

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Suite C.
Des Moines, Washington
Thursday, February 27, 2025 - 6:00 PM**

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

COMMENTS FROM THE PUBLIC

COMMITTEE CHAIR REPORT

ECONOMIC DEVELOPMENT MEETING: Chair Jeremy Nutting

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

Item 1. MEMORIAL FLAG TRIANGLE UPDATE

CONSENT AGENDA

Item 1. APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through February 13, 2025 and payroll transfers through February 05, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#11390-11459	\$ 405,514.75
Wires	#2853-2876	\$ 934,900.90
Accounts Payable Checks	#166447-166481	\$ 554,811.37
Voided Wire	#2843	\$ (351.46)
Payroll Checks	#19923-19927	\$ 1,423.83
Payroll Advice	#12455-12626	\$ 519,120.69

Total Checks and Wires for A/P & Payroll: \$2,415,420.52

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES

Motion is to approve the January 09, 2025 and January 23, 2025 City Council Regular Meeting Minutes.

[Approval of Minutes](#)

Item 3. 2025 SENIOR ACTIVITY CENTER SOLAR PANELS

Motion is to approve the Public Works Contract with Ellensburg Solar LLC for the 2025 Senior Activity Center Solar Panels in the amount of \$112,745.00, authorize a project construction contingency in the amount of \$11,500.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.

[2025 Senior Activity Center Solar Panels](#)

NEW BUSINESS

Item 1. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

PERFORMANCE OF A PUBLIC EMPLOYEE RCW 42.30.110(1)(G) –
20 Minutes

NEXT MEETING DATE

March 06, 2024 City Council Study Session

ADJOURNMENT

[Projected Future Agenda Items](#)

CITY OF DES MOINES
Voucher Certification Approval
February 27, 2025
Auditing Officer Certification

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

As of **February 27, 2025** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through February 13, 2025 and payroll transfers through February 5, 2025 included in the attached list and further described as follows:

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


 Jeff Friend, Finance Director

			# From	# To	Amounts
Claims Vouchers:					
EFT's			11390	11459	405,514.75
Wires			2853	2876	934,900.90
AP Checks			166447	166481	554,811.37
Voided Wire			2843		(351.46)
Total Vouchers paid					1,894,875.56
Payroll Vouchers					
Payroll Checks	2/5/2025		19923	19927	1,423.83
Payroll Advice			12455	12626	519,120.69
Total Paychecks & Direct Deposits					520,544.52
Total checks and wires for A/P & Payroll					2,415,420.08

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Suite C
Des Moines, Washington
Thursday, January 9, 2025 - 6:00 PM**

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Matt Mahoney.

ROLL CALL

Council Present:

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

Staff Present:

City Manager Katherine Caffrey; City Attorney Tim George; Assistant City Manager Adrienne Johnson-Newton; Director of Community/Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Police Chief Ted Boe; Finance Director Jeff Friend; Assistant City Attorney Matt Hutchins; City Prosecutor Tara Vaughn; Public Works Director Michael Slevin; City Engineer Tommy Owen; Civil Engineer II Tyler Beekley; Civil Engineer 1 Alex Johnson; Civil Engineer Allyssa Beaver; IT Manager Chris Pauk; Community Development Director Rebecca Deming; Director of Court Administration Melissa Patrick; Deputy City Clerk Sara Lee; and City Clerk Taria Keane

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

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

COMMENTS FROM THE PUBLIC

- Chuck Coleman, Thank you to Public Works
- Lee Tomlin, Stairs/Public Works
- Diane Tucker, Boardwalk Tides

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- Jim Lamphriello, City Imagery
- Garner Duncan, Ziply and Ezee Fiber

COMMITTEE CHAIR REPORT

- TRANSPORTATION COMMITTEE MEETING UPDATE: Chair Matt Mahoney
 - Councilmember Matt Mahoney provided an update on the recent Municipal Facilities Committee meeting held on January 09, 2025.
- ENVIRONMENT COMMITTEE MEETING UPDATE: Chair JC Harris
 - Councilmember JC Harris provided an update on the recent Environment Committee meeting held on January 09, 2025.
- PUBLIC ISSUES COMMITTEE: Deputy Mayor Harry Steinmetz.
 - Deputy Mayor Harry Steinmetz provided an update on the recent Public Issues Committee meeting held on January 08, 2025.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

DES MOINES ACTIVITY CENTER SENIOR DANCE ON FEBRUARY 14, 2025 AT 6:00 P.M.

PETER PHILIPS MARINA ACTIVATION

- Consultant Peter Philips gave Council a PowerPoint Presentation on the Des Moines Marina Activation Update.

ZERO EMISSION VEHICLE COOPERATIVE (ZEV CO-OP)

- Beza Daniel Communication Manager and Julien Thorn Customer Service and Outreach Manager from ZEV Co-Op gave Council a PowerPoint Presentation on the Zero Emission Vehicle that will be located at the Marina.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through December 26, 2024 and payroll transfers through December 20, 2024 in the attached list and further described as follows:

EFT Vendor	#11085-11210	\$ 964,502.26
Payments		
Wires	#2789-2823	\$2,793,150.28

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Accounts Payable	#166263-166334	\$ 359,132.52
Checks		
Payroll Checks	#19915-19915	\$ 1,728.11
Payroll Advice	#11946-12112	\$ 508,233.64

Total Checks and Wires for A/P & Payroll: \$4,626,746.81

Item 2: APPROVAL OF MINUTES

Motion is to approve the October 24, and November 21, 2024 City Council Regular Meeting, the November 14, 2024 City Council Retreat, and the December 05, 2024 City Council Study Session Meeting Minutes.

Item 3: HUMAN TRAFFICKING AWARENESS DAY PROCLAMATION

Motion is to approve the Proclamation recognizing January 11, 2025 as Human Trafficking Awareness Day.

Item 4: KOREAN AMERICAN DAY PROCLAMATION

Motion is to approve the Proclamation recognizing January 13, 2025 as Korean American Day.

Item 5: CO-RESPONDER GRANT AWARD

Motion is to ratify and affirm the Grant Award Agreement in the amount of \$69,000 to provide funding for the City's co-responder position for the first six months of 2025.

Item 6: DRAFT RESOLUTION NO. 24-108 IN SUPPORT OF REDONDO BOAT RAMP GRANT APPLICATION

Motion is to enact Draft Resolution 24-108 naming the City Manager as the designated representative/agent for the City in order to apply for grant funding for the Redondo Boat Launch Improvement Project.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda; seconded by Councilmember Matt Mahoney.

Mayor Traci Buxton pulled Consent Agenda Item #6.

The remainder of the Consent Agenda passed 7-0.

Council discussed Consent Agenda Item #6.

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda as read; seconded by Deputy Mayor Harry Steinmetz. Motion passed 7-0.

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Mayor Traci Buxton read the Korean American Day Proclamation into the record.

Mayor Traci Buxton read the Human Trafficking Awareness Day Proclamation into the record.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

PUBLIC RECORDS FEE SCHEDULE UPDATE
Staff Presentation by City Prosecutor Tara Vaughn

At 7:20 p.m. Mayor Traci Buxton opened the Public Hearing.

City Prosecutor Tara Vaughn gave Council a PowerPoint Presentation on the Public Records Fee Schedule Update.

Mayor Traci Buxton asked Council if they had any questions.

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

At 7:35 p.m. Mayor Traci Buxton closed the Public Hearing.

Direction/Action

Motion made by Councilmember Matt Mahoney to enact Draft Ordinance No. 24-037, amending the City's Public Records Fee Schedule; seconded by Councilmember Jeremy Nutting.
Motion passed 7-0.

UNFINISHED BUSINESS

Item 1: CITY OF DES MOINES MISSION, VISION & VALUES

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the City of Des Moines Mission, Vision, and Values Statement; seconded by Councilmember Matt Mahoney.

Amended Motion made by Deputy Mayor Harry Steinmetz to change the Mission and Vision statement from "Des Moines is a waterfront community committed to building a safe, sustainable environment, by providing a high quality of life for all to live, work and play." to "Des Moines is a waterfront community committed to maintaining a safe, sustainable environment, while ensuring a high quality of life for all to live, work and play."; seconded by Mayor Traci Buxton.

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Amended Motion passed 6-1.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz;
Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui,
Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

Against: Councilmember JC Harris

Amended Motion made by Deputy Mayor Harry Steinmetz to change the Vision statement from "To be the premier marine destination in the Pacific Northwest" to say "To be the premier waterfront destination in the Pacific Northwest"; seconded by Councilmember Jeremy Nutting. Motion passed 4-1-2.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz;
Councilmember Gene Achziger, and Councilmember Jeremy Nutting.

Against: Councilmember Matt Mahoney.

Abstained: Councilmember Yoshiko Grace Matsui and Councilmember JC Harris.

The amended main motion passed 6-1.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz;
Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui,
Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

Against: Councilmember JC Harris

At 7:57 p.m., Council took an 8-minute break and resumed the meeting at 8:04 p.m.

NEW BUSINESS

Item 1: DES MOINES MARINA STEPS PROJECT
Staff Presentation by Public Works Director Michael P. Slevin III, P.E.

Public Works Director Michael P. Slevin gave Council a PowerPoint Presentation on the Des Moines Marina Steps Project.

Item 2: DES MOINES CREEK ESTUARY PROJECT UPDATE

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Staff Presentation by Surface Water and Environmental Engineering Manager Tyler Beekley, P.E.

Surface Water and Environmental Engineering Manager Tyler Beekley gave Council a PowerPoint Presentation on the Des Moines Creek Estuary Project Update.

Direction/Action

At 8:59 p.m. Councilmember Jeremy Nutting made a motion extend the meeting until 9:10 p.m.; seconded by Councilmember Matt Mahoney. Motion failed 3-4

For: Deputy Mayor Harry Steinmetz; Councilmember Matt Mahoney and Councilmember Jeremy Nutting.

Against: Mayor Traci Buxton; Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui, and Councilmember JC Harris.

Councilmember Yoshiko Grace Matsui made a motion to extend the meeting until 9:20 p.m.; seconded by Councilmember Matt Mahoney. Motion passed 5-2.

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

Against: Councilmember JC Harris and Councilmember Jeremy Nutting.

Item 3: TELECOM FRANCHISE AGREEMENT WITH EZEE FIBER
Staff Presentation by City Attorney Tim George

Item 4: TELECOM FRANCHISE AGREEMENT WITH ZIPLY FIBER
Staff Presentation by City Attorney Tim George

City Attorney Tim George gave Council a presentation on the Ezee Fiber and Zipley Fiber Telecom Franchise Agreement.

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to pass Draft Ordinance No. 24-087 to a second reading on the next available City Council agenda; seconded by Councilmember Jeremy Nutting. Motion passed 7-0.

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Motion made by Deputy Mayor Harry Steinmetz to pass the Draft Ordinance No. 24-107 to a second reading on the next available City Council agenda; seconded by Councilmember Jeremy Nutting.
Motion passed 7-0.

At 9:15 p.m. Councilmember Jeremy Nutting left the meeting.

Item 5: ~~CITY LOGO DISCUSSION~~ Moved to January 23, 2025 City Council Regular Meeting.

Item 6: DISCUSSION ON NON-PROFIT SUMMIT HOSTED BY CITY OF DES MOINES
Led by Council

Council discussed hosting a Non-Profit Summit on February 22, 2025.

Item 7: Mayor Traci Buxton informed the Council about the Study Session on January 30, 2025, regarding FIFA.

NEXT MEETING DATE

January 23, 2025 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Matt Mahoney to adjourn; seconded by Councilmember Yoshiko Grace Matsui.
Motion passed 6-0.

The meeting adjourned at 9:20 p.m.

[Projected Future Agenda Items](#)

MINUTES

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

CALL TO ORDER

Mayor Traci Buxton called the meeting to order at 6:10 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Yoshiko Grace Matsui.

ROLL CALL

Council Present:

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

Staff Present:

City Manager Katherine Caffrey; City Attorney Tim George; Assistant City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Police Chief Ted Boe; Public Works Director Michael Slevin; City Engineer Tommy Owen; Harbormaster Scott Wilkins; Assistant Harbormaster Katy Bevegne; Community Development Director Rebecca Deming; Director of Community/Administrative Services Bonnie Wilkins; Finance Director Jeff Friend; IT Manager Chris Pauk; and City Clerk Taria Keane

COMMENTS FROM THE PUBLIC

- Karen Schutman, Pier
- Carol Coleman, Pier
- John Hartman, Pier
- Diane Tucker, Pier
- Michael A Imbruglio, Pier
- Teresa Laico, Pier
- Robert Wells, Pier
- David Emery, Pier
- Victoria Andrews, Planning

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- Jim Irish, Pier and Ramp
- Bill Linscott, Marina Docks and Stairs
- Lloyd Lytle Jr., Masonic Home
- George Pettibone, Masonic Home
- Mark Eide, Redondo Pier
- David Litowitz and Carmen Corbin, Ordinance 24-074

CORRESPONDENCE

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

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

Item 1: MIDDLE HOUSING OPEN HOUSE UPDATE

Community Development Director Rebecca Deming gave Council a PowerPoint Presentation update on the Middle Housing Open House.

Item 2: LEGISLATIVE ISSUE UPDATE

Legislative Advocate Anthony Hemstad gave Council a presentation on the Legislative Issues

Item 3: ANIMAL CONTROL UPDATE

Police Chief Ted Boe gave a PowerPoint Presentation update on Animal Control.

Item 4: HOSPITALITY HERO

City Manager Katherine Caffrey informed the Council that Harbormaster Scott Wilkins received the Seattle Southside Hospitality Hero Award.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through January 09, 2025 and payroll transfers through January 03, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#11211-11305	\$ 857,351.02
Wires	#2824-2845	\$1,990,919.97
Accounts Payable Checks	#166335-166384	\$ 741,984.86
Payroll Checks	#19916-19919	\$ 1,689.85

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Payroll Advice #12113-12286 \$ 583,095.10

Total Checks and Wires for A/P & Payroll: \$4,175,040.80

- Item 2: APPROVAL OF MINUTES
Motion is to approve the December 12, 2024 City Council Regular Meeting Minutes.
- Item 3: TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH EZEE FIBER
Motion is to approve Draft Ordinance No. 24-107 granting a telecommunications Franchise Agreement to Ezee Fiber.
- Item 4: TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH ZIPLY FIBER
Motion is to approve Draft Ordinance No. 24-087 granting a telecommunications Franchise Agreement to Ziplly Fiber.
- Item 5: SURPLUS PROPERTY - VEHICLES
Motion is to accept the 2025 surplus Vehicle List declaring certain vehicles and equipment identified in Attachment 1 as surplus and authorize disposal of said surplus vehicles and equipment by auction or trade-in.
- Item 6: 2025-2026 RECYCLING PROGRAM GRANT FUNDING
Motion to accept the King County Solid Waste Division WR/R Grant and the Seattle & King County Department of Pubic Health LHWMP Grant and authorize the City Manager to sign the grant document substantially in the form as attached.
- Item 7: 2025 VACTOR TRUCK PURCHASE
Motion is to approve the purchase of a new Vactor Truck from Owen Equipment for a total amount of \$643,422.36 and to authorize the City Manager or the City Manager's designee to sign the purchase order at the time they are created.
- Item 8: AWARD OF CONTRACT FOR THE DES MOINES MARINA DOCK REPLACEMENT PHASE 1 - L, M, N DOCKS PROJECT TO QUIGG BROS. INC
Motion is to approve the agreement between the City of Des Moines and Quigg Bros. Inc. in the amount of \$10,466,355.20 and a contingency of \$1,569,953.00, for the purpose of replacing L, M, N Docks, and authorize the City Manager to sign the agreement substantially in the form as attached.

Direction/Action

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Motion made by Councilmember to approve the Consent Agenda;
seconded by Councilmember Matt Mahoney.

Councilmember JC Harris pulled Consent Agenda Item #8.

The remainder of the Consent Agenda was approved 7-0.

Council discussed Consent Agenda Item #8.

Motion made by Councilmember JC Harris to approve Consent Agenda
Item #8 as read; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

NEW BUSINESS

- Item 1: TRANSPORTATION IMPACT FEE REDUCTION FOR EARLY
LEARNING FACILITIES
Staff Presentation by Assistant City Attorney Matthew Hutchins

Assistant City Attorney Matthew Hutchins gave Council a PowerPoint
Presentation on the Transportation Impact Fee Reduction for Early
Learning Facilities.

Direction/Action

Motion made by Councilmember Matt Mahoney to pass Draft
Ordinance 24-074 creating a partial exemption from transportation
impact fees for qualifying early learning facilities; seconded by
Councilmember Jeremy Nutting.

Motion made by Councilmember JC Harris to to reschedule this item to
a future date.
Motion died for a lack of a second.

The Main Motion passed 6-1.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz;
Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui,
Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

Against: Councilmember JC Harris.

- Item 2: CITY LOGO DISCUSSION
Staff Presentation by Director of Community/Administrative Services
Bonnie Wilkins.

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Director of Community/Administrative Services Bonnie Wilkins gave Council a PowerPoint Presentation on the City Logo.

Council discussed the City Logo parameters.

Council directed staff to present the parameters to the consultant and return with recommendations for Council's review.

- Item 3: REDONDO FISHING PIER REPLACEMENT PROJECT - AMENDED TASK ASSIGNMENT FOR CONSULTANT DESIGN
Staff Presentation by Public Works Director Michael P Slevin III, P.E.

Public Works Director Michael P Slevin gave Council a PowerPoint on the Redondo Fishing Pier Replacement Project.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the 2020-2021 On-Call General Civil Engineering Amendment Task Assignment 2020-4.1 with Exeltech Consulting Inc. to provide engineering design services for the Redondo Fishing Pier Replacement Project in the amount of \$211,524.25, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

- Item 4: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

EXECUTIVE SESSION

The Special Meeting was called to order by Mayor Traci Buxton at 8:27 p.m.

ROLL CALL

Council Present:

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

Others Present:

City Manager Katherine Caffrey, Assistant City Manager Adrienne Johnson-Newton, City Attorney Tim George, and Police Chief Ted Boe

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The purpose of the Special Meeting was to hold an Executive Session to discuss Labor Negotiations under RCW 42.30.140 (4)(a). The Executive Session was expected to last 20 minutes.

At 8:45 p.m. Mayor Traci Buxton extended the Executive Session to 8:55 p.m.

No formal action was taken. The Executive Session lasted 38 minutes.

The meeting adjourned at 8:55 p.m.

Direction/Action

Motion made by Councilmember Jeremy Nutting to set aside all other items for the rest of the meeting, seconded by Councilmember Matt Mahoney.
Motion passed 7-0.

NEXT MEETING DATE

January 30, 2025 City Council Study Session

ADJOURNMENT

Direction/Action

Motion made by Councilmember Yoshiko Grace Matsui to adjourn; seconded by Councilmember Jeremy Nutting.
Motion passed 7-0

The meeting adjourned at 8:56 p.m.

[Projected Future Agenda Items](#)

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2025 Senior Activity Center Solar
Panels

AGENDA OF: February 27, 2025

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: February 18, 2025

1. Public Works Contract

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation:

The purpose of this Agenda Item is to seek City Council approval of the Public Works Contract with Ellensburg Solar LLC (Attachment 1), for the 2025 Senior Activity Center Solar Panels. The following motion will appear on the Consent Agenda:

Suggested Motion

Motion: "I move to approve the Public Works Contract with Ellensburg Solar LLC for the 2025 Senior Activity Center Solar Panels in the amount of \$112,745.00, authorize a project construction contingency in the amount of \$11,500.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted."

Background

The City applied for, and received, a Department of Commerce Solar Grant for a solar panel array to be installed on the roof of the Senior Activity Center in 2024. The grant will cover the cost of solar panel installation on the roof of the Senior Activity Center, and the tie-in to the existing electrical system. The grant will not cover the costs associated with the upper roof replacement, but a new roof (less than 5 years old) is a requirement in order to obtain the Solar Grant. The upper roof will be replaced prior to any solar panel installation under a separate contract.

Discussion

Bids were solicited on January 13, 2025 from 5 electrical contractors via the MRSC Roster, with a bid due date of February 5, 2025 @ 4:00 PM. A project walkthrough for interested parties was held on January 22, 2025 @ 9:00 AM – 2 electrical contractors were present. Bid proposals from three electrical contractors were received. Bids are summarized below.

BID RESULTS

<u>Contractor Name</u>	<u>Bid Proposal</u>
Ellensburg Solar LLC	\$112,745.00 (Responsive Low Bid)
Forecast Solar	\$124,142.00
A & R Solar	\$141,240.00

Ellensburg Solar LLC is the Responsive Low Bidder at \$112,745.00. The bid proposals and contractor qualifications have been reviewed, and staff finds that the low bid is responsive and recommends award of the Contract to Ellensburg Solar LLC.

Alternatives

None.

Financial Impact

The Department of Commerce Solar Grant will provide adequate funding for this project.

Recommendation

Staff recommends approval of the suggested motion.

Council Committee Review

Not Applicable.



PUBLIC WORKS CONTRACT
between City of Des Moines and
Ellensburg Solar LLC

THIS CONTRACT is made and entered into by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Ellensburg Solar LLC organized under the laws of the State of Washington, located and doing business at P O Box 1681, Ellensburg, WA 98926, (509) 856-5204, Colby Peone (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

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

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

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

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

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

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

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

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

II. TIME OF COMPLETION. The parties agree that work on the tasks described in Section I above and more specifically detailed in Exhibit "A" attached hereto will begin immediately upon execution of this Contract. Upon the effective date of this Contract, the Contractor shall complete the work described in Section I within **50 Working Days**, and be complete before **May 31, 2025**. If said work is not completed within the time specified, the Contractor agrees to pay the City the sum specified in Section VI - Liquidated Damages of this contract.

III. COMPENSATION. The City shall pay the Contractor a total amount not to exceed \$112,745.00, plus any applicable Washington State Sales Tax, for the work and services contemplated in this Contract per attached Exhibit "A". Total amount of contract, including applicable sales tax, not to exceed \$112,745.00. ***This project is exempt from***

sales and use tax per the attached Special Notice from the Department of Revenue.

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

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

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

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

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

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

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

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

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

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

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

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

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **\$338.24** [*Liquidated Damages = (0.15*Contract Amount)/Time for Completion*] shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

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

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

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

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

IX. COMPLIANCE WITH WAGE, HOUR, SAFETY, AND HEALTH LAWS. The Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 29 U.S.C. 201 et seq, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq, the Washington Industrial Safety and Health Act, Chapter 49.17 RCW, and any other state or federal laws applicable to wage, hours, safety, or health standards.

X. DAYS AND TIME OF WORK. Unless otherwise approved by the City, the working hours for this project will be limited to the following hours:

Monday through Friday: 7:00 a.m. to 7:00 p.m.
Saturday, Sunday and Holidays: 8:00 a.m. to 5:00 p.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

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

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

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

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

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

C. Other Insurance Provisions

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

D. Acceptability of Insurers

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

E. Verification of Coverage

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

F. Subcontractors

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

G. Notice of Cancellation

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

H. Failure to Maintain Insurance

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

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

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

In the event that the Compensation called for in Section III of this Contract is less than \$150,000.00, which sum shall be determined after the addition of applicable Washington State sales tax, the Contractor may, prior to the execution to this contract and in lieu of the above mentioned bonds, elect to have the City retain 10% of the contract amount for a period of either thirty (30) days after final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

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

XXII. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTRACTOR:	CITY OF DES MOINES:
By: _____ (Signature)	By: _____ (Signature)
Print Name: _____	Print Name: Katherine Caffrey
Its: _____ (Title)	Its: City Manager
DATE: _____	DATE: _____
	Approved as to Form: _____ City Attorney DATE: _____

NOTICES TO BE SENT TO:	NOTICES TO BE SENT TO:
CONTRACTOR:	CITY OF DES MOINES:
Colby Peone Ellensburg Solar LLC P O Box 1681 Ellensburg, WA 98926 (509) 856-5204 (telephone) colby@ellensburgsolar.com (e-mail address)	Scott J. Romano City of Des Moines 21650 11 th Avenue South Des Moines, WA 98198 (206) 870-6539 (telephone) sromano@desmoineswa.gov (e-mail address)

At the direction of the Des Moines
City Council taken at an open
Public meeting on _____.

Bond No. _____

PUBLIC WORKS PERFORMANCE BOND
to City of Des Moines, WA

Bond No. _____

The City of Des Moines, Washington, (City) has awarded to _____ (Principal), a contract for the construction of the project designated as _____ (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and _____ (Surety), a corporation, organized under the laws of the State of _____ and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of _____ US Dollars (\$ _____) Total Contract Amount, subject to the provisions herein.

This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all the terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond shall be executed in one (1) original counterpart, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL

SURETY

Principal Signature _____ Date _____

Surety Signature _____ Date _____

Printed Name _____

Printed Name _____

Title _____

Title _____

Name, address, and telephone of local office/agent of Surety Company is:

EXHIBIT “A” – SCOPE OF WORK

SENIOR ACTIVITY CENTER SOLAR PANELS SCOPE OF WORK

2025 Senior Activity Center Solar Panels

Work contemplated to be performed under this contract is as follows:

- Furnish and install a turnkey solar photovoltaics (PV) solar panel system rated for 47.045 kW DC / 50 kW AC at standard test conditions on the roof of the Senior Activity Center.
- The contractor will be responsible for developing detailed design and engineering plans, specifying solar panels, inverters, mounting structures, and necessary electrical components.
- Follow all State and Local Building Codes and regulations.
- Adhere to all manufacturer codes and specifications.

This is a Public Works Project which is subject to Prevailing Wage and Sales Tax rules. A current City of Des Moines Business License is required for all contractors and subcontractors that perform work under this contract. These licenses shall be in place prior to the issuance of any Notice to Proceed. Retainage will be withheld.

Project Location:

Senior Activity Center Roof – 2045 South 216th Street, Des Moines, WA 98198

Project Walkthrough:

A project walkthrough will be held for interested parties on Wednesday, January 22, 2025 at 9:00 AM.

Interested contractors must be familiar with municipal government installations similar to the Senior Activity Center, and have previous work experience on projects funded through the Washington State Department of Commerce. This project is supported with funding from the Washington State Department of Commerce – Community Decarbonization 2024 Energy Retrofits for Public Buildings.

We are currently in the process of removing the existing upper roofing, and installing new TPO membrane on insulation. The existing upper roof area is 45 squares at a 2/12 pitch. This work will be completed before this solar panel work begins. The building will be occupied at all times during construction.

This is a short turnaround due to our funding availability. We need this work completed by the end of May 2025. Please have your estimates e-mailed to me no later than 4:00 PM on Wednesday, February 5, 2025. E-mail address is sromano@desmoineswa.gov.



Special Notice

Intended audience: sellers and installers of solar energy systems, consumers

June 21, 2019

Sales and use tax exemption on purchases and installation of solar energy systems

A sales and use tax exemption for purchases and installation of solar energy systems that produce at least one kilowatt (kW), but no more than 100 kW AC of electricity is available July 1, 2019, through Dec. 31, 2029.

Sellers/installers of renewable energy systems

A new bill (E2SSB 5116) provides a 100% sales and use tax exemption on purchases of machinery and equipment used directly in a solar energy system if:

- The system is capable of generating at least 1 kW, but no more than 100 kW, AC of electricity.
- The machinery and equipment are purchased between July 1, 2019 and Dec. 31, 2029.

Installation charges for qualifying solar systems may also be eligible for the sales tax exemption if the installer meets certain requirements. This exemption applies to installations beginning on July 1, 2019, and completed by Dec. 31, 2029.

Qualified installers

To qualify for the sales tax exemption on the installation charges at the time of installation, the installer must:

- be registered with the Department of Labor and Industries as a contractor
- possess a current state unified business identifier (UBI) number
- possess proof of industrial insurance coverage

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- possess an Employment Security Department number
- possess a state excise tax registration number
- have had no findings of violations of federal or state wage and hours laws and regulations in the past 24 months

The installer requirements will be verified in the normal course of desk and field audits. The buyer is not responsible for ensuring the seller is compliant.

How is the exemption reported?

To document the exemption at the time of sale, the buyer must provide the seller (and installer, if different from the seller) with a completed [Buyer's Retail Sales Tax Exemption Certificate](#). Buyers can obtain this form on the department's website. The seller/installer must keep the completed form in their records for five years.

Sellers that file electronic returns:

The department has added a deduction line titled **Sales of Solar Machinery/Equipment; Install Labor** on the retail sales tax deduction page of the electronic return.

Sellers that file paper returns:

Sellers of qualifying machinery, equipment, and installation labor may take a deduction for *Other* from retail sales tax and use the explanation **Sales of Solar Machinery/Equipment; Install Labor**.

For further information

- See [E2SSB 5116](#), sections 18 and 19 (Chapter 288, Laws of 2019).
- Visit our Tax Incentives page under [Renewable Energy/Green Incentives](#).

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