to strategically address labor-related expenses in 2020 as a precursor to 2021. Taking actions, such as laying off extra-hire positions, implementing a hiring lag, placing staff on stand-by, along with other measures, did assist with our funding constraints in 2021 and our outlying years. Uncertainty is inherent in any budget preparation, however for 2021; it was much higher than usual because of increased volatility in revenues and expenditure needs.

The 2021 budget was passed in early November with a (0) % cost of living increase (COLA) for non-represented employees. At the end of November, the City was able to fully utilize monies provided by the CARES act. Additionally, we found that our estimates regarding revenues related to taxes and franchise fees were more conservative than the actual amounts collected. This coupled with the “savings” from our discipline in managing program expenditures and salary and benefits from unfilled vacancies has placed the City in a position to be able to offer a COLA to our non-represented employees.

The City Administration is now able to provide the June 2020 Consumer Price Index (CPI-U) for Seattle-Tacoma-Bellevue, which was (0.9)%. Given that this increase will need City Council approval and cannot take effect until February 16, 2021, if approved, the actual amount of the increase will be a (1.0)% wage increase for non-represented employees. This Draft Resolution would also eliminate the 457 Sick Leave Rollover program for the General employees, commensurate with the Teamsters Agreement. The savings from elimination of this program will be reallocated to support the non-represented wage increase for 2021.

Alternatives

The Council could choose not to approve the Resolution and direct the City Manager to consider alternative wage and benefits packages for non-represented employees.

Financial Impact

Finance has accounted for the proposed increase and has determined that a sustainable budget through 2021 will be maintained with passage of this Draft Resolution.

Recommendation or Conclusion

Administration recommends approval of the proposed Agreement as it contains those changes and compromises authorized by the Council.

CITY ATTORNEY'S FIRST DRAFT 02/5/2021**DRAFT RESOLUTION NO. 21-005**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, regarding salaries, wages and benefits for non-represented employees for the period February 16, 2021, through December 31, 2021.

WHEREAS, this Resolution pertains to all regular employees, excluding those who are represented by labor organizations, specifically, Teamsters Local 763 and the Des Moines Police Guild.

WHEREAS, the City's non-represented employees fall into three groups: General Employees, those who are eligible for overtime compensation under the Fair Labor Standards Act (FLSA); Exempt Employees, those who are exempt under the FLSA; and the remaining exempt employees known as Directors, which for purposes of this Resolution includes all department heads as well as executive staff, and

WHEREAS, in December 2016, the General Employees and Exempt Employees entered into memorandums of understanding with the City formally acknowledging that they are not collective bargaining organizations, preferring to seek mutual understanding for employees and city management in an informal, collaborative process to discuss issues of concern in the workforce without being bound by the constraints of chapter 41.56 RCW, and

WHEREAS, the parties further agreed that the City will treat non-represented employees equitably in relation to those represented by labor unions in accordance with DMMC 2.12.10, with the exception of the constraints of bargaining units with binding arbitration which necessitates a different outcome for certain uniformed groups of employees, and

WHEREAS, the City Council recently approved the 2021 City of Des Moines budget for the period of January 1, 2021, through December 31, 2021, which includes a 0% wage increase for non-represented employees, and

WHEREAS, the City Council recently approved a Collective Bargaining Agreement with Teamsters Local Union Number 763 for the period of January 1, 2020, through December 31, 2022 which included a wage increase, and

WHEREAS, the City Council has determined that it is in the best interest of the citizens of Des Moines for the City to provide equitable wage increases and benefit adjustments to non-represented employees for the year 2021; now, therefore,

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

Sec. 1. The City hereby provides the following for its regular non-represented employees effective February 16, 2021, and remaining in effect as follows until December 31, 2021. All provisions of past resolutions, agreements or memorandums of understanding between the City and the General Employees and the Exempt Employees not modified by this Resolution remain in full force and effect. All personnel rules and regulations as may be promulgated according to DMMC 2.12.10 shall govern unless expressly contrary to this Resolution.

Sec. 2. Salaries and wages. Salaries and wages shall be increased as follows, maintaining the established differentials between pay steps and ranges:

(1) 1.00% increase effective February 16, 2021; such pay increase shall apply to current employees on the payroll as of the date of Council approval of this Resolution;

Sec. 3. Section 4 of Resolution No. 1392 is amended to read as follows:

General Employee Sick Leave Balances. Effective March 1, 2021, the City shall no longer for General (non-exempt) employees with a sick leave balance of over one hundred and fifty (150) hours have one (1) hour of their monthly sick leave accrual of eight (8) hours cashed and deposited into the ICMA-RC 457 Plan and the City shall no longer for General (non-exempt) employees whose balance is over two hundred and fifty (250) hours have two (2) hours of their monthly sick leave accrual of eight (8) hours cashed and deposited into the ICMA-RC 457 Plan.

Sec. 4. Conflicts. Where a conflict exists between the terms of this Resolution and the Des Moines Personnel Manual, this Resolution shall control.

Sec. 5. Ratification and confirmation. Any acts consistent with the authority and prior to the effective date of this Resolution are hereby ratified and confirmed.

ADOPTED BY the City Council of the City of Des Moines,
Washington this ____th day of _____, 2021, and signed in
authentication thereof this ____th day of _____, 2021.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

New Business Item #1

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Wesley Homes Pedestrian Bridge at
216th Street

ATTACHMENTS:

1. Architectural Rendering of Proposed
Pedestrian Bridge

FOR AGENDA OF: February 11, 2021

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: February 4, 2021

CLEARANCES:

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

CHIEF OPERATIONS OFFICER: *David J. ...*

- [X] Legal /s/ 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 of the general concept of a private pedestrian bridge over South 216th Street, to be owned and maintained by Wesley Homes, and direction for Administration to prepare an agreement with Wesley Homes for a pedestrian bridge. The following motions will appear on the consent calendar:

Suggested Motion

Motion: "I move to approve the general concept of a private pedestrian bridge over South 216th Street, owned and maintained by Wesley Homes, and direct Administration to prepare a draft agreement with Wesley Homes for a pedestrian bridge for future Council consideration."

Background

Wesley Homes, 815 South 216th Street, has submitted permits for the construction of phase 3 which would complete redevelopment of the campus per the Wesley Homes Master Plan. As a part of this final phase, Wesley Homes has proposed a pedestrian sky bridge over South 216th Street that would

link the newly constructed the south campus with the existing Terrace Building on the north campus as shown in Attachment 1.

Discussion

A pedestrian bridge creates a unique opportunity for a visually appealing gateway feature in the City. Staff would plan to address several issues related to the potential pedestrian bridge in a mutually agreeable development agreement. This development agreement would cover the following items but not be limited to:

- Liability and Insurance
- Airspace rights
- Maintenance and Repairs
- Compensation
- Stormwater Management

Staff would anticipate bringing a draft development agreement to the Council later this spring for consideration and discussion.

Alternatives

The City Council may choose not to accept the general concept of the pedestrian bridge and direct staff not to prepare a development agreement with Wesley Homes.

Financial Impact

Unknown at this time. There could be compensation associated with the permitting of the airspace rights and or costs associated with the development agreement.

Recommendation

Staff recommends adoption of the motion.

EXTERIOR FINISH LEGEND



ORIGINAL ISSUE **NOVEMBER 2003**

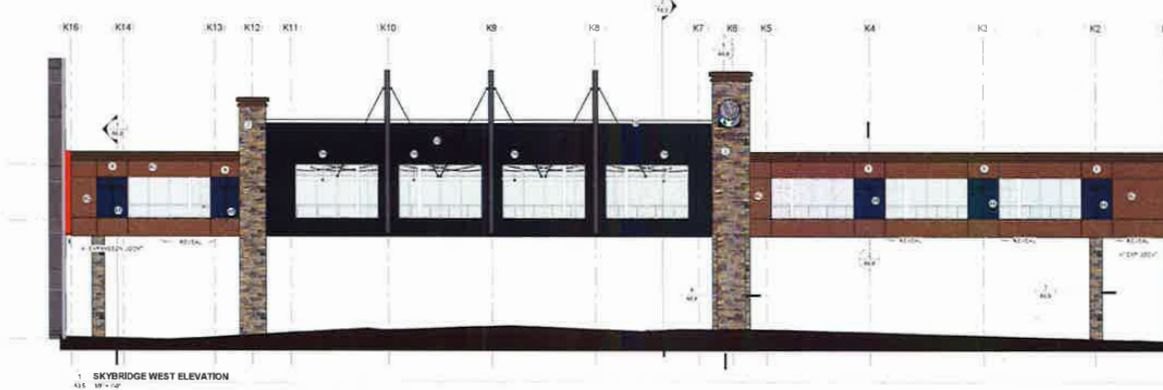
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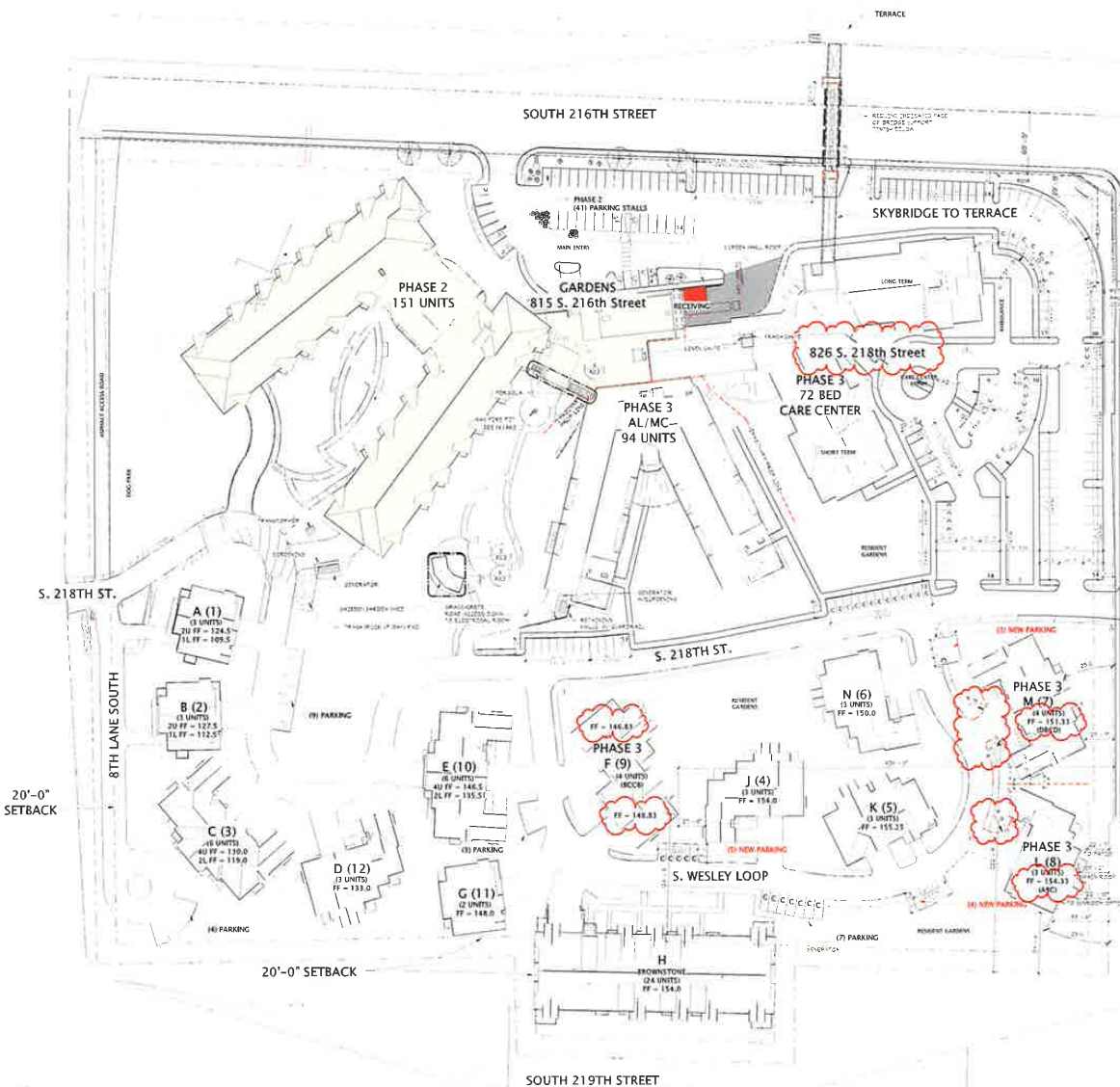
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DES MOINES CAMPUS
PHASE 3

EXTERIOR ELEVATIONS -
SKYBRIDGE

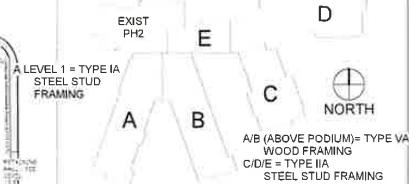
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GARDENS (PHASE 2 + WINGS A, B)
815 S. 216TH STREET

HEALTH CARE CENTER (WINGS C, D, E)
826 S. 218TH ST.



PHASE 3 SCOPE:

SKYBRIDGE TO TERRACE

Unit Counts and required parking:

CARE CENTER: 72

1:4 Parking: 18 stalls

1:2 Staff: 36 stalls

COTTAGES F, M, L: 11

2:1 Parking: Garage + Driveway - 22 stalls

AL UNITS: 68

1:4 Parking: 17 stalls

1:2 Staff: 34 stalls

MC UNITS: 26

1:4 Parking: 7 stalls

1:2 Staff: 13 stalls

PHASE 2:

IL UNITS: 151

1:1 Parking: 151 stalls

PHASE 1A/1B:

Unit Counts and required parking:

BROWNSTONE UNITS: 24

1:1 Parking: 24 stalls

1:1 Proof of Parking: 24 stalls

COTTAGES: 32

2:1 Parking: Garages + driveway - 64 stalls

TOTAL UNITS: 392

Visitor parking: 1:5 = 78 stalls

TOTAL REQUIRED PARKING: 486 stalls

CAMPUS PARKING PROVIDED:

PHASE 3 SURFACE - 140+12

(6 ADA stalls req'd/8 provided)

COTTAGES: 2:1 provided

(garages + driveways)

PHASE 2 SURFACE -

(2 ADA req'd/6 provided)

PHASE 2 GARAGE -

PHASE 1A/1B SURFACE -

COTTAGES: 2:1 provided

(garages + driveways)

PHASE 1A/1B GARAGE

BROWNSTONE Garage

Surface Parking:

153 stalls

22 stalls

41 stalls

157 stalls

64 stalls

35 stalls

23 stalls

TOTAL PARKING PROVIDED: 521 stalls

COMPACT STALLS SUMMARY:

PHASE 1: 7

PHASE 2: 3

PHASE 3: 50

TOTAL: 60 STALLS

DES MOINES CAMPUS -
PHASE 3
815 S. 216th St.
Des Moines, WA 98198

BLD2020-0669
LUA2020-0036

PERMIT SET
FOR
CONSTRUCTION
11 MAY 2020

ORIGINAL ISSUE

REVISION:

Rev. Description

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1 SITE PLAN, PH3 CONSTRUCTION SET
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1901
DES MOINES CAMPUS -
PHASE 3

SITE PLAN - PHASE 3

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New Business Item #1

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Wesley Homes Pedestrian Bridge at
216th Street

ATTACHMENTS:

1. Architectural Rendering of Proposed
Pedestrian Bridge

FOR AGENDA OF: February 11, 2021

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: February 4, 2021

CLEARANCES:

- [X] Community Development Susan M. Cey
 [] Marina N/A
 [] Parks, Recreation & Senior Services N/A
 [X] Public Works R. Blum

CHIEF OPERATIONS OFFICER: David J. ...

- [X] Legal /s/ 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 of the general concept of a private pedestrian bridge over South 216th Street, to be owned and maintained by Wesley Homes, and direction for Administration to prepare an agreement with Wesley Homes for a pedestrian bridge. The following motions will appear on the consent calendar:

Suggested Motion

Motion: "I move to approve the general concept of a private pedestrian bridge over South 216th Street, owned and maintained by Wesley Homes, and direct Administration to prepare a draft agreement with Wesley Homes for a pedestrian bridge for future Council consideration."

Background

Wesley Homes, 815 South 216th Street, has submitted permits for the construction of phase 3 which would complete redevelopment of the campus per the Wesley Homes Master Plan. As a part of this final phase, Wesley Homes has proposed a pedestrian sky bridge over South 216th Street that would

link the newly constructed the south campus with the existing Terrace Building on the north campus as shown in Attachment 1.

Discussion

A pedestrian bridge creates a unique opportunity for a visually appealing gateway feature in the City. Staff would plan to address several issues related to the potential pedestrian bridge in a mutually agreeable development agreement. This development agreement would cover the following items but not be limited to:

- Liability and Insurance
- Airspace rights
- Maintenance and Repairs
- Compensation
- Stormwater Management

Staff would anticipate bringing a draft development agreement to the Council later this spring for consideration and discussion.

Alternatives

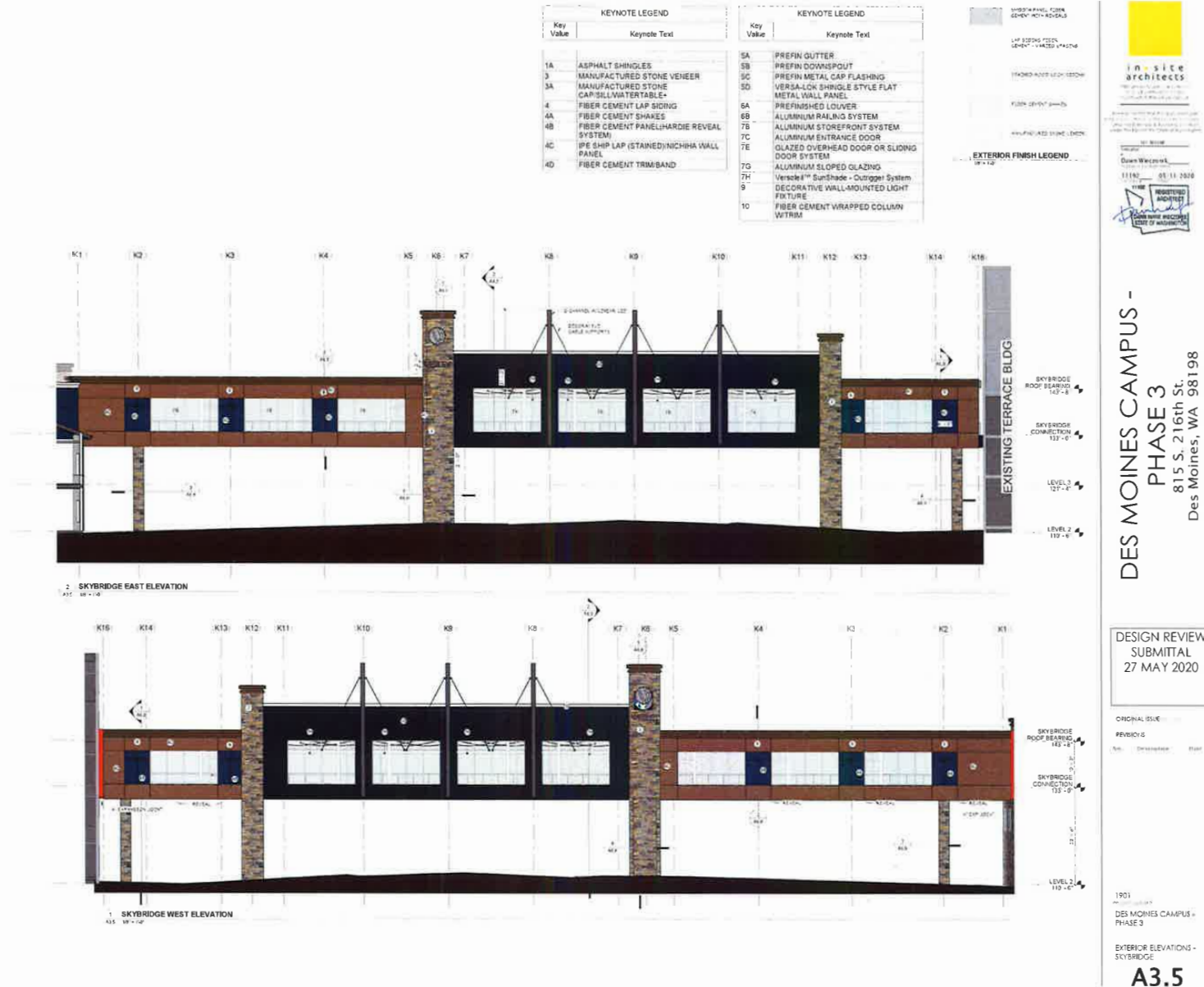
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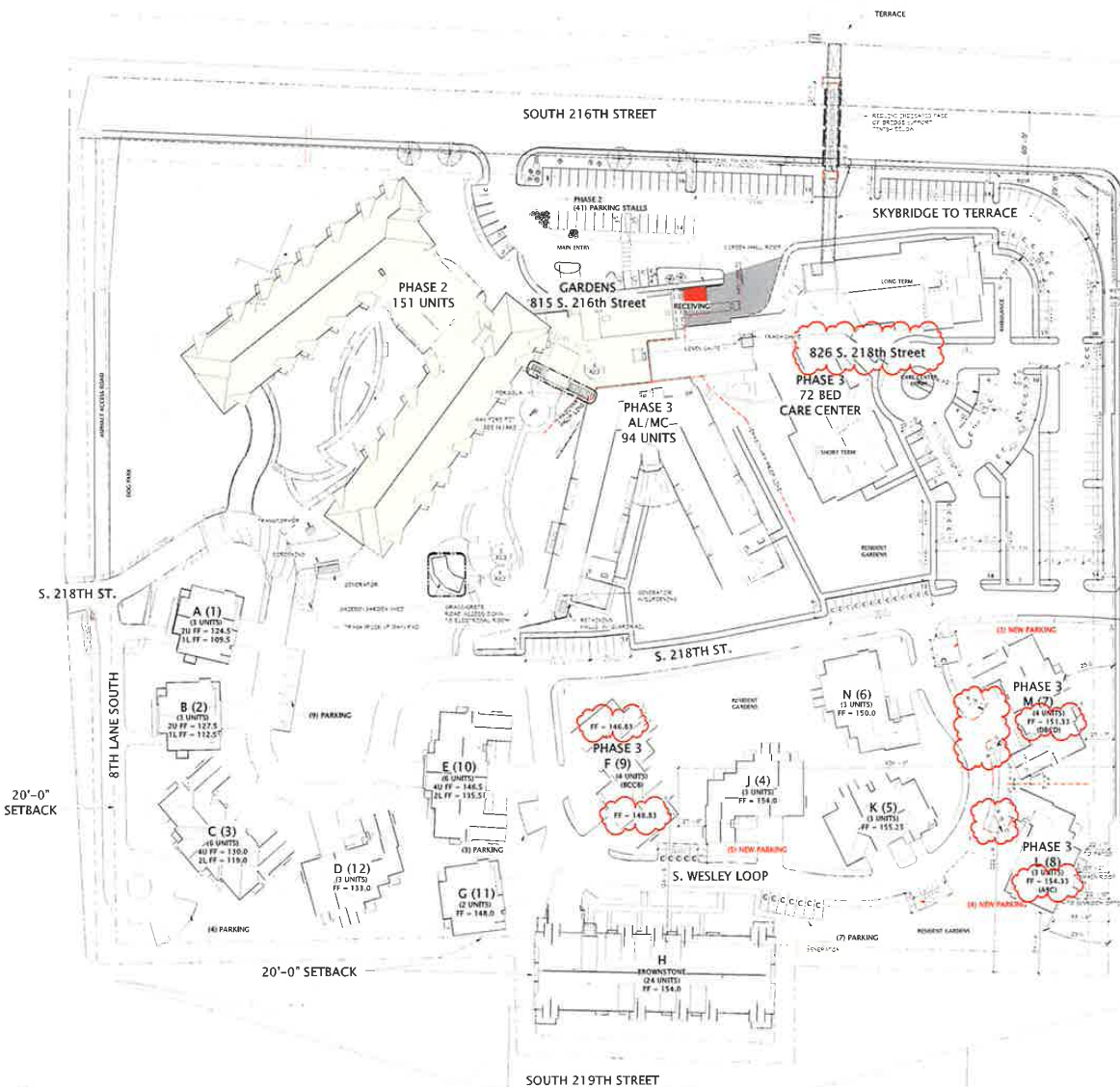
Financial Impact

Unknown at this time. There could be compensation associated with the permitting of the airspace rights and or costs associated with the development agreement.

Recommendation

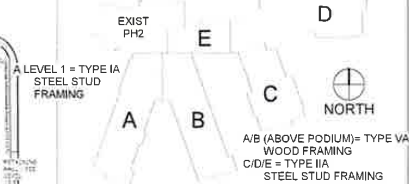
Staff recommends adoption of the motion.





GARDENS (PHASE 2 + WINGS A, B)
815 S. 216TH STREET

HEALTH CARE CENTER (WINGS C, D, E)
826 S. 218TH ST.



PHASE 3 SCOPE:

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PHASE 3: 50

TOTAL: 60 STALLS



1000 University Ave, Suite 100
Des Moines, IA 50319
515.281.1111
www.insitearchitects.com

DESIGN: 10/18/2020
REVISED: 11/11/2020

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1 SITE PLAN, PH3 CONSTRUCTION SET
AS 11/11/2020

DES MOINES CAMPUS -
PHASE 3
815 S. 216th St.
Des Moines, WA 98198

BLD2020-0669
LUA2020-0036

PERMIT SET
FOR
CONSTRUCTION
11 MAY 2020

ORIGINAL ISSUE

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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:

North Marina Parking Lot Bulkhead and Restroom Replacement – Environmental Mitigation Banking; Exeltech Consulting Design Contract Supplemental Agreement #2 & #3

FOR AGENDA OF: February 11, 2021

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: February 3, 2021

ATTACHMENTS:

1. Puget Sound Salmon, Steelhead and Bull Trout Umbrella Conservation Bank Agreement for Sale of Conservation Credits
2. Corps Permit Verification Letter and Nationwide Permit 3
3. NMFS RPA Verification Letter
4. Local Agency A&E Professional Services Supplemental Agreement #2 (Exeltech Consulting)
5. Local Agency A&E Professional Services Supplemental Agreement #3 (Exeltech Consulting)
6. Phase I & II Graphic

CLEARANCES:

- ☐ Community Development N/A
- ☐ Marina N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☒ Public Works R. Ph. C.

CHIEF OPERATIONS OFFICER: [Signature]

☒ Legal /s/ TG

☒ Finance [Signature]

☐ Courts N/A

☐ Police N/A

APPROVED BY CITY MANAGER

FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this Agenda Item is to seek City Council authorization to enter into agreement for sale of conservation credits with Wildlands of Washington, LLC for environmental impact mitigation as required by project federal permits (Attachment 1), and to seek City Council authorization for two supplemental agreements with Exeltech Consulting for design and permitting services for the North Marina Parking Lot Bulkhead and Restroom Replacement project Phase I and Phase II Bid Documents (Attachment 4, 5, & 6). The following motion(s) are suggested:

Suggested Motion(s)

Motion 1: “I move to approve the Agreement for Sale of Conservation Credits with Wildlands of Washington, LLC for Blue Heron Slough Conservation Bank discounted-service-acre-year (DSAY) credits as required by the US Army Corps Permit NWS-2018-492 and as certified by US NOAA National Marine Fisheries Service (NMFS) Reference Number WCRO-2020-0136, and further authorize the City Manager to sign said Agreement substantially in the form as submitted.”

Motion 2: “I move to approve Supplemental Agreement #2 with Exeltech Consulting for the North Marina Parking Lot Bulkhead and Restroom Replacement project in the amount of \$64,849.82 to complete Phase I Design and Engineering, and further authorize the City Manager to sign said Agreement substantially in the form as submitted

Motion 3: “I move to approve Supplemental Agreement #3 with Exeltech Consulting for the North Marina Parking Lot Bulkhead and Restroom Replacement project in the amount of \$128,808.09 to complete Phase II Design and Engineering, and further authorize the City Manager to sign said Agreement substantially in the form as submitted

Background

The existing North Marina Bulkhead was constructed in 1979 and consists of timber lagging supported by timber piling anchored to the shore utilizing a timber waler and deadman anchor system which is fronted by a rock slope for wave and tide protection. In the current condition, these timber elements exhibit noticeable degradation, decomposition, and in some instances failure. Such failure includes situations where the deadman anchor system is no longer constrained by timber walers which is intended to restrain lateral earth pressures. Additionally, situations exist where there are apparent visible voids thru the timbers.

In December 2017, the City entered into contract with Exeltech Consulting for design and permitting services in anticipation of full bulkhead, breakwater, and restroom replacements. This design work is nearly complete and has included survey, geotechnical engineering, coastal engineering, civil engineering, structural engineering, urban design, landscape architecture, and architecture. Additionally, extensive local, state, and federal permitting has been part of this process.

Project environmental permitting is complete, with the federal National Environmental Policy Act (NEPA) review lead by the US Army Corps of Engineers (Corps) having been concluded on January 15th, 2021 with issuance of a Corps Nationwide Permit. This permit also provides concurrence that the proposed work complies with the WA Department of Ecology (Ecology) Water Quality Certification (WQC) requirements and Coastal Zone Management (CZM) consistency determination response for the issued Nationwide Permit. No further coordination with Ecology for WQC and CZM are required.

Other significant environmental permits that have been obtained include the State Environmental Policy Act (SEPA) determination, WA Department of Fish and Wildlife (WDFW) Hydraulic Permit Approval (HPA) issuance, and WA Department of Natural Resources (DNR) concurrence among others.

Discussion

Motion 1:

All project permits issued dictate certain terms and conditions to protect our natural resources at the project site, and more broadly those of Puget Sound. The Corps Nationwide Permit is by far the most comprehensive permit issued under NEPA. One element of this permit is the Endangered Species Act (ESA) Section 7 review in which the Corps is obligated to obtain consultation through the National Marine Fisheries Service (NMFS), and concludes with formal issuance of a Biological Opinion (BO). The Corps then incorporates the BO into the NEPA review and ultimately the Nationwide Permit 3 Issuance (Attachment 2). The BO issued concludes that the North Marina Bulkhead and Restroom Replacement Project will result in ‘jeopardy’ of species under the ESA and that the project sponsor will be required to offset this impact for implementation of the proposed project. Specific species identified as impacted include the listed Puget Sound Chinook salmon and Southern Resident killer whales and

their critical habitat. The BO further defines how much conservation offset is necessary with the following provided general methodology overview.

As a result of the NMFS Habitat Equivalency Analysis (HEA) and Nearshore Habitat Values Model (NHVM), the BO states that this project has (-2043.14) debits of habitat impact to restore (Attachment 3). To determine a universal basic unit of measurement when evaluating value of mitigation efforts to generate a comparable credit value, a discounted-service-acre-year (DSAY) measurement is utilized. In this case, the project requires 20.43 DSAY credits to offset the debit.

NMFS furthermore determined the below Reasonable and Prudent Alternatives (RPA's) that can be utilized by a project sponsor to satisfy the project debit offset required.

- 1.1 Implement on-site habitat improvements that would result in conservation credits.
Current Project Action: Reduced bulkhead footprint, creosote pile removal (credited).
Pros: Site specific action.
Cons: No further ability to significantly reduce debit load; Agency responsible for HEA and NVHM analysis; Schedule delay; Project re-permitting required; Project re-design.
- 1.2 Implement off-site habitat improvements that would result in conservation credits.
Current Project Action: None Taken
Pros: Local action.
Cons: Limited restoration opportunities in Des Moines; Proposals require NMFS approval; Agency responsible for HEA and NVHM analysis; Schedule delay; Project re-permitting required; Additional project design.
- 1.3 Provide funding to a habitat restoration "sponsor" (i.e., a state agency, Regional Organization, designated Lead Entity, Conservation District or Regional Fisheries Enhancement Group) to support a restoration project that will improve nearshore or estuarine habitat.
Current Project Action: None Taken
Pros: Agency discretion to develop project partnerships.
Cons: Limited partners; Proposals require NMFS approval; Agency responsible for HEA and NVHM analysis; Schedule delay.
- 1.4 Purchase conservation credits from a NMFS-approved conservation bank, in-lieu fee program, and/or crediting provider.
Current Project Action: NMFS approved RPA for project; Draft purchase and sales Agreement with Wildlands.
Pros: NMFS approved; No added design or permitting; Immediate.
Cons: Limited partners and action locations; Market based DSAY pricing.
- 1.5 Project modifications that reduces impacts to habitat function impacts.
Current Project Action: Project design efforts factored in appropriate level of modifications.
Pros: Site specific action.
Cons: Project redesign and permitting required; Project outcomes not achievable; Schedule Delay.

The project management team has evaluated each of the five RPA's available and have made the preliminary request to utilize RPA 1.4 to obtain the appropriate project credits needed for debit offset.

This approach is the least expensive, causes the least schedule impact, and does not require redesign and re-permitting efforts to implement. Upon search for available conservation banks in which the City is eligible to participate, only one has been identified that is approved by the NMFS. The specific bank is the Blue Heron Slough Conservation Bank managed by Wildlands of Washington, LLC and is approved for DSAY credit sales. A brief description of the Blue Heron site includes the following.

- 353-acre site in the Lower Snohomish River Estuary.
- Historic clearing, water flow control for agriculture in the 1800's caused estuary collapse.
- Objective to restore habitats including marsh, mud flat, riparian, and channel habitat.
- Bank identified in 2005 as one key location for Puget Sound Chinook Salmon and Bull Trout Recovery.
- Construction has commenced in 2005 and will resume through the entitlement of credits.

The terms and conditions of the Corps Nationwide Permit 3, as well as project concurrence from the DNR have significant project financial implications for both Phase I and II (Attachment 6). The most significant requirements that are required to be met either need to be fully executed prior to, during, or after construction is completed. They all require additional engineering, direct construction, and construction inspection & reporting costs. The following is a list of the most significant, but not all-inclusive, requirements and estimated costs.

- RPA 1.4 Mitigation Bank Credit Purchase (Corps) - \$344,224 TOTAL for Phase I and Phase II
- Marine Mammal Protection Plan (Corps) - \$26,400 EACH for Phase II
- Suspended Sediment Monitoring Plan & Sediment Control Plan (Corps) - \$56,400 EACH for Phase I and Phase II
- Stormwater Treatment Plan Approval (Corps) - \$32,000 TOTAL for Phase I and Phase II
- Completion Report (Corps) - \$6,000 EACH for Phase I and Phase II
- Sediment Sampling & Analysis Plan (DNR) - \$50,400 EACH for Phase I and Phase II

TOTAL Estimated Corps Permit Compliance - \$489,024 (Phase I) - \$628,224 (Phase I & II)

Motion 2:

The Supplemental Agreement #2 (Attachment 4) with Exeltech Consulting provides additional resources to complete the project Bid Documents for Phase I (Attachment 6) in compliance with the added terms and conditions of the Corps Nationwide Permit 3 as well as the final conditions of the various other permits. This work entails minor engineering design detail changes and most significantly, Contract Provision drafting to incorporate all various permit obligations into the Contract Documents. Proceeding with the completion of the project Bid Documents will allow the City to advertise the project prior to the permitted 2021 fish window for in-water activities. Additionally, obtaining project Bids will help determine final construction resource needs.

Motion 3:

The Supplemental Agreement #3 (Attachment 5) with Exeltech Consulting provides additional resources to complete the project Bid Documents for Phase II (Attachment 6) and incorporate this work as an Additive Bid Schedule of Work within the Phase I Contract Documents. This will allow the City opportunity to obtain project Bids for Phase II, evaluate final construction resources needed, and make a decision to award the Additive Work. The City may also realize cost savings due to economies of scale, more potential bidders interested in the project, shorter duration construction schedules, and less public impacts due to one project versus two. This work will also be completed in compliance with the various project permits.

Alternatives

Motion 1:

Do not approve project DSAY credit purchase and reevaluate RPA options.

The City Council could elect not to approve the purchase of DSAY credits from Wildlands of Washington, LLC to satisfy project ESA impact mitigation as defined within the Corps Nationwide Permit 3. The City would then be required to review and re-engage the Corps and NMFS and determine what RPA option would be acceptable. This alternative will cause schedule delay, increase project costs, potentially require re-permitting, and place the WA Department of Commerce Direct Appropriation at risk.

Motion 2: Do not approve Supplement #2

The City Council could elect not to approve the Supplemental Agreement #2 with Exeltech Consulting at this time. Phase I (Attachment 6) would be reevaluated at a future time for needed resources to complete the Bid Documents as a standalone project. Not obtaining a Bid at this time may result in the inability to utilize the WA State Direct Appropriation secured for the current biennium and construct the project in the upcoming in-water work window.

Motion 3: Do not approve Supplement #3

The City Council could elect not to approve the Supplemental Agreement #3 with Exeltech Consulting at this time. Phase II (Attachment 6) would be reevaluated at a future time for needed resources to complete the Bid Documents as a standalone project. Not obtaining a Bid at this time may result in the inability to use a WA State Direct Appropriation for Phase II if secured in the current legislative session.

Financial Impact

The Project CIP has adequate resources to fund Motion 1, Motion 2, and Motion 3. Upon Bids received, the City will evaluate project resource need for Council review prior to entering into any contracts for construction.

Recommendation

Staff recommends adoption of the motion(s).

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**PUGET SOUND SALMON, STEELHEAD AND BULL TROUT
UMBRELLA CONSERVATION BANK**

AGREEMENT FOR SALE OF CONSERVATION CREDITS

Blue Heron Slough Conservation Bank

Corps Permit No. NWS-2018-492

NMFS BO No. WCRO-2020-01361

This Agreement is made and entered into this ____ day of _____, 2021 by and between **WILDLANDS OF WASHINGTON, LLC**, a Washington limited liability company (“**Bank Sponsor**”), and the **CITY OF DES MOINES** (“**Project Proponent**”).

RECITALS

A. Bank Sponsor has entitlements to the Puget Sound Salmon, Steelhead and Bull Trout Umbrella Conservation Bank’s Blue Heron Slough Conservation Bank Site (Site #1) (“**Bank**”) located in Snohomish County, Washington; and

B. The Bank has been authorized by the National Marine Fisheries Service (“**NMFS**”) to operate as a Conservation Bank with credits available for sale; and

C. Project Proponent is seeking to implement the Des Moines Marina Bulkhead Replacement Project described in Exhibit A attached hereto (“**Project**”), which would unavoidably and adversely impact habitat thereon, and seeks to compensate for the loss of habitat by purchasing credits from Bank Sponsor; and

D. Project Proponent has been authorized by United States Army Corps of Engineers (“**Corps**”) Nationwide Permit 3 (Reference No. NWS-2018-492) dated January 15, 2021 and by NMFS Section 7 consultation batch Biological Opinion (“**BO**”) No. WCRO-2020-01361 dated November 9, 2020 (Project No. WCRO-2018-01246) to purchase from the Bank Sponsor 20.43 discounted service acre year credits (“**DSAY Credits**”); and

E. Pursuant to the terms of this Agreement, Project Proponent desires to purchase from Bank Sponsor, and Bank Sponsor desires to sell to Project Proponent, 20.43 DSAY Credits at Bank.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Effective Date. For purposes of this Agreement, the date on which the last party executes this Agreement and delivers it to the other party shall hereinafter be referred to as the “**Effective Date**.”

2. Purchase and Sale. Pursuant to the terms and conditions of this Agreement, Bank Sponsor hereby agrees to sell to Project Proponent and Project Proponent hereby agrees to purchase from Bank Sponsor 20.43 DSAY Credits from the Bank for the purchase price of Three

Hundred Forty-Three Thousand Two Hundred Twenty-Four and No/100ths Dollars (\$343,224.00) (“**Purchase Price**”), which was calculated by multiplying 20.43 DSAY Credits by Sixteen Thousand Eight Hundred and No/100ths Dollars (\$16,800.00).

3. Payment of Purchase Price.

a. Deposit. Within five (5) days after the Effective Date of this Agreement, Project Proponent shall pay to Bank Sponsor the amount of Seventeen Thousand One Hundred Sixty-One and 20/100ths Dollars (\$17,161.20), which constitutes five percent (5%) of the Purchase Price (“**Deposit**”). The Deposit shall be non-refundable upon payment, and shall be credited to the Purchase Price.

b. Balance at Closing. On or before the Closing Date (as hereinafter defined), Project Proponent shall deliver to Bank Sponsor the balance of the Purchase Price in the amount of Three Hundred Twenty-Six Thousand Sixty-Two and 80/100ths Dollars (\$326,062.80), in cash or immediately available funds.

4. Closing. For purposes of this Agreement, “**Closing**” shall be defined as the date on which Bank Sponsor delivers to Project Proponent an executed Bill of Sale evidencing the transfer of the DSAY Credits to Project Proponent. The Bill of Sale shall be in the form attached hereto as Exhibit B and incorporated herein by this reference. The Closing shall occur on or before September 30, 2021 (the “**Closing Date**”).

5. No Interest in Real Property. The sale and transfer herein is not intended as a sale or transfer to Project Proponent of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

6. Limitation on Obligations. Project Proponent shall have no obligation whatsoever by reason of the purchase of the DSAY Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the DSAY Credits sold, or the Bank. As required by law, Bank Sponsor shall monitor and make reports to the appropriate agency or agencies on the status of any DSAY Credits sold to Project Proponent. Bank Sponsor shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the DSAY Credits, by all state or federal jurisdictional agencies.

7. No Transfer or Assignment. The DSAY Credits sold and transferred to Project Proponent shall be nontransferable and non-assignable, and shall not be used as conservation mitigation for any other Project or purpose, except as set forth herein.

8. Failure to Pay Purchase Price. Project Proponent must pay the Purchase Price to Bank Sponsor by the Closing Date, or this Agreement shall become null and void.

9. Liquidated Damages. **PROJECT PROPONENT RECOGNIZES THAT THE DSAY CREDITS WILL BE REMOVED BY BANK SPONSOR FROM THE MARKET DURING THE EXISTENCE OF THIS AGREEMENT. IF THE SALE OF**

THE DSAY CREDITS IS NOT CONSUMMATED BECAUSE OF PROJECT PROPONENT'S DEFAULT, THE PARTIES HAVE DETERMINED AND AGREED THAT THE ACTUAL AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY BANK SPONSOR AS A RESULT OF ANY SUCH DEFAULT WOULD BE VERY DIFFICULT OR IMPRACTICABLE TO DETERMINE AS OF THE DATE OF THIS AGREEMENT. AS A RESULT, THE PARTIES HAVE AGREED THAT AN AMOUNT EQUAL TO THE DEPOSIT IS SUFFICIENT TO COVER ANY ESTIMATED DAMAGES THAT MAY BE INCURRED BY BANK SPONSOR. FOR THESE REASONS, THE PARTIES AGREE THAT IF THE PURCHASE OF THE DSAY CREDITS IS NOT CONSUMMATED BECAUSE OF PROJECT PROPONENT'S DEFAULT, BANK SPONSOR SHALL BE ENTITLED TO RETAIN THE DEPOSIT AS BANK SPONSOR'S SOLE REMEDY AND NO FURTHER DAMAGES SHALL BE AWARDBLE TO BANK SPONSOR. NOTHING SET FORTH IN THIS SECTION 9 SHALL PRECLUDE ANY ACTION FOR THE AWARD OF ATTORNEY'S FEES AND COSTS IN CONJUNCTION WITH ANY ACTION RELATING TO THIS AGREEMENT.

Bank Sponsor Initials_____ Project Proponent's Initials_____

10. Payment Receipt. Upon the Closing, the Bank Sponsor shall complete the payment receipt form attached hereto as Exhibit C, and submit the completed payment receipt to NMFS.

11. Miscellaneous.

a. Notices. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (i) upon receipt when hand delivered during normal business hours (provided that notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (ii) upon receipt when sent by facsimile prior to 5:00 p.m. of a given Business Day (otherwise such receipt is deemed as of the following Business Day) to the number set forth below (provided, however, that notices given by facsimile shall not be effective unless the sending party's machine provides written confirmation of successful delivery thereof); (iii) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery); or (iv) one (1) Business Day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

To Bank Sponsor: Wildlands of Washington, LLC
 3301 Industrial Avenue
 Rocklin, California 95765
 Attention: Julie Maddox
 Telephone: (916) 435-3555
 Facsimile: (916) 435-3556

To Project Proponent: City of Des Moines
 21650 11th Avenue South
 Des Moines, Washington 98198-6317
 Attention: Andrew Merges, City Engineer
 Telephone: (206) 870-6568
 Facsimile: (206) 870-6596

b. Amendments. This Agreement may not be amended, altered or modified except by a writing signed by the party to be bound.

c. No Partnership or Joint Venture. The relationship of Bank Sponsor and Project Proponent hereunder is and will be that of Bank Sponsor and Project Proponent, and none of the provisions of this Agreement are intended to create any relationship other than Bank Sponsor and Project Proponent. No agency, partnership, joint venture or other relationship is intended hereby, and neither party shall be deemed the agent, servant, employee, partner or joint venturer of the other party. Bank Sponsor and Project Proponent shall not, in any way or for any reason be deemed to have become a partner of the other in the conduct of its business or otherwise, or a joint venturer. In addition, by virtue of this Agreement, there shall not be deemed to have occurred a merger or any joint enterprise between Project Proponent and Bank Sponsor.

d. Attorneys' Fees. If a party commences an action against the other party to interpret or enforce any of the terms of this Agreement or because of the breach by another party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment. For the purpose of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred. The term "attorney" shall have the same meaning as the term "counsel."

e. Construction of Agreement. The Agreement contained herein shall not be construed in favor of or against either party, but shall be construed as if both parties prepared this Agreement. Project Proponent and Bank Sponsor acknowledge that they have been represented, or have had the opportunity to be represented, by counsel of their own choice.

f. Headings. The headings in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or interpret the scope of this Agreement or of any particular provision hereof.

g. Governing Law and Venue. This Agreement and the documents in the forms attached as exhibits hereto shall be governed by, and construed in accordance with, the laws of the State of Washington. In the event of any legal action to enforce or interpret this Agreement or any of the documents in the forms attached as exhibits hereto, the sole and exclusive venue shall be a court of competent jurisdiction located in Snohomish County; and the parties hereto agree to and do hereby submit to the jurisdiction of such court.

h. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

i. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

j. Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and lawful assignees.

k. Further Actions. Each party agrees to perform any further acts and execute and deliver any further documents reasonably necessary to carry out the provisions of this Agreement.

l. Time of Essence. The parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision under this Agreement and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by any party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

m. Recitals/Exhibits. The Recitals herein, and any exhibits to this Agreement, are hereby incorporated by reference into this Agreement. The parties warrant that the Recitals are true and correct.

n. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

o. Electronic Transmittals. The parties agree that if this Agreement is transmitted electronically, the electronic transmittal of the original execution signatures shall be treated as original signatures and given the same legal effect as an original signature.

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

BANK SPONSOR:

PROJECT PROPONENT:

WILDLANDS OF WASHINGTON, LLC,
a Washington limited liability company

CITY OF DES MOINES

By: TCP II Wildlands Asset Holdings, LLC,
its Sole Member and Manager

By: _____

Name: _____

By: TCP II Holdings, LLC, its Sole
Member and Manager

Its: _____

By: _____

Name: _____

Its: Managing Director

Exhibit “A”**DESCRIPTION OF PROJECT
TO BE
MITIGATED**

The Project proposes to remove 842 linear feet (LF) of existing creosote timber bulkhead, 33,052 square feet (SF) of existing riprap, and 148 LF of existing breakwater. The removed riprap and structures would be replaced with 834 LF steel sheet pile bulkhead, 4,010 SF of riprap, and 148 LF of new breakwater.

The Project is located in Puget Sound at the City of Des Moines in King County, Washington.

Exhibit “B”**BILL OF SALE****Contract #: BHSCB -21- ____****Corps Permit No. NWS-2018-492
NMFS BO No. WCRO-2020-01361**

In consideration of Three Hundred Forty-Three Thousand Two Hundred Twenty-Four and No/100ths Dollars (\$343,224.00), receipt of which is hereby acknowledged, WILDLANDS OF WASHINGTON, LLC, a Washington limited liability company (“Bank Sponsor”) does hereby bargain, sell and transfer to the CITY OF DES MOINES 20.43 discounted service acre year credits (“DSAY Credits”) for the Des Moines Marina Bulkhead Replacement Project on the Puget Sound Salmon, Steelhead and Bull Trout Umbrella Conservation Bank’s Blue Heron Slough Conservation Bank Site (Site #1) in Snohomish County, Washington, developed and approved under the authority of the National Marine Fisheries Service.

Bank Sponsor represents and warrants that it has good title to the DSAY Credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

DATED: _____

WILDLANDS OF WASHINGTON, LLC, a Washington limited liability company

By: _____

Name:

Its:

Exhibit "C"

PUGET SOUND SALMON, STEELHEAD AND BULL TROUT UMBRELLA CONSERVATION BANK

CONSERVATION CREDITS: PAYMENT RECEIPT BLUE HERON SLOUGH CONSERVATION BANK SITE

PARTICIPANT INFORMATION

Name: City of Des Moines

Address: 21650 11th Avenue South, Des Moines, WA 98198-6317

Telephone: (206) 870-6568

Contact: Andrew Merges, City Engineer

PROJECT INFORMATION

Project Description: Des Moines Marina Bulkhead Replacement Project

NMFS File Number: WCRO-2020-01361 (Project WCRO-2018-01246)

Corps Permit Number: NWS-2018-492

Habitat Affected: Puget Sound (PS) Chinook salmon

Credits Required: 20.43

Payment Amount: \$343,224.00

Project Location: Puget Sound at the City of Des Moines

County: King

PAYMENT INFORMATION

Payee: Wildlands of Washington, LLC

Payer: City of Des Moines

Amount: Three Hundred Forty-Three Thousand Two Hundred Twenty-Four and No/100ths Dollars (\$343,224.00)

Method of Payment: Cash _____ Check # _____ Other _____

(Signature)

Name: _____

Title: _____

Date: _____

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Regulatory Branch

January 15, 2021

Mr. Andrew Merges
City of Des Moines
21650 11th Avenue South
Des Moines, Washington 98198

Reference: NWS-2018-492
Des Moines, City of Des
(Moines Marina Bulkhead
Replacement)

Dear Mr. Merges:

We have reviewed your application to replace an existing bulkhead, breakwater and associated riprap to maintain existing structures in the Puget Sound near Des Moines, King County, Washington. You propose to remove 842 linear feet (LF) of existing creosote timber bulkhead, 33,052 square feet (SF) (5,354 cubic yards) of existing riprap, and 148 LF of existing breakwater then replace with a 834 LF steel sheet pile bulkhead, 4,010 SF (668 cubic yards) riprap, and 148 LF of new breakwater. Based on the information you provided to us, Nationwide Permit (NWP) 3, *Maintenance*, Federal Register January 6, 2017, Vol. 82, No. 4), authorizes your proposal as depicted on the enclosed drawings dated September 2018.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 3, Terms and Conditions* and the following special conditions:

a. You must implement and abide by the Endangered Species Act (ESA) requirements and/or agreements set forth in the *Biological Assessment City of Des Moines North Marina Bulkhead Replacement Project* dated September 10, 2018 in its entirety. The U.S. Fish and Wildlife Service (USFWS) provided the enclosed LOC with a finding of “may affect, not likely to adversely affect” based on this document on March 22, 2019 (USFWS Reference Number 01EWF00-2019-I-0214). USFWS will be informed of this permit issuance. Failure to comply with the commitments made in this consultation constitutes non-compliance with the ESA and your U.S. Army Corps of Engineers permit. The USFWS is the appropriate authority to determine compliance with ESA.

b. This U.S. Army Corps of Engineers (Corps) permit does not authorize you to take a threatened or endangered species. In order to legally take a listed species, you must have a

separate authorization under the Endangered Species Act (ESA; e.g., an ESA Section 10 permit, or ESA Section 7 consultation Biological Opinion (BO) with non-discretionary “incidental take” provisions with which you must comply). The enclosed BO prepared by the National Marine Fisheries Service (NMFS) dated November 9, 2020, contains a reasonable and prudent alternative (RPA) and mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the specified “incidental take” in the BO (NMFS Reference Number WCRO-2020-01361). Your authorization under this Corps permit is conditional upon your implementation of the RPA per the documentation of your proposal confirmed by NMFS on January 11, 2021 and upon your compliance with all of the mandatory terms and conditions associated with incidental take of the enclosed BO. These terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The NMFS is the appropriate authority to determine compliance with the RPA, terms and conditions of its BO and with the ESA.

c. Incidents where any individuals of fish species, marine mammals and/or sea turtles listed by National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters of the U.S. authorized by this Nationwide Permit verification shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the Seattle District of the U.S. Army Corps of Engineers at (206) 764-3495. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

d. In order to meet the requirements of the Endangered Species Act you may conduct the authorized in-water activities (e.g., pile driving) during the period from July 16th through February 15th in any year this permit is valid. You shall not conduct any in-water work authorized by this permit during the period from February 16th through July 15th in any year this permit is valid.

e. In order to meet the requirements of the Endangered Species Act, you may conduct the authorized work above the High Tide Line and in the dry during the period from February 16th through July 15th, provided equipment and materials are prevented from entering the water.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic

Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

Please be reminded that Special Condition “b” of your permit requires that you implement and abide by the Endangered Species Act (ESA) requirements set forth in the Biological Opinion (BO) for this project. You must implement the Reasonable and Prudent Alternative as agreed to with the National Marine Fisheries Service. In addition, there are non-discretionary terms and conditions listed in Section 2.9.4 of the BO. In particular, you must provide monitoring and reporting, as described in term and condition 5 of the BO, including notification to the National Marine Fisheries Service on the start date of project construction and a project completion report within 60 days of the project being completed. In addition, note that Section 1.3 of the BO requires that you have a NOAA-approved Marine Mammal Monitoring Plan in place prior to commencing in-water work.

As part of our permit application review process, we notified Native American tribes that have an interest in this area. The Snoqualmie Indian Tribe requested their archeology staff be present to observe construction. Based on our coordination, you agreed to allow Tribal Staff access. Please contact Adam Osbekoff at adam@snoqualmietribe.us prior to commencing construction.

The authorized work complies with the Washington State Department of Ecology’s (Ecology) Water Quality Certification (WQC) requirements and Coastal Zone Management (CZM) consistency determination response for this NWP. No further coordination with Ecology for WQC and CZM is required.

You have not requested a jurisdictional determination for this proposed project. If you believe the U.S. Army Corps of Engineers does not have jurisdiction over all or portions of your project you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

Our verification of this NWP authorization is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and encourage you to complete a customer service survey. These documents and information about our program are available on our website at www.nws.usace.army.mil, select "Regulatory Branch, Permit Information" and then "Contact Us." A copy of this letter with enclosures will be furnished to Mr. Jon Adkins at jadkins@xltech.com. If you have any questions, please contact me at kristin.l.mcdermott@usace.army.mil or (206) 316-3975.

Sincerely,

A handwritten signature in black ink that reads "Kristin McDermott" with a stylized flourish at the end.

Kristin McDermott, Project Manager
Regulatory Branch

Enclosures



US Army Corps
of Engineers
Seattle District

NATIONWIDE PERMIT 3

Terms and Conditions

Effective Date: March 19, 2017

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- A. Description of Authorized Activities
- B. U.S. Army Corps of Engineers (Corps) National General Conditions for all NWP
- C. Corps Seattle District Regional General Conditions
- D. Corps Regional Specific Conditions for this NWP
- E. Washington Department of Ecology (Ecology) Section 401 Water Quality Certification (401 Certification): General Conditions
- F. Ecology 401 Certification: Specific Conditions for this NWP
- G. Coastal Zone Management Consistency Response for this NWP

In addition to any special condition that may be required on a case-by-case basis by the District Engineer, the following terms and conditions must be met, as applicable, for a Nationwide Permit (NWP) authorization to be valid in Washington State.

A. DESCRIPTION OF AUTHORIZED ACTIVITIES

Maintenance. (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays. (b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. (c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction

sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. (d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects. Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act (Sections 10 and 404)) Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act section 404(f) exemption for maintenance.

B. CORPS NATIONAL GENERAL CONDITIONS FOR ALL NWPs

To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.
13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. (b) If a proposed NWP

activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status. (c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. **Tribal Rights.** No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. **Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs. (e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word

“harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required. (g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity

has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. (d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment. (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal: (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site). (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal. (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)). (e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses. (f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation. (2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)). (3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation. (4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer

before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). (5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided. (6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs. (h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management. (i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include: (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions; (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and (c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will

request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is

large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals. (d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal. (2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes. (3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse

environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWP, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

District Engineer's Decision: 1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre. 2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns. 3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or

for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer. 4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

Further Information: 1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP. 2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. 3. NWPs do not grant any property rights or exclusive privileges. 4. NWPs do not authorize any injury to the property or rights of others. 5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

C. CORPS SEATTLE DISTRICT REGIONAL GENERAL CONDITIONS: The following conditions apply to all NWPs for the Seattle District in Washington State, unless specified.

1. Project Drawings: Drawings must be submitted with pre-construction notification (PCN). Drawings must provide a clear understanding of the proposed project, and how waters of the U.S. will be affected. Drawings must be originals and not reduced copies of large-scale plans. Engineering drawings are not required. Existing and proposed site conditions (manmade and landscape features) must be drawn to scale.

2. Aquatic Resources Requiring Special Protection: Activities resulting in a loss of waters of the United States in mature forested wetlands, bogs and peatlands, aspen-dominated wetlands, alkali wetlands, vernal pools, camas prairie wetlands, estuarine wetlands, wetlands in coastal lagoons, and wetlands in dunal systems along the Washington coast cannot be authorized by a NWP, except by the following NWPs:

- NWP 3 – Maintenance
- NWP 20 – Response Operations for Oil and Hazardous Substances
- NWP 32 – Completed Enforcement Actions
- NWP 38 – Cleanup of Hazardous and Toxic Waste

In order to use one of the above-referenced NWPs in any of the aquatic resources requiring special protection, prospective permittees must submit a PCN to the Corps of Engineers (see NWP general condition 32) and obtain written authorization before commencing work.

3. New Bank Stabilization in Tidal Waters of Puget Sound: Activities involving new bank stabilization in tidal waters in Water Resource Inventory Areas (WRIAs) 8, 9, 10, 11 and 12 (within the areas identified on Figures 1a through 1e on Corps website) cannot be authorized by NWP.

4. Commencement Bay: The following NWPs may not be used to authorize activities located in the Commencement Bay Study Area (see Figure 2 on Corps website):

- NWP 12 – Utility Line Activities (substations)
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 23 – Approved Categorical Exclusions
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater and Wastewater Management Facilities

5. Bank Stabilization: All projects including new or maintenance bank stabilization activities require PCN to the Corps of Engineers (see NWP general condition 32). For new bank stabilization projects only, the following must be submitted to the Corps of Engineers:

- a. The cause of the erosion and the distance of any existing structures from the area(s) being stabilized.
- b. The type and length of existing bank stabilization within 300 feet of the proposed project.
- c. A description of current conditions and expected post-project conditions in the waterbody.
- d. A statement describing how the project incorporates elements avoiding and minimizing adverse environmental effects to the aquatic environment and nearshore riparian area, including vegetation impacts in the waterbody.

In addition to a. through d., the results from any relevant geotechnical investigations can be submitted with the PCN if it describes current or expected conditions in the waterbody.

6. Crossings of Waters of the United States: Any project including installing, replacing, or modifying crossings of waters of the United States, such as culverts or bridges, requires submittal of a PCN to the Corps of Engineers (see NWP general condition 32). If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, the project must apply the stream simulation design method from the Washington Department of Fish and Wildlife located in the *Water Crossing Design Guidelines* (2013), or a design method which provides passage at all life stages at all flows where the salmonid species would naturally seek passage. If the stream simulation design method is not applied

for a culvert where salmonid species are present or could be present, the project proponent must provide a rationale in the PCN sufficient to establish one of the following:

- a. The existence of extraordinary site conditions.
- b. How the proposed design will provide equivalent or better fish passage and fisheries habitat benefits than the stream simulation design method.

If a culvert is proposed to cross waters of the U.S. where salmonid species are present or could be present, project proponents must provide a monitoring plan with the PCN that specifies how the proposed culvert will be assessed over a five-year period from the time of construction completion to ensure its effectiveness in providing passage at all life stages at all flows where the salmonid species would naturally seek passage. Culverts installed under emergency authorization that do not meet the above design criteria will be required to meet the above design criteria to receive an after-the-fact nationwide permit verification.

7. Stream Loss: A PCN is required for all activities that result in the loss of any linear feet of stream beds. No activity shall result in the loss of any linear feet of perennial stream beds or the loss of greater than 300 linear feet of intermittent and/or ephemeral stream beds. A stream may be rerouted if it is designed in a manner that maintains or restores hydrologic, ecologic, and geomorphic stream processes, provided there is not a reduction in the linear feet of stream bed. Streams include brooks, creeks, rivers, and historical waters of the U.S. that have been channelized into ditches. This condition does not apply to ditches constructed in uplands. Stream loss restrictions may be waived by the district engineer on a case-by-case basis provided the activities result in net increases of aquatic resource functions and services.

8. Mitigation: Pre-construction notification is required for any project that will result in permanent wetland losses that exceed 1,000 square feet. In addition to the requirements of General Condition 23 (Mitigation), compensatory mitigation at a minimum one-to-one ratio will be required for all permanent wetland losses that exceed 1,000 square feet. When a PCN is required for wetland losses less than 1,000 square feet, the Corps of Engineers may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation for impacts to marine waters, lakes, and streams will be determined on a case-by-case basis. If temporary impacts to waters of the U.S. exceed six months, the Corps of Engineers may require compensatory mitigation for temporal effects.

9. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat

Essential Fish Habitat (EFH) is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. If EFH may be adversely affected by a proposed activity, the prospective permittee must provide a written EFH assessment with an analysis of the effects of the proposed action on EFH. The assessment must identify the type(s) of essential fish habitat (i.e., Pacific salmon, groundfish, and/or coastal-pelagic species) that may be affected. If the Corps of Engineers determines the project will adversely affect EFH, consultation with NOAA Fisheries will be required. Federal agencies should follow their own procedures for complying with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. If PCN is required for the proposed activity, Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

10. Forage Fish: For projects in forage fish spawning habitat, in-water work must occur within designated forage fish work windows, or when forage fish are not spawning. If working outside of a designated work window, or if forage fish work windows are closed year round, work may occur if the work window restriction is released for a period of time after a forage fish spawning survey has been conducted by a biologist approved by the Washington State Department of Fish and Wildlife (WDFW). Forage fish species with designated in-water work windows include Pacific sand lance (*Ammodytes hexapterus*), Pacific herring (*Clupea pallasii*), and surf smelt (*Hypomesus pretiosus*). This RGC does not

apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

11. Notification of Permit Requirements: The permittee must provide a copy of the nationwide permit authorization letter, conditions, and permit drawings to all contractors and any other parties performing the authorized work prior to the commencement of any work in waters of the U.S. The permittee must ensure all appropriate contractors and any other parties performing the authorized work at the project site have read and understand relevant NWP conditions as well as plans, approvals, and documents referenced in the NWP letter. A copy of these documents must be maintained onsite throughout the duration of construction.

12. Construction Boundaries: Permittees must clearly mark all construction area boundaries before beginning work on projects that involve grading or placement of fill. Boundary markers and/or construction fencing must be maintained and clearly visible for the duration of construction. Permittees should avoid and minimize removal of native vegetation (including submerged aquatic vegetation) to the maximum extent possible.

13. Temporary Impacts and Site Restoration

- a. Temporary impacts to waters of the U.S. must not exceed six months unless the prospective permittee requests and receives a waiver by the district engineer. Temporary impacts to waters of the U.S. must be identified in the PCN.
- b. No more than 1/2 acre of waters of the U.S. may be temporarily filled unless the prospective permittee requests and receives a waiver from the district engineer (temporary fills do not affect specified limits for loss of waters associated with specific nationwide permits).
- c. Native soils removed from waters of the U.S. for project construction should be stockpiled and used for site restoration. Restoration of temporarily disturbed areas must include returning the area to pre-project ground surface contours. If native soil is not available from the project site for restoration, suitable clean soil of the same textural class may be used. Other soils may be used only if identified in the PCN.
- d. The permittee must revegetate disturbed areas with native plant species sufficient in number, spacing, and diversity to restore affected functions. A maintenance and monitoring plan commensurate with the impacts, may be required. Revegetation must begin as soon as site conditions allow within the same growing season as the disturbance unless the schedule is approved by the Corps of Engineers. Native plants removed from waters of the U.S. for project construction should be stockpiled and used for revegetation when feasible. Temporary Erosion and Sediment Control measures must be removed as soon as the area has established vegetation sufficient to control erosion and sediment.
- e. If the Corps determines the project will result in temporary impacts of submerged aquatic vegetation (SAV) that are more than minimal, a monitoring plan must be submitted. If recovery is not achieved by the end of the monitoring period, contingencies must be implemented, and additional monitoring will be required.

This RGC does not apply to NWP 48, *Commercial Shellfish Aquaculture Activities*. Please see specific regional conditions for NWP 48.

D. CORPS REGIONAL SPECIFIC CONDITIONS FOR THIS NWP: none

E. ECOLOGY 401 CERTIFICATION: GENERAL CONDITIONS

In addition to all the Corps National and Seattle Districts' Regional permit conditions, the following State General Section 401 Water Quality Certification (Section 401) conditions apply to all Nationwide Permits whether **certified** or **partially certified** in the State of Washington.

1. **For in-water construction activities.** Ecology Section 401 review is required for projects or

activities authorized under NWP that will cause, or may be likely to cause or contribute to an exceedance of a State water quality standard (Chapter 173-201A WAC) or sediment management standard (Chapter 173-204 WAC). State water quality standards and sediment management standards are available on Ecology's website. Note: In-water activities include any activity within a wetland and/or activities below the ordinary high water mark (OHWM).

2. Projects or Activities Discharging to Impaired Waters. Ecology Section 401 review is required for projects or activities authorized under NWP if the project or activity will occur in a 303(d) listed segment of a waterbody or upstream of a listed segment and may result in further exceedances of the specific listed parameter. To determine if your project or activity is in a 303(d) listed segment of a waterbody, visit Ecology's Water Quality Assessment webpage for maps and search tools.

3. Application. For projects or activities that will require Ecology Section 401 review, applicants must provide Ecology with a Joint Aquatic Resources Permit Application (JARPA) along with the documentation provided to the Corps, as described in National General Condition 32, Pre-Construction Notification, including, when applicable: (a) A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, best management practices (BMPs), and any other Department of the Army or federal agency permits used or intended to be used to authorize any part of the proposed project or any related activity. (b) Drawings indicating the Ordinary High Water Mark (OHWM), delineation of special aquatic sites and other waters of the state. Wetland delineations must be prepared in accordance with the current method required by the Corps and shall include Ecology's Wetland Rating form. Wetland rating forms are subject to review and verification by Ecology staff. Guidance for determining the OHWM is available on Ecology's website. (c) A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted. See State General Condition 5 for details on mitigation requirements. (d) Other applicable requirements of Corps Nationwide Permit General Condition 32, Corps Regional Conditions, or notification conditions of the applicable NWP. (e) Within 180 calendar days from receipt of applicable documents noted above **and** a copy of the final authorization letter from the Corps providing coverage for a proposed project or activity under the NWP Program Ecology will provide the applicant notice of whether an individual Section 401 will be required for the project. If Ecology fails to act within a year after receipt of **both** of these documents, Section 401 is presumed waived.

4. Aquatic resources requiring special protection. Certain aquatic resources are unique, difficult-to-replace components of the aquatic environment in Washington State. Activities that would affect these resources must be avoided to the greatest extent possible. Compensating for adverse impacts to high value aquatic resources is typically difficult, prohibitively expensive, and may not be possible in some landscape settings. Ecology Section 401 review is required for activities in or affecting the following aquatic resources (and not prohibited by Seattle District Regional General Condition): (a) Wetlands with special characteristics (as defined in the Washington State Wetland Rating Systems for western and eastern Washington, Ecology Publications #14-06-029 and #14-06-030):

- Estuarine wetlands.
- Wetlands of High Conservation Value.
- Bogs.
- Old-growth and mature forested wetlands.
- Wetlands in coastal lagoons.
- Interdunal wetlands.
- Vernal pools.
- Alkali wetlands.

(b) Fens, aspen-dominated wetlands, camas prairie wetlands. (c) Marine water with eelgrass (*Zostera marina*) beds (except for NWP 48). (d) Category I wetlands. (e) Category II wetlands with a habitat score ≥ 8 points. This State General Condition does not apply to the following Nationwide Permits:

NWP 20 – *Response Operations for Oil and Hazardous Substances*, NWP 32 – *Completed Enforcement Actions*

5. Mitigation. Applicants are required to show that they have followed the mitigation sequence and have first avoided and minimized impacts to aquatic resources wherever practicable. For projects requiring Ecology Section 401 review with unavoidable impacts to aquatic resources, adequate compensatory mitigation must be provided.

(a) Wetland mitigation plans submitted for Ecology review and approval shall be based on the most current guidance provided in Wetland Mitigation in Washington State, Parts 1 and 2 (available on Ecology's website) and shall, at a minimum, include the following:

- i. A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.
- ii. The nature of the proposed impacts (i.e., acreage of wetlands and functions lost or degraded).
- iii. The rationale for the mitigation site that was selected.
- iv. The goals and objectives of the compensatory mitigation project.
- v. How the mitigation project will be accomplished, including construction sequencing, best management practices to protect water quality, proposed performance standards for measuring success and the proposed buffer widths.
- vi. How it will be maintained and monitored to assess progress towards goals and objectives. Monitoring will generally be required for a minimum of five years. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.
- vii. How the compensatory mitigation site will be legally protected for the long term.

Refer to Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Ecology Publication #06-06-011b) and Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology Publications #09-06-032 (Western Washington) and #10-06-007 (Eastern Washington)) for guidance on selecting suitable mitigation sites and developing mitigation plans. Ecology encourages the use of alternative mitigation approaches, including credit/debit methodology, advance mitigation, and other programmatic approach such as mitigation banks and in-lieu fee programs. If you are interested in proposing use of an alternative mitigation approach, consult with the appropriate Ecology regional staff person. Information on alternative mitigation approaches is available on Ecology's website.

(b) Mitigation for other aquatic resource impacts will be determined on a case-by-case basis.

6. Temporary Fills. Ecology Section 401 review is required for any project or activity with temporary fill in wetlands or other waters of the state for more than 90 days, unless the applicant has received written approval from Ecology. Note: This State General Condition does not apply to projects or activities authorized under NWP 33, *Temporary Construction, Access, and Dewatering*

7. Stormwater pollution prevention: All projects that involve land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the State.

(a) For land disturbances during construction, the applicant must obtain and implement permits (e.g., Construction Stormwater General Permit) where required and follow Ecology's current stormwater manual.

(b) Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces shall be provided.

Ecology's Stormwater Management and Design Manuals and stormwater permit information are available on Ecology's website.

8. State Section 401 Review for PCNs not receiving 45-day response from the Seattle District. In the event the Seattle District Corps does not issue a NWP authorization letter within 45 calendar days of receipt of a **complete** pre-construction notification, the applicant must contact Ecology for Section 401 review prior to commencing work.

F. ECOLOGY 401 CERTIFICATION: SPECIFIC CONDITIONS FOR THIS NWP:

Certified subject to conditions. Ecology Section 401 review is required for projects or activities authorized under this NWP if:

1. The project or activities are below the Ordinary High Water Mark (OHWM) with new work being proposed outside the original footprint.
2. The proposed project or activity increases the original footprint of the structure by more than 1/10th acre in wetlands.
3. The project or activity includes adding a new structure, such as a weir, flap gate/tide gate, or culvert to the site.

G. COASTAL ZONE MANAGEMENT CONSISTENCY RESPONSE FOR THIS NWP:

(Note: This only applies in the following counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum and Whatcom)

Response: Ecology concurs that this NWP is consistent with the CZMP, subject to the following condition: An individual Coastal Zone Management Consistency Determination is required for project or activities under this NWP if State Section 401 review is required.

General Conditions: For Non-Federal Permittees

1. Necessary Data and Information. A Coastal Zone Management Program "Certification of Consistency" form is required for projects located within a coastal county. "Certification of Consistency" forms are available on Ecology's website. The form shall include a description of the proposed project or activity and evidence of compliance with the applicable enforceable policies of the Washington Coastal Zone Management Program (CZMP). Also, a map of the site location is required.
2. Timing. Within 6 months from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 6 month period, concurrence with the CZMP is presumed.

General Conditions: For Federal Permittees (Agencies)

1. Necessary Data and Information. Federal agencies shall submit the determination, information, and analysis required by 15 CFR 930.39 to obtain a federal consistency determination.
2. Timing. Within 60 days from receipt of the necessary data and information, Ecology will provide a federal consistency determination for the proposed project or activity. If Ecology fails to act within the 60 day period, concurrence with the CZMP is presumed.

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
7600 Sand Point Way
Seattle, WA 98115-6349

January 11, 2021

Michelle Walker
Chief Regulatory Branch
Seattle District, U.S. Army Corps of Engineers
P.O. Box 3755
Seattle, Washington 98124-3755

RE: WCRO-2020-01361 Reasonable and Prudent Alternative Verification for NWS-2018-492

Dear Ms. Walker,

On December 17, 2020, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) received from the U.S. Army Corps of Engineers (USACE) a request for confirmation that the compensatory conservation proposal for NWS-2018-492 would meet the requirements of the Reasonable and Prudent Alternative (RPA) 1.4 included in the WCRO-2020-01361 Biological Opinion (Opinion). This communication confirms that NMFS has verified that the Letter of Intent to purchase credits by The City of Des Moines from the Blue Heron Slough Conservation Bank submitted by NWS-2018-492 would meet the RPA's requirements.

At the time that the WCRO-2020-01361 Opinion was finalized, the NWS-2018-492 project was expected to result in habitat impacts depicted by the Puget Sound Nearshore Habitat Values calculator output as – 2,043 debits. The Opinion's RPA required NWS-2018-492 to offset project debits with an equal (or greater) amount of conservation credits by taking one or more actions consistent with RPA 1.1-1.5. RPA parts 1.1, 1.2, 1.3, 1.4, and 1.5 may be used in any combination with each other to achieve the necessary conservation offsets so long as each project results in net zero conservation debits or positive conservation points.

The applicant proposes to implement RPA 1.4, and has provided:

Documentation of a presale (signed official letter of intent to purchase credits) agreement with Blue Heron Slough Conservation Bank in Snohomish County, Washington on behalf of Wildlands of Washington, LLC for the purchase of 2,043 credits (20.43 DSAY credits).



Based on the provided information, NMFS verifies that the proposal submitted by the proponents of NWS-2018-492 would meet the RPA's requirements. If you have questions please contact Mary Bhuthimethee at mary.bhuthimethee@noaa.gov or 206-526-4489.

Sincerely,

A handwritten signature in black ink, reading "Elizabeth L. Babcock". The signature is written in a cursive, flowing style.

Elizabeth L. Babcock
Branch Chief, North Puget Sound
Oregon Washington Coastal Area Office

Cc: Kristin McDermott, USACE



Supplemental Agreement Number <u>2</u>		Organization and Address	
Original Agreement Number 17-108		Phone: 360-357-8289	
Project Number 310.405	Execution Date	Completion Date	
Project Title CODM N. Marina Pk. Lot & RR Replace	New Maximum Amount Payable \$1,511,059.46		
Description of Work Original Scope of Work - 12/11/17 Executed Agreement) (Supplement No. 1 Scope of Work - 2/13/2020 Executed Supplement) Engineering and Environmental permitting services for Phase 1 to complete Bid Documents			

The Local Agency of Des Moines

desires to supplement the agreement entered in to with Exeltech Consulting, Inc.

and executed on 12/11/17 and 2/13/2020 and identified as Agreement No. 17-108

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

The Consultant shall perform the following services under this Supplement:

Update the PS&E for the Project (Phase 1 in Attached Scope of Work), All Services listed in Tasks 4 and 5 in attached Scope of Work.

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: _____

III

Section V, PAYMENT, shall be amended as follows:

Contract payment increase by \$64,849.82 per Exhibit A attached.

New Total Maximum Amount Payable of \$1,511,059.46

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate spaces below and return to this office for final action.

By: Santosh J. Kuruvilla, President - Exeltech Consulting, Inc. By: _____

Consultant Signature

Approving Authority Signature

Date

Exhibit "A"
Summary of Payments

	Basic Agreement	Supplement No.1	Supplement No. 2	Total
Direct Salary Cost	\$200,426.90	\$12,539.63	\$21,147.37	\$234,113.90
Overhead (Including Payroll Additives)	\$340,084.36	\$19,290.98	\$34,334.87	\$393,710.21
Direct Non-Salary Costs (Includes Subconsultant Costs)	\$777,572.88	\$21,756.60	\$1,966.00	\$801,295.48
Fixed Fee	\$70,149.42	\$4,388.87	\$7,401.58	\$81,939.87
Sub-Total	\$1,388,233.56	\$57,976.08	\$64,849.82	
Total		\$1,466,209.64	\$1,511,059.46	\$1,511,059.46

Exhibit A

Supplement 2 Scope of Services

City of Des Moines North Marina Parking Lot Bulkhead and Restroom Supplemental Environmental Services

January, 2021

Prepared by:

Exeltech Consulting, Inc.
8729 Commerce Pl Dr NE, Suite A
Lacey, WA 98516



Scope of Services for

North Marina Parking Lot Bulkhead and Restroom Replacement

Supplemental Environmental Services

Under this Agreement, Exeltech Consulting, Inc., hereinafter referred to as the “Consultant”, will perform professional services for the City of Des Moines hereinafter referred to as the “City”. This Scope of Work (“SOW”) provides for environmental permitting and structural engineering services for Phase 1 of the North Marina Parking Lot Bulkhead and Restroom Replacement Project to complete Bid Documents.

The Consultant will actively coordinate and manage the design team’s activities with the City. The Consultant will also apply industry standard of care to resolve issues, and maintain the accuracy and overall quality of the work products. The Consultant will be responsible for the performance of the services described hereinafter, furnishing materials and information as needed to accomplish the work tasks. This document will be used to plan, conduct and complete the work for the Project.

BACKGROUND

The Des Moines North Marina preliminary design documents were submitted with permitting applications in mid 2019. After submittal, additional work has been required to satisfy the permit conditions and comments received from the permitting agencies. These services include specification revisions, stormwater revisions, bulkhead construction restrictions, in-water work restrictions, and services related to producing engineering technical memorandums for the permitting agencies.

PROJECT SCHEDULE (UPDATED)

• NTP	Dec 7th, 2017
• Geotechnical exploration & survey	January 30, 2017
• Draft Geotechnical Report & Seismic Analysis	February 15, 2018
• Wave Analysis	February 15, 2018
• Environmental SEPA/NEPA Kickoff Meeting	February 28, 2018
• Alternatives Analysis Anticipated Completion	April 30, 2018
• JARPA Submittal (45day approval)	May 15, 2018
• 30% Plan Submittal	June 30, 2018
• Draft permit submittals	August, 2018
• 90% & 100% Plan Submittal	April, 2019
• Coordination / response to Permit requests	April, 2019 to April, 2021
• Design mods related to permit requirements	April, 2021
• Ad Date	April, 2021

PROJECT DESCRIPTION

The City proposes to replace the existing north, south and west bulkheads and restroom, and provide other amenities. The project is divided into two phases. Phase 1 will construct the north bulkhead and half

of the west bulkhead and restroom. Phase 2 will construct the remaining portion of the west bulkhead, south bulkhead, breakwater, and some ground plane modifications. Project elements include:

1. Traffic/Parking Lot Control.
2. Removal and replacement of the existing restroom facility
3. Construction of a new north, south and west bulkhead. The bulkhead designs shall not preclude future boat moorage or dredging along the west bulkhead assuming a -13 foot depth.
4. Construction of a new breakwater between the west and south bulkheads.
5. Construction of pedestrian amenities adjacent to the bulkhead(s).

ASSUMPTIONS

1. The plans, specifications, and estimates (PS&E), along with reports will be prepared, to the extent feasible, in accordance with the (2018) version of the WSDOT Standard Specifications for Road, Bridge and Municipal Construction, the current WSDOT Bridge Design Manual, WSDOT Highway Design Manual, and AASHTO Specifications.
2. The plans will be prepared using AutoCAD software.
3. The project will be developed using English units of measure.
4. All construction work will be within the existing right-of-way, it is anticipated that no new right-of-way will be required.
5. There are no hazardous materials or wastes in the project area.
6. The City will have complete jurisdiction over local permitting requirements.
7. The City will be the lead agency under the State Environmental Policy Act (SEPA).
8. It is assumed that SEPA review will result in a Mitigated Determination of Non- Significance, and that an Impact Statement (EIS) will not be required, or an exemption will be granted.
9. The NEPA process, including Endangered Species Act (ESA) Section 7 documentation and National Historic Preservation Act (NHPA) Section 106 consultation will be required.
10. The project will impact wetlands or waters of the State and U.S. It is assumed that a Joint Aquatic Resource Permit Application (JARPA) will be required.
11. No historic/archaeological resources will be discovered. Specifications may be required within the final PS&E to accommodate findings of resources during construction.
12. Historical bathymetric and nearshore data which is possessed by the city will be made available to the project team.
13. Sea-level rise assessment is not included in this SOW. Assumed Sea-level rise figures will be agreed to in the Basis of Design and based on past City analysis.
14. Breakwater replacement is assumed to be of uniform cross-section.
15. This scope of work does not include sediment sampling which would be required for dredged material management.
16. Tsunami analysis, tsunami hydrodynamic loading, and scour due to tsunami not included in this SOW.
17. A Coastal engineering design report is not required. Scope of Work includes coastal processes technical memorandum for existing conditions and potential dredging only.

18. SOW does not include vessel propwash analysis which may be required for scour protection due to vessels, depending on marina use at the west bulkhead.
19. The City will provide pertinent site information to the Consultant in a timely fashion during the information gather stage.
20. The restroom will be permitted under the 2018 International Building Code. Initial design will use 2015, there is hours included in the budget for any rework necessary emitting from the 2018 IBC, which is not scheduled to be released until mid-2018.
21. The restroom will be a custom, site-built building with similar program as the existing restroom building.
22. Technical specifications for the restroom will be written in CSI Format.
23. Services not specifically identified herein, are expressly excluded.
24. City directed activities, beyond the scope of work, will require written confirmation from the City Project Manager or designee, prior to any work commences.
25. Timely reviews of submitted deliverables at mutually agreed upon times and consolidation of review comments into one review document prior to returning to the Consultant.

SCOPE OF SUPPLEMENTAL SERVICES

TASK 1 PROJECT MANAGEMENT

Task 1.1 Monthly Project Management

This task includes services necessary to plan the work, understand the needs of the City, gain endorsement of the project, and plan the scope, schedule, and budget. Project management involves controlling scope, schedule, and budget during the course of the project by communicating with project team members. The Project Manager will prepare invoices, communicate with the team, prepare progress reports, and manage the operations of the design.

1.1.2 Monthly Invoice

TASK 2 PRELIMINARY ENGINEERING (COMPLETE)

TASK 3 BULKHEAD & BREAKWATER ALTERNATIVES ANALYSIS (COMPLETE)

TASK 4 ENVIRONMENTAL SERVICES, CULTURAL RESOURCES, AND PERMITTING (EXELTECH, AQUA TERRA) TASK 4.1 COORDINATION AND MANAGEMENT (EXELTECH)

The City has received all project permits and agency approvals necessary to build the project in compliance with applicable laws and regulations. Several of the permits carry Terms and Conditions that must be met to maintain compliance. The WDFW and USACE require pre- and post-construction notification. Certain agency approvals are contingent upon satisfactory preparation and submittal (for approval) of various sampling and monitoring plans intended to demonstrate permit compliance.

Consultant will compile Terms and Conditions in an Environmental Commitment List to facilitate tracking and documentation of permit compliance through construction. The Environmental Commitments List will be developed in an MS Excel spreadsheet. Consultant will also include permit terms and conditions in construction contract specifications and special provisions.

The Consultant will determine documentation and technical requirements of monitoring and resource protection plans that will be required prior to and during construction. One or more of the required monitoring plans will require retention of sub-consultant(s). Consultant will coordinate directly with needed subconsultants to prepare scope and fee documents for construction phase services.

The Consultant shall review, implement, and/or prepare the Bid Documents to comply with the various acquired permits and conditions including the following:

- Mitigation Bank Credit Purchase and Reporting
- Marine Mammal Protection Plan
- Suspended Sediment Monitoring Plan & Sediment Control Plan
- Stormwater Treatment Plan Approval
- Completion Report
- Sediment Sampling & Analysis Plan

Deliverables:

- Environmental Commitments List (MS Excel format)
- Various applicable pre-Bid technical memorandums.

Task 4.2 Biological Studies and Supporting Documentation (Complete)

Task 4.3 Permitting Shannon & Wilson (Complete)

Task 4.4 Cultural Resources Evaluation Section 106 - Aqua Terra (Complete)

TASK 5 PROJECT PS&E PHASE 1 (NORTH, WEST, RESTROOM AND LANDSCAPE URBAN DESIGN)

Task 5.1 Coastal Engineering (Mott MacDonald) Complete

Task 5.4 PS&E Phase 1 for North, West, Bulkhead Design, and Urban Amenities

The phase 1 PS&E is approximately 110 plan sheets including the following:

- Existing site Plan and Survey Control
- Demolition Plans
- TESC Plans
- Alignment Plans
- Site Civil Plans
- Storm Drainage Plans
- Temporary and Permanent Traffic Control
- Illumination Plans
- Structural Plans & Details
- Urban Design Plans & Details
- Restroom Plans & Details

The Consultant shall update the 100% Plans and prepare Bid Documents to incorporate, but not be limited to:

- City 100% Plan Review Comments
- Final Environmental Permitting Terms and Conditions

The Consultant shall update the 100% Project Contract and Specifications and prepare Bid Documents to incorporate, but not be limited to:

- City 100% Plan Review Comments
- Final Environmental Permitting Terms and Conditions

5.4.1 Structural Calculations to size bulkhead elements (Complete)

5.4.2 (Complete)

5.4.3 The Consultant will assimilate sub-consultant developed PS&Es into one package for advertisement.

5.4.4 The Consultant will develop the bid documents per the City standards and Permit Requirements

Deliverables:

- Bid Documents (Plans and Specifications)

Task 5.5 PS&E Review

5.5.1 The Consultant will modify the Record of Materials (ROM) while performing the constructability review of the Bid Documents and verify that items of work have been incorporated into the Contract.

TASK 6 BID SUPPORT SERVICES

Task 6.1 The Consultant will provide support to the City during the project advertisement.

Task 6.2 The Consultant will address Contractor requests for information and interpretations of the contract documents. The Consultant will provide Bid Item quantity checks, prepare and process updates to the Contract Provisions and Contract Plans for any Addendums. The Consultant will provide Bid analysis and a recommendation on award of the project.

TASK 7 OPTIMIZATION OF SEISMIC DESIGN (EXELTECH & S&W) (COMPLETE)

TASK 8 ENGINEER OF RECORD SERVICES (SEPARATE AGREEMENT)

At the request of the City, the Consultant will provide additional services as requested.

**TASK 9 CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES
(SEPARATE AGREEMENT)**

At the request of the City, the Consultant will provide additional services as requested.

MANAGEMENT RESERVE (NOT USED)

Exhibit D
City of Des Moines
Marina Bulkhead Replacement
Hours Sheet

138

	Senior Project Manager	Senior Bridge Engineer	Bridge Engineer	Bridge EIT	Civil Engineer	Civil Engineer EIT	CADD	Environmental Lead	Landscape Architect	0	Total Exeltech Labor Hours
PROJECT HOURS (IN SCOPE)										0	0
1. PROJECT MANAGEMENT											
1.1 Monthly Project Management	8							12			20
1.2 Monthly invoicing	8							12			20
2. PRELIMINARY ENGINEERING (Complete)											
3. BULKHEAD & BREAKWATER ALTERNATIVES ANALYSIS (Complete)											
4. ENVIRONMENTAL SERVICES, CULTURAL RESOURCES AND PERMITTING											
4.1 Coordination and Management	8	16	15				48	60			147
4.2 Biological Studies and Supporting Documentation (complete)											
4.3 Permitting Shannon & Wilson (complete)											
4.4 Cultural Resources Aquaterra (complete)											
5. PROJECT PS&E (North Bulkhead and Restroom/Urban Amenities)											
5.1 Coastal Engineering (complete)											
5.2 Geotechnical Engineering (complete)											
5.3 Architecture - KPG (complete)											
5.4 Urban Amenities, Utilities & Parking Lot Rehab - Exeltech	8				12	18	40	20			98
5.4 Bulkheads Design, Breakwater, PS&E and Bid Package Assimilation	8	14			12	16	58	24			132
5.5 PS&E Review											
6. BID SUPPORT SERVICES											
7. Optimization of Seismic Design											
8. Engineer of Record (TBD)											
9. Construction Management and Inspection Services (TBD)											
TOTAL HOURS	40	30	15	0	24	34	146	128	0	0	417
MANAGEMENT RESERVE											

Exhibit D
Consultant Fee Determination - Summary Sheet

Marina Bulkhead Replacement
City of Des Moines

Task Description: Prime Consultant
Consultant: Exeltech

Classification	Man Hours		Rate	Dollars
	Hours			
Senior Project Manager	40	x	\$83.31	= 3,332.40
Senior Bridge Engineer	30	x	\$62.73	= 1,881.90
Bridge Engineer	15	x	\$57.17	= 857.55
Bridge EIT	0	x	\$30.00	= 0.00
Civil Engineer	24	x	\$45.50	= 1,092.00
Civil Engineer EIT	34	x	\$35.00	= 1,190.00
CADD	146	x	\$31.00	= 4,526.00
Environmental Lead	128	x	\$64.59	= 8,267.52
Landscape Architect	0	x	\$53.00	= 0.00
Total Hours	417			
Total DSC				= 21,147.37
	% Increase	% of Work		
Labor Escalation for '14				= 0.00
Escalated Total DSC				= 21,147.37
Overhead (OH Cost -- including Salary Additives)				
OH Rate x DSC of	162.36%	x	\$21,147.37	= 34,334.87
Fixed Fee (FF):				
FF Rate x DSC of	35.00%	x	\$21,147.37	= 7,401.58
Reimbursables				
Itemized	Quantity	Units	Rate	In Scope
Meals and Lodging		each	@ \$150.00	= 0.00
Mileage	1,680	each	@ \$0.575	= 966.00
Reproduction and Printing	10	exhibits	@ \$100.00	= 1,000.00
Heavy Civil Construction Contractor Servic	0	Est	@ \$5,000.00	= 0.00
Miscellaneous Supplies		Est	@ \$500.00	= 0.00
Reimbursables Total				1,966.00
Exeltech Subtotal				64,849.82
Subconsultant Costs (See Exhibit G)				0.00
Management Reserve				0.00
Grand Total				64,849.82

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Supplemental Agreement Number <u>3</u>		Organization and Address	
Original Agreement Number 17-108		Phone: 360-357-8289	
Project Number 310.405	Execution Date	Completion Date	
Project Title CODM N. Marina Pk. Lot & RR Replace	New Maximum Amount Payable \$1,639,867.55		
Description of Work (Original Scope of Work - 12/11/17 Executed Agreement); (Supplement No. 1 Scope of Work - 2/13/2020 Executed Supplement); (Supplement No. 2 Scope of Work - Pending Approval 1/27/2021) Complete Bid Documents for Phase II improvements consistent with a Bid Alternative to be included into Phase 1 Bid Documents for Advertisement - (South and West Bulkhead and Breakwater Design = Phase II)			

The Local Agency of Des Moines

desires to supplement the agreement entered in to with Exeltech Consulting, Inc.

and executed on see above for dates and identified as Agreement No. 17-108

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

The Consultant shall provide the following services under this Supplement:

Provide Structural, Civil, Breakwater and Urban Design Services for the South and West Bulkheads as outlined in the attached
Scope of Work (Exhibit B).

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days
for completion of the work to read: _____

III

Section V, PAYMENT, shall be amended as follows:

Contract payment increase by \$128,808.09 per Exhibit A attached.

New Total Maximum Amount Payable of \$1,639,867.55

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate
spaces below and return to this office for final action.

By: Santosh J. Kuruvilla, President - Exeltech Consulting, Inc. By: _____

Consultant Signature

Approving Authority Signature

Date

Exhibit "A"
Summary of Payments

	Basic Agreement	Supplement No.1	Supplement No. 2	Supplement No. 3	Total
Direct Salary Cost	\$200,426.90	\$12,539.63	\$21,147.37	\$37,545.20	\$271,659.10
Overhead (Including Payroll Additives)	\$340,084.36	\$19,290.98	\$34,334.87	\$60,958.39	\$454,668.60
Direct Non-Salary Costs (Includes Subconsultant Costs)	\$777,572.88	\$21,756.60	\$1,966.00	\$17,163.68	\$818,459.16
Fixed Fee	\$70,149.42	\$4,388.87	\$7,401.58	\$13,140.82	\$95,080.69
Sub-Total	\$1,388,233.56	\$57,976.08	\$64,849.82	\$128,808.09	
Total		\$1,466,209.64	\$1,511,059.46	\$1,639,867.55	\$1,639,867.55

Exhibit A

**Scope of Services
Supplement 3
Final design phase 2 elements: South Bulkhead, West Bulkhead and Breakwater**

**City of Des Moines
North Marina Parking Lot Bulkhead Replacement**

January, 2021

Prepared by:
Exeltech Consulting, Inc.
8729 Commerce Pl Dr NE, Suite A
Lacey, WA 98516



Scope of Services for
North Marina Parking Lot Bulkhead and Restroom Replacement
City of Des Moines

Under this Agreement, Exeltech Consulting, Inc., hereinafter referred to as the “Consultant”, will perform professional services for the City of Des Moines hereinafter referred to as the “City”. This Scope of Work (“SOW”) provides for environmental permitting and structural engineering services for the North Marina Parking Lot Bulkhead and Restroom Replacement Project. Construction Engineering, Management, and Inspection Services will be negotiated under a separate Task Order.

The Consultant will actively coordinate and manage the design team’s activities with the City. The Consultant will also apply industry standard of care to resolve issues, and maintain the accuracy and overall quality of the work products. The Consultant will be responsible for the performance of the services described hereinafter, furnishing materials and information as needed to accomplish the work tasks. This document will be used to plan, conduct and complete the work for the Project.

BACKGROUND

The Des Moines North Marina preliminary design documents were submitted with permitting applications in mid 2019. After submittal, additional work has been required to satisfy the permit conditions and comments received from the permitting agencies. Focus in the project life cycle has been the preparation of Phase I Bid Documents for construction, while Phase II has been targeted for a future construction date. Phase II work has been fully permitted as part of the overall project process.

PROJECT SCHEDULE

- | | |
|------------------|-------------------|
| • NP | February 10, 2021 |
| • 100% Submittal | March, 2021 |
| • Ad Date | April, 2021 |

ASSUMPTIONS

1. The plans, specifications, and estimates (PS&E), along with reports will be prepared, to the extent feasible, in accordance with the (2021) version of the WSDOT Standard Specifications for Road, Bridge and Municipal Construction, the current WSDOT Bridge Design Manual, WSDOT Highway Design Manual, and AASHTO Specifications.
2. The plans will be prepared using AutoCAD software.
3. The project will be developed using English units of measure.

4. All construction work will be within the existing right-of-way, it is anticipated that no new right-of-way will be required.
5. There are no hazardous materials or wastes in the project area.
6. Permitting services are not included within this scope of services.
7. Sea-level rise assessment is not included in this SOW. Assumed Sea-level rise figures will be agreed to in the Basis of Design and based on past City analysis.
8. Breakwater replacement is assumed to be of uniform cross-section.
9. Services not specifically identified herein, are expressly excluded.
10. City directed activities, beyond the scope of work, will require written confirmation from the City Project Manager or designee, prior to any work commences.
11. Timely reviews of submitted deliverables at mutually agreed upon times and consolidation of review comments into one review document prior to returning to the Consultant.

SCOPE OF DESIGN SERVICES

TASK 10 PROJECT MANAGEMENT

Task 10.1 Monthly Project Management

This task includes services necessary to plan the work, understand the needs of the City, gain endorsement of the project, and plan the scope, schedule, and budget. Project management involves controlling scope, schedule, and budget during the course of the project by communicating with project team members. The Project Manager will prepare invoices, communicate with the team, prepare progress reports, and manage the operations of the design.

Deliverables:

- Coordination of Subs
- Monthly Invoice
- Progress Reports

TASK 11 SOUTH AND WEST BULKHEAD DESIGN

Task 11 will complete Bid Documents for Phase II improvements consistent with a Bid Alternative to be included into Phase I Bid Documents for advertisement.

Task 11.1 Structural Design

This task includes designing final structural elements related to the south and west bulkheads. Quantities, plans, and specifications will be prepared for construction of the south bulkhead and the portion of the west bulkhead remaining from Phase 1. The west bulkhead design will include a moveable barrier to accommodate future loading and unloading of a docking vessel for Emergency Management Operations.

Deliverables:

- Bid Ready Plans, quantities and specifications of south bulkhead

- Bid Ready Plans, quantities and specifications of west bulkhead

Task 11.2 Civil Design

This task details final civil components related to the south and west bulkheads. Areas of removal and replacement will be detailed. Temporary staging areas will be identified along with erosion and sediment control treatment.

Deliverables

- Bid Ready Plans, quantities and specifications of south bulkhead
- Bid Ready Plans, quantities and specifications of west bulkhead

Task 11.3 Breakwater Design

This task details the final elements needed to construct a new breakwater for the marina. A preliminary concept was already prepared along with wave analyses, and geotechnical analysis. Elements needed for construction include cylinder piles, sheet piles, cap, power, lighting, and removal of the existing breakwater. Structural work related to the new breakwater will occur on the marina side of the existing breakwater to prevent impacts on the waterside of the existing breakwater.

Deliverables:

- Bid Ready Plans, quantities and specifications of breakwater

Task 11.4 Urban Design

Urban design elements related to the south and west bulkhead will be detailed and described in the plans. Specifications for a minimum design life of 20 years will be prepared for finishes on the project site. Urban design elements include pedestrian features, sidewalk finishes, pigmented sealers, railings, and amenities.

Deliverables

- Bid Ready Plans, quantities and specifications of urban design elements

Sheet List

Number	Sheet Title		100%
	General		X
G1	Cover and Vicinity Map		X
G2	Index and reference symbols		X
G3	General Notes		
	Site		
E1	Existing site Plan		X
E2	Existing site Plan		X
E3	Existing site Plan		X
E4	Existing site Plan		X
	Staging		
S1	Staging Plan 1		X
S2	Staging Plan 2		X

Number	Sheet Title		100%
S3	Staging Plan 3		X
	Demo / Civil		
DC1	Demo Plan 1		X
DC2	Demo Plan 2		X
DC3	Demo Plan 3		X
DC4	Site Layout 1		X
DC5	Site Layout 2		X
DC6	Site Layout 3		X
DC7	Site Layout 4		X
DC8	ADA Ramp Details 1		X
DC9	ADA Ramp Details 2		X
DC10	Sidewalk Typ Sections 1		X
DC11	Sidewalk Typ Sections 2		X
DC12	Storm Drain plan		X
DC13	Striping Plan		X
DC14	Temporary Traffic Control Plan		X
DC15	Illumination Plan 1		X
DC16	Illumination Plan 2		X
DC17	Illumination Plan 3		X
DC18	Illumination Details 1		X
DC19	Illumination Details 2		X
	Irrigation		
I1	Irrigation Plan		X
I2	Irrigation Details		X
	Structural		
ST1	Wall Layout		X
ST2	General Notes and Sequence		X
ST3	Plan and Elevation South Wall		X
ST4	Plan and Elevation West Wall		X
ST5	Bulkhead Typical Section		X
ST6	Anchor Details		X
ST7	Wall Cap Reinforcing Plan		X
ST8	Wall Cap Section		X
ST9	Wall Cap Elevation		X
ST10	Wall Details		X
ST11	Breakwater Plan and Elevation		X
ST12	Breakwater Typical Section		X
ST13	Breakwater Details		X
ST14	Pedestrian Barrier Details 1		X
ST15	Pedestrian Barrier Details 2		X
ST16	Pedestrian Barrier Details 3		X
ST17	Pedestrian Barrier Details 4		X
ST18	Railing Details 1		X
ST19	Railing Details 2		X

Number	Sheet Title		100%
ST20	Railng Details 3		X
	Urban Design		
UD1	Urban Design Planter 1		X
UD2	Urban Design Planter 2		X
UD3	Urban Design Planter 3		X
UD4	Landscape Details		X
UD5	West Bulkhead Planters		X
UD6	South Bulkhead Planters		X
UD7	Pedestrian Barrier Details		X
UD8	Special Paving Alternative		X

Exhibit D
City of Des Moines
Marina Bulkhead Replacement
Summary of Cost Per Consultant

149

Task	Exeltech	Makers	Total
PROJECT BUDGET (IN SCOPE)			
10. PROJECT MANAGEMENT			
10.1 Monthly Project Management	\$6,769.82		\$6,769.82
11. SOUTH AND WEST BULKHEAD DESIGN			
11.1 Structural Design	\$38,215.22		\$38,215.22
11.2 Civil Design	\$32,371.20		\$32,371.20
11.3 Breakwater Design	\$34,288.17		\$34,288.17
11.4 Urban Design		\$15,164.68	\$15,164.68
TOTAL BUDGET (IN SCOPE)	\$111,644.41	\$15,164.68	\$126,809.09
Direct Costs	\$1,966.00	\$33.00	\$1,999.00
TOTAL BUDGET	\$113,610.41	\$15,197.68	\$128,808.09

Exhibit D
Consultant Fee Determination - Summary Sheet

Marina Bulkhead Replacement
City of Des Moines

Task Description: Prime Consultant
Consultant: Exeltech

Classification	Man Hours		Rate	Dollars
	Hours			
Senior Project Manager	32	x	\$83.31	= 2,665.92
Senior Bridge Engineer	188	x	\$62.73	= 11,793.24
Bridge Engineer	88	x	\$57.17	= 5,030.96
Civil Engineer	80	x	\$45.50	= 3,640.00
CADD	440	x	\$31.00	= 13,640.00
Environmental Lead	12	x	\$64.59	= 775.08
Total Hours	840			
Total DSC				= 37,545.20
	% Increase		% of Work	
Labor Escalation for '21				= 0.00
Escalated Total DSC				= 37,545.20
Overhead (OH Cost -- including Salary Additives)				
OH Rate x DSC of	<u>162.36%</u>	x	<u>\$37,545.20</u>	= 60,958.39
Fixed Fee (FF):				
FF Rate x DSC of	<u>35.00%</u>	x	<u>\$37,545.20</u>	= 13,140.82
Reimbursables				
Itemized	Quantity	Units	Rate	In Scope
Meals and Lodging		each	@ \$150.00	= 0.00
Mileage	1,680	each	@ \$0.575	= 966.00
Reproduction and Printing	10	exhibits	@ \$100.00	= 1,000.00
Heavy Civil Construction Contractor Servic	0	Est	@ \$5,000.00	= 0.00
Miscellaneous Supplies		Est	@ \$500.00	= 0.00
Reimbursables Total				1,966.00
Exeltech Subtotal				113,610.41
Subconsultant Costs (See Exhibit G)				15,197.68
Management Reserve				0.00
Grand Total				128,808.09

Exhibit D
City of Des Moines
Marina Bulkhead Replacement
Hours Sheet

	Senior Project Manager	Senior Bridge Engineer	Bridge Engineer	Civil Engineer	CADD	Environmental Lead	Total Exeltech Labor Hours	Partner	Senior Associate	Associate	Staff	Total Makers Labor Hours	TOTAL
PROJECT HOURS (IN SCOPE)							0					0	0
10. PROJECT MANAGEMENT													
10.1 Monthly Project Management	12	8				12	32						32
11. SOUTH AND WEST BULKHEAD DESIGN													
11.1 Structural Design		100	50		120		270						270
11.2 Civil Design	20			80	180		280						280
11.3 Breakwater Design		80	38		140		258						258
11.4 Urban Design								25	48	68		141	141
TOTAL HOURS	32	188	88	80	440	12	840	25	48	68	0	141	981

Exhibit E
Subconsultant Fee Determination - Summary Sheet

Marina Bulkhead Replacement
City of Des Moines

Task Description: Urban Amenities Conceptulization

Consultant: Makers

Classification	Hours		Labor Rate		Dollars
Partner	25	x	\$63.00	=	\$1,575.00
Senior Associate	48	x	\$45.00	=	\$2,160.00
Associate	68	x	\$23.00	=	\$1,564.00
Staff	0		\$29.00		\$0.00
Total Hours	141				
Total Direct Labor Cost					= \$5,299.00

	% Increase	% of Work		
Labor Escalation for '21	0	0	=	0.00
Escalated Total DSC			=	5,299.00

Overhead (OH Cost -- including Salary Additives)

OH Rate x DSC of 156.18% x \$5,299.00 = **8,275.98**

Fixed Fee (FF):

FF Rate x DSC of 30.00% x \$5,299.00 = **1,589.70**

Reimbursables	Quantity	Units	Rate	In Scope
Itemized				
Meals and Lodging		each @	\$150.00 =	\$0.00
Mileage		each @	\$0.54 =	\$0.00
Reproduction and Printing		each @	\$10.00 =	\$0.00
Postage and Supplies	Est. 1	each @	\$33.00 =	\$33.00
				\$33.00

Grand Total **\$15,197.68**

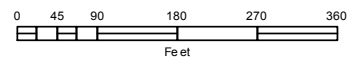
Prepared By: _____ Date: _____

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Des Moines GeoViewer

City of Des Moines
GIS Viewer

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Map Generated: Dec 05, 2017



* This map is not suitable
for site-specific analysis
or for utility location *

