AMENDED AGENDA

DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
VIA ZOOM

Thursday, April 22, 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

COMMENTS FROM THE PUBLIC VIA ZOOM/WRITTEN PUBLIC COMMENT

CITY MANAGER REPORT

Item 1. SUMMER PROGRAMS UPDATE

CONSENT CALENDAR

Item 1. APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers through April 16, 2021 in the attached list and further described as follows:

Total A/P Checks/Vouchers	#162283-162400	$1,364,459.54
Electronic Wire Transfers	# 1675-1682	$1,243,641.33
Payroll Checks	# 19402-19402	$ 435.17
Payroll Direct Deposit	#130001-130146	$ 373,658.42

Total Checks and Wires for A/P and Payroll: $2,982,194.46

Consent Item 1

Item 2. CONTRACT WITH EHM WASHINGTON, LLC TO PROVIDE ELECTRONIC MONITORING SERVICES TO MUNICIPAL COURT FOR INDIGENT DEFENDANTS

Motion is to approve the Goods and Services Contract between the EHM Washington LLC and the City of Des Moines for electronic monitoring services for indigent defendants and further authorize the City Manager to sign the agreement substantially in the form as submitted.

Consent Item 2

Item 3. DES MOINES ACTIVITY CENTER INTERIOR FLOORING

Motion is to approve the Public Works Contract with NFI Enterprises, LLC in the total amount of $93,837.73 for the Des Moines Normandy Park Activity Center re-flooring project, approve $20,000.00 in construction contingency, and authorize the City Manager to sign the contract substantially in the form as submitted.

Consent Item 3

Item 4. AMENDMENT 2 TO THE WASHINGTON MULTI-CITY BUSINESS LICENSE AND TAX PORTAL AGENCY INTERLOCAL AGREEMENT (FILE LOCAL)

Motion is to authorize the City Manager to sign Amendment No. 2 to the Washington Multi-City Business License and Tax Portal Agency Interlocal Agreement extending the use of historical transaction counts, substantially in the form as attached.

Consent Item 4

Item 5. ADDENDUM NO. 1 TO THE INTERLOCAL AGREEMENT FOR EMERGENCY DISPATCH SERVICES

Motion is to approve Addendum No. 1 to the Interlocal Agreement for Emergency Dispatch Services between the City and Valley Communications, and authorize the City Manager to sign the Addendum substantially in the form as attached.

Consent Item 5

Item 6. SURFACE WATER CAPITAL PROJECTS – CONSTRUCTION CONTACT AWARD

Motion 1 is to approve the award of the construction contract of the Surface Water Capital Projects to R.W. Scott Construction, in the amount of $1,282,248.20 including sales tax, authorize a project contingency in the amount of $128,000.00, and authorize the City Manager to sign said contract substantially in the form as submitted.

Motion 2 is to approve the Task Order Assignment with Parametrix,that will provide construction management services for Schedule A - 6th Ave S and S 239th St Pipe Project in the amount of $132,042.01, plus a contingency in the amount of $13,000.00, and authorize the City Manager to sign said Task Order Assignment, substantially in the form as submitted.

Motion 3 is to approve the Task Order Assignment with Parametrix, that will provide construction management services for Schedule B - Soundview/Redondo Beach Drive Pipe Project in the amount of $66,104.64, plus a contingency in the amount of $7,000.00, and authorize the City Manager to sign said Task Order Assignment, substantially in the form as submitted.

Motion 4 is to approve the Task Order Assignment with Parametrix, that will provide construction management services for Schedule C/D - 8th Avenue (264th to 265th) Pipe Project in the amount of $111,889.65, plus a contingency in the amount of $11,000.00, and authorize the City Manager to sign said Task Order Assignment, substantially in the form as submitted.

Motion 5 is to approve the Interlocal Agreement Amendment between the City of Des Moines and the Lakehaven Water & Sewer District, and further authorize the City Manager to sign said Interlocal Agreement Amendment substantially in the form as submitted.

Motion 6 is to direct Administration to submit a CIP budget amendment for the 8th Ave South (South 264th St to South 265th St) Stormwater Pipe Project to incorporate the Lakehaven Utility construction costs.

Consent Item 6

Item 7. PORT OF SEATTLE ECONOMIC DEVELOPMENT PARTNERSHIP AGREEMENT

Motion is to ratify and approve the Port of Seattle Economic Development Partnership Agreement (S-00320657).

Consent Item 7

EXECUTIVE SESSION

Performance of a Public Employee under RCW 42.30.110(1)(g) AND Real Estate Acquisition under RCW 42.30.110(1)(b)– 7560 minutes

NEW BUSINESS

INTRODUCTION OF ITEMS FOR FUTURE CONSIDERATION – 10 Minutes

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

~~EXECUTIVE SESSION~~

~~Performance of a Public Employee under RCW 42.30.110(1)(g) 60 minutes~~

NEXT MEETING DATE

May 06, 2021 City Council Regular Meeting

ADJOURNMENT

Consent Calendar Item #1

April 22, 2021

Auditing Officer Certification

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

As of April 22, 2021 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through April 16, 2021 and payroll transfers through April 5, 2021 included in the attached list and further described as follows:

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

Beth Anne Wroe

Beth Anne Wroe, Finance Director

			# From		# To	Amounts
Claims Vouchers:						
Total A/P Checks/Vouchers			162283		162400	1,364,459.54
Voided Check						0.00
Electronic Wire Transfer			1675		1682	1,243,641.33
Total claims paid						**2,608,100.87**
Payroll Vouchers						
Payroll Checks	4/5/2021		19402	-	19402	435.17
Direct Deposit			130001		130146	373,658.42
Total Paychecks/Direct Deposits paid						**374,093.59**
Total checks and wires for A/P & Payroll						**2,982,194.46**

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Consent Calendar Item #2

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Contract with EHM Washington, LLC to provide electronic monitoring services to Municipal Court for indigent defendants.

ATTACHMENTS:
1. Goods and Services Contract between the EHM Washington, LLC and the City of Des Moines

FOR AGENDA OF: April 22, 2021

DEPT. OF ORIGIN: Court

DATE SUBMITTED: April 15, 2021

CLEARANCES:
[ ] Community Development
[ ] Marina
[ ] Parks, Recreation & Senior Services
[ ] Public Works

CHIEF OPERATIONS OFFICER:_________

[X] Legal /s/ TG
[X] Finance Cathleen Ware
[X] Court
[ ] Police

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Michael Matthias

Purpose and Recommendation

The purpose of this agenda item is to request the Council's approval of the Goods and Services Contract between EHM Washington, LLC and the City of Des Moines to provide electronic monitoring of indigent defendants.

Suggested Motion

"I move to approve the Goods and Services contract between the EHM Washington LLC and the City of Des Moines for electronic monitoring services for indigent defendants and further authorize the City Manager to sign the agreement substantially in the form as submitted."

Background

Cities in Washington are responsible for the costs and implementation of prosecuting, adjudicating, sentencing, and incarcerating persons accused of committing misdemeanors and gross misdemeanors within their jurisdiction. Jailing is the method most commonly associated with pretrial detention, for which Des Moines largely utilizes SCORE jail.

For defendants charged but not yet convicted of a misdemeanor or gross misdemeanor, Court Rules require that the Court impose less restrictive measures to protect public safety and insure the defendant's presence in Court in lieu of jail unless the defendant is shown to be likely to commit a violent crime or fail to appear of their own recognizance. With respect to sentencing, the most effective and just sentence will sometimes lie somewhere between a traditional jail sentence and mere probation.

Electronic monitoring is an alternative to total confinement in jail. Monitoring may include confinement to an individual's residence, alcohol monitoring, and/or GPS monitoring to identify the offender's presence or absence at a particular location. In addition to a Judge's inherent power to impose electronic monitoring as a pretrial detention or sentence, State Law explicitly allows electronic monitoring in certain cases and requires it in others.

As examples, RCW 10.99.040 provides that GPS monitoring may be imposed in various circumstances, including, but not limited to: at the time of entering a domestic violence no contact order; and, as a penalty for violation of certain domestic violence no contact orders. Moreover, in 2020 the Tiffany Hill Act was signed enabling victim notification through electronic monitoring of defendants. Additionally, state law mandates that the Court impose, as a pretrial condition of release, alcohol monitoring using either a transdermal alcohol detection system and/or an ignition interlock device where a defendant is charged with a second (or subsequent) DUI offense per RCW 10.21.055. A period of electronic home detention is mandatory following a jail term in sentence for most DUI sentences where the defendant has one or more prior convictions within seven years.

Discussion

Electronic monitoring is used by the Court as a sanction that is more punitive then traditional probation, but less harsh than incarceration. The punitive element involves rigorously enforced compliance with conditions set by the Court and monitored by probation. The intent is to enhance compliance while allowing offenders to remain out of custody to focus on pro-social activities such as seeking or maintaining employment, engaging in substance use disorder or mental health evaluation and treatment, or pursuing educational opportunities.

Electronic monitoring can be employed at various stages of the criminal justice system, from pretrial through post-conviction probation. Electronic monitoring allows the Court to monitor and verify offenders' compliance and whereabouts, increasing the likelihood that noncompliance is detected quickly and sanctions swiftly applied. In addition to providing the Court with an intermediate sanction for noncompliance, electronic monitoring also results in reduced jail costs, decreased jail population, and reduced rates of recidivism.

EHM Washington LLC can provide timely installations of equipment on our defendants, minimizing time that defendants may go unmonitored. EHM Washington is willing and able to provide onsite installation services to our clients, allowing them to enroll in monitoring at the Court. EHM Washington has a track record of timely, receptive and transparent communication with the Court, clients, and the City.

Alternatives

The council may:

1. Approve the contract for services for electronic monitoring with EHM Washington LLC
2. Decline to approve the contract. (Not recommended)

Financial Impact

The city spent approximately $65,000 on electronic monitoring of indigent defendants in 2020. The average cost of electronic monitoring is $14.25 per day whereas the cost of total confinement at SCORE Jail is $174 per day. This represents a savings to the City of $159.75 per day, per defendant. Staff projects that the cost of home monitoring under this agreement will be no more than $75,000.

Recommendation

Staff recommends that the Council approve the Goods and Services Contract between the EHM Washington LLC and the City of Des Moines.

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Attachment #1

GOODS & SERVICES CONTRACT between the City of Des Moines and

EHM WASHINGTONLLC

THIS CONTRACT is made by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and EHM Washington organized under the laws of the State of Washington, located and doing business at 622 Tacoma Ave S Tacoma, WA 98402, 253-328-7345, Toby Skaats (hereinafter the "Vendor").

CONTRACT

I DESCRIPTION OF WORK.

Vendor shall provide the following goods and materials and/or perform the following services for the City:

> The Vendor will provide electronic monitoring services to our indigent defendants including continuous alcohol monitoring (SCRAM); electronic home detention; electronic home detention with alcohol monitoring (SCRAMx); GPS monitoring; and victim notification services as ordered by Des Moines Municipal Court. Services will be billed at the following rates: SCRAM $13.65/day; EHD $14.40/day; SCRAMx $15.65/day; GPS $14/day; Victim Notification $11/day and set-up fee of $50/ea defendant. Vendor will also provide onsite services, including but not limited to unit installation, calibration and removal at Des Moines Municipal Court, 21630 11th Ave S Ste C Des Moines, WA 98198, on mutually agreed upon dates and times with the city/court at no additional cost. Vendor further agrees to abide by city vendor COVID protocols including: screening questionnaire, temperature check and face covering policy. Furthermore, Vendor will sanitize work area between each client.

Vendor acknowledges and understands that it is not the City's exclusive provider of these goods, materials, or services and that the City maintains its unqualified right to obtain these goods, materials, and services through other sources.

II TIME OF COMPLETION. Upon the effective date of this Contract, Vendor shall complete the work and provide all goods, materials, and services through December 31, 2022.

III. COMPENSATION. The City shall pay the Vendor an amount not to exceed $75,000 per year, including applicable Washington State Sales Tax, for the goods, materials, and services contemplated in this Contract. The City shall pay the Vendor the following amounts according to the following schedule:

Vendor will be paid no later than the 20th of each month for the previous month's invoices. The city may either remit payment through credit card or check for services rendered.

If the City objects to all or any portion of an invoice, it shall notify Vendor and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

A. Defective or Unauthorized Work. The City reserves its right to withhold payment from Vendor for any defective or unauthorized goods, materials or services. If Vendor is unable, for any reason, to complete any part of this Contract, the City may obtain the goods, materials or services from other sources, and Vendor 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 these additional costs incurred to complete this Contract with other sources, from any and all amounts due or to become due the Vendor.

B. Final Payment: Waiver of Claims. VENDOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY VENDOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

IV. PREVAILING WAGES. Vendor shall not be required to pay Prevailing Wage.

V. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Vendor has the ability to control and direct the performance and details of its work; however, the City shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

VI. TERMINATION. Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract.

VII. CHANGES. The City may issue a written amendment for any change in the goods, materials or services to be provided during the performance of this Contract. If the Vendor determines, for any reason, that an amendment is necessary, Vendor must submit a written amendment request to the person listed in the notice provision section of this Contract, section XVI(C), within fourteen (14) calendar days of the date Vendor 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 Vendor'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 Vendor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Vendor shall proceed with the amended work upon receiving either a written amendment from the City or an oral order from the City before actually receiving the written amendment. If the Vendor fails to require an amendment within the time allowed, the Vendor waives its right to make any claim or submit subsequent amendment requests for that portion of the contract work. If the Vendor disagrees with the equitable adjustment, the Vendor must complete the amended work; however, the Vendor may elect to protest the adjustment as provided in subsections A through E of Section VIII, Claims, below.

The Vendor accepts all requirements of an amendment by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. An amendment that is accepted by Vendor 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.

VIII. CLAIMS. If the Vendor disagrees with anything required by an amendment, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Vendor may file a claim as provided in this section. The Vendor shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Vendor 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 Vendor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Vendor'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 Vendor'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 Vendor is asserting a schedule change or disruption.

B. Records. The Vendor 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 Vendor'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. Vendor's Duty to Complete Protested Work. In spite of any claim, the Vendor 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 Vendor 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 Vendor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

IX. LIMITATION OF ACTIONS. VENDOR 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 VENDOR'S ABILITY TO FILE THAT SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

X WARRANTY. This Contract is subject to all warranty provisions established under the Uniform Commercial Code, Title 62A, Revised Code of Washington. Vendor warrants goods are merchantable, are fit for the particular purpose for which they were obtained, and will perform in accordance with their specifications and Vendor's representations to City. The Vendor 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 part of the goods are repaired, 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 Vendor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the

Vendor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Vendor shall pay all costs incurred by the City in order to accomplish the correction.

XI. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any sub-contract, the Vendor, its sub-contractors, or any person acting on behalf of the Vendor 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.

XII. INDEMNIFICATION. The Contractor shall defend, indemnify and hold the Public Entity, 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 Agreement, except for injuries and damages caused by the sole negligence of the Public Entity.

However, should a court of competent jurisdiction determine that this Agreement 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 Public Entity, 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 Agreement.

XIII. INSURANCE. The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the Contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein. Vendor shall obtain insurance of the type described below:

No Limitation. Vendor'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 Public Entity's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Vendor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations,

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 a per project general aggregate limit using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Public Entity shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the Public Entity 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 at least as broad coverage.

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

B. Minimum Amounts of Insurance

Vendor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $300,000.00 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $2,000,000 each occurrence, $2,000,000 general aggregate and $2,000,000 products-completed operations aggregate limit.

C. City Full Availability of Vendor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.

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

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

F. Verification of Coverage

Vendor shall furnish the Public Entity with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the Public Entity, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all subcontractors' coverage.

G. Subcontractors' Insurance
The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the Public Entity is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

H. Notice of Cancellation. The Vendor shall provide the city with written notice of any policy cancellation, within two business days of their receipt of such notice.

I. Failure to Maintain Insurance. Failure on the part of the Vendor to maintain the insurance as required shall constitute a material breach of contract, upon which the Public Entity 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 Public Entity on demand, or at the sole discretion of the Public Entity, offset against funds due the Contractor from the Public Entity.

J. Working On, Over, or Near Navigable Waters. This Contract involves work on or adjacent to and/or work contributing to commerce on Navigable Waters of the United States, as defined by the U.S. Code of Federal Regulations. The Contractor therefore shall provide proof of insurance coverage in compliance with the statutory requirements of the U.S. Longshore and Harbor Workers' Compensation Act.

If the Contractor is working from barges or any other watercraft, owned or non-owned, the Contractor must maintain Protection and Indemnity (P&I) insurance providing coverage for actions of the crew to third parties in the amount of at least $2,000,000 each occurrence or accident. The Public Entity shall be named by endorsement as an additional insured on the Contractor's Protection and Indemnity insurance policy. The Contractor must also provide proof of insurance coverage in compliance with the statutory requirements of the Merchant Marine Act of 1920 (Jones Act)..

XIV. WORK PERFORMED AT VENDOR'S RISK. Vendor 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 Vendor's own risk, and Vendor 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.

XV. CITY'S RIGHT OF INSPECTION. Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

XVI. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Washington, If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Contract, then the following shall be the means for resolving the dispute:

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 XII 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 Vendor.

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

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

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

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

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

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

VENDOR: By: Toby Skaats (signature) Print Name: TOBY SKAATS Its MANAGER (Title) DATE: MARCH 26, 2021	**CITY OF DES MOINES:** By:__________ (signature) Print Name: Michael Matthias Its City Manager (Title) DATE:__________ Approved as to form: __________ City Attorney DATE:__________
NOTICES TO BE SENT TO: **VENDOR:** Toby@EHMWA.com Toby Skaats EHM Washington LLC. 622 Tacoma Ave S Tacoma, WA 98402 253-328-7345 (telephone) 253-300-3200 (facsimile)	**NOTICES TO BE SENT TO:** **CITY OF DES MOINES:** Jennefer Johnson City of Des Moines 21630 11th Avenue S., Suite C Des Moines, WA 98198 206-878-4597 (telephone) 206-870-4387 (facsimile)

Consent Calendar Item #3

A G E N D A   I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Des Moines Activity Center Interior Flooring

ATTACHMENTS:
1. Public Works Contract
2. Adopted 2021 - 2026 CIP Sheets

FOR AGENDA OF: April 22, 2021

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

DATE SUBMITTED: April 15, 2021

CLEARANCES:
[ ] Community Development ____
[ ] Marina ____
[X] Parks, Recreation & Senior Services Susan M. Cezar
[X] Public Works ____

CHIEF OPERATIONS OFFICER: ____________

[X] Legal /s/ TG
[X] 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 Public Works Contract with NFI Enterprises, LLC (Attachment 1) in the total amount of $93,837.73 for the Des Moines Normandy Park Activity Center floor replacement project. The re-flooring has been a City priority project, and is listed in the most updated Capital Improvement Plan (CIP) 2021-2026 (Attachment 2).
The following motion will appear on the consent calendar:

Suggested Motion

Motion: "I move to approve the Public Works Contract with NFI Enterprises, LLC in the total amount of $93,837.73 for the Des Moines Normandy Park Activity Center re-flooring project, approve $20,000.00 in construction contingency, and authorize the City Manager to sign the contract 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. The current flooring dates back to 1997 and is worn and in need of replacement. The floor was waxed every other year from 2000 to 2017. There is splitting in the wood flooring and areas are buckling – this has been the condition for the past 10 years. The flooring has progressively gotten worse over the last two years. This project has been anticipated for some time.

In August 2020, staff requested an estimate from the contractor that recently completed the Beach Park Auditorium flooring (NFI Enterprises, LLC). Since we only had the one price at the time, we solicited for additional quotes via the MRSC Roster in March 2021. Staff selected 4 additional contractors, plus the previous contractor to provide quotes for the work. Quotes were to be received by COB on March 24, 2021. At the deadline, the City only received one quote – from NFI Enterprises, LLC.

Discussion:
The City's DMAC remains committed to serving seniors in the area. An important goal is to increase outreach to socially isolated seniors and veterans alike. The Center continues to serve our seniors with the on-going take-out lunch service and other outreach activities. While this past year has been unprecedented, the closure of the Center to in-person programming does provide the opportunity to replace the flooring in the Activity Center while it remains closed to the public. This will allow services and in-person programming to resume when safe to do so, without causing any disruptions.

Alternatives:
Reject contract. (Not recommended).

Financial Impact:
The funding sources for the DMAC floor replacement will be paid from private contributions (Provine Estate) in the amount of $55,000 and the City's facility repair and replacement fund in the amount of $64,000. The Provine Estate is designated specifically for Senior Activity Center use, and the funds for this project are included in the approved budget.

Recommendation:
Staff recommends approval of this contract.

Attachment #1

PUBLIC WORKS CONTRACT
between City of Des Moines and

NFI Enterprises, LLC

THIS CONTRACT is made and entered into by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and NFI Enterprises, LLC organized under the laws of the State of Washington, located and doing business at P O Box 58583, Seattle, WA 98138, (253) 245-5500, Bobbie Fritcher (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 **30 Working Days**, and be complete before **July 30, 2021**. 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 $85,229.55, 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 $93,837.73. 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 **$469.19** *[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, 294 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 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: ____________________	By: ____________________
(Signature)	*(Signature)*
Print Name: ____________________	Print Name: Michael Matthias
Its: ____________________	Its: City Manager
(Title)	*(Title)*
DATE: ____________________	DATE: ____________________
	Approved as to Form:
	____________________
	City Attorney
	DATE: ____________

NOTICES TO BE SENT TO:	**NOTICES TO BE SENT TO:**
CONTRACTOR:	**CITY OF DES MOINES:**
Bobbie Fritcher NFI Enterprises, LLC P O Box 58583 Seattle, WA 98138 (253) 245-5500 (telephone) bobbiefritcher@gmail.com (e-mail address)	Scott J. Romano City of Des Moines 21650 11th 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 ____________________.

PUBLIC WORKS PAYMENT 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 under the terms of that Contract to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

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 payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW Titles 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work; and if such payment 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, except as provided herein, 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 four (4) original counterparts, 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:

____

____

____

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 four (4) original counterparts, 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"

FLOORING and Interiors

NFI Enterprises, LLC
PO Box 58583
Seattle, WA 98138
P: (253) 245-5500
F: (253) 804-5392

For:
SCOTT ROMANO
CITY OF DES MOINES
21650 11TH AVE S.
DES MOINES, WA 98198

Project:
CITY OF DES MOINES - ACTIVITY
ACTIVITY CENTER
2045 S 216TH ST
DES MOINES, WA

Proposal #
Q02413 01000

Date
4/13/2021

Dear SCOTT ROMANO

Thank you for the opportunity to submit the following proposal for the above referenced project.

EPOXY VAPOR BARRIER - NEW FLOORING AT CITY ACTIVITY CENTER

ITEMIZED ESTIMATE	AMOUNT
MOISTURE TESTING/SUBFLOOR INSPECTION. 3 AREAS, OPEN UP WOOD FLOOR, INPECT SUBFLOOR AND SETUP 72HR MOISTURE TEST	$966.66
JOBSITE SETUP/MOB, DUST MITIGATION, HANGING PLASTIC, COVID 19 STATION/JOBSITE SIGN IN SHEETS SETUP, R/R DOORS	$1,939.99
SITE SETUP - PULL TOILETS AND PARTITIONS	$1,546.66
R/R FURNITURE AS NEEDED, OWNER TO BOX UP SMALL ITEMS TO BE MOVED AND UNHOOK ALL ELECTRONICS	$733.33
DEMO EXISTING MATERIAL - WOOD AND CARPET, DISPOSE IN DUMPSTER ONSITE PROVIDED BY NFI	$14,351.62
DEMO AND DISPOSE OF EXISTING MATERIAL - VINYL AND TILE BASE	$1,383.99
PREP SUBFLOOR ALLOWANCE - NEED TO COMPLETE MOISTURE TEST AND SUBFLOOR INSPECTION IN 3 AREAS, PRELIMINARY BUDGET	$25,930.63
REMOVE COFFEE BAR CABINETS - DISPOSE OF LOWER CABINET, STORE ONSITE UPPER CABINET FOR OWNERS	$110.00
DEMO AND DISPOSE OF 1/2 WALL AT FRONT ENTRY OWNER - TOUCH UP FINISH ON POST	$385.70
SUPPLY AND INSTALL KARNDEAN KARNDEAN LOOSELAY LONGBOARD PEARL OAK #LLP306	$22,852.01
SUPPLY AND INSTALL WALK OFF MAT AT MAIN FRONT DOOR - HERCULES NOP,	$978.55
BASE OPTION 2 - RUBBER BASE ROPPE 700 SERIES CAMEL #191	$1,556.62
SUPPLY AND INSTALL SHEET VINYL ARMSTRONG CONNECTION CORLON WHITECLIFS AR887026	$6,393.42
FRONT OFFICE - RE-LAMINATE DESK TOP AND SELF EDGE	$1,106.66
SENIOR SERVICE ROOM- RE- LAMINATE COUNTER & SELF EDGE RE-INSTALL WOOD BACKSPLASH	$1,346.66
SUPPLY AND INSTALL NEW QUARTZ COUNTER TOPS - 2CM QUARTZ TOPS, STOCK LYRA ALLOWANCE, DEMO, BRACKETS INCLUDED, REMOVAL OF VANITY	$3,647.05
Sales Tax – 10.1%	~~$8,523.01~~ $8,608.18
Total Estimated Job Cost	~~$93,752.50~~

$93,837.73 HR

NFI Enterprises, LLC
PO Box 58583
Seattle, WA 98138
P: (253) 245-5500
F: (253) 804-5392

NFI Terms & Conditions:

1. Excludes from the above pricing are overtime labor, floor preparation, demolition and removal of existing floor coverings and adhesives/mastics, abnormal subfloor prep, ie., grinding, leveling, floating, moisture sealing, or ramping to other floor finishes providing underlayments, washing and waxing resilient floors, vacuuming carpet, protective coverings and providing temporary heat or electricity.
2. Amounts and prices are based upon blueprints and are subject to variance if physical measurements vary.
3. This proposal is subject to acceptance within 30 days and must be acknowledged and made part of any contractual agreement. If any of NFI's costs for materials increase by more than 5% of the prices in effect at the time of acceptance of NFI's proposal, than Customer shall reimburse NFI for all such price increases. NFI agrees to use best efforts to obtain lowest possible prices from available suppliers.
5. Our labor rates for any additional work not covered by the original scope of this proposal will be based on $75.00 per hour straight time unless otherwise agreed in writing. Overtime, nights and weekends will carry an additional charge.
6. Prior to commencement of NFI's work: (a) Customer shall test all concrete sub floors receiving flooring for vapor emissions levels and alkalinity per manufacturers' recommendations utilizing ASTM F2170 and/or F1869 and provide written results to NFI, including a list of any sealers applied to the concrete sub floors, (b) If Customer does not provide such reports at least 10 days prior to commencement of NFI's work, then Customer shall provide NFI with access to all concrete sub floors for appropriate testing and Customer shall be responsible for the costs of such testing; and (c) Any concrete sub floors not meeting manufacturers' requirements for installation will require correction or the execution of a separate waiver agreement.

Return Policy: All returns within 30 days are subject to 25% re-stock fee and freight back to their location pending approval from vendor and NFI management. Excludes broken cartens and special orders.

Washington State Contractor no. NFIENEL901LG (Expires: 06/07/2022), as a general contractor and has posted with the state a bond or cash deposit of $12,000 under Bond #100127873 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business.

Accepted By

Date

CITY OF DES MOINES
2021-2026 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)

Activity Center Floor | Project # **506.718**

Summary Project Description:
Activity Center Floor Replacement

CIP Category: Building Facility Project

Managing Department: Plan, Build & PW Admin

Justification/Benefits: The Activity Center floor is worn.

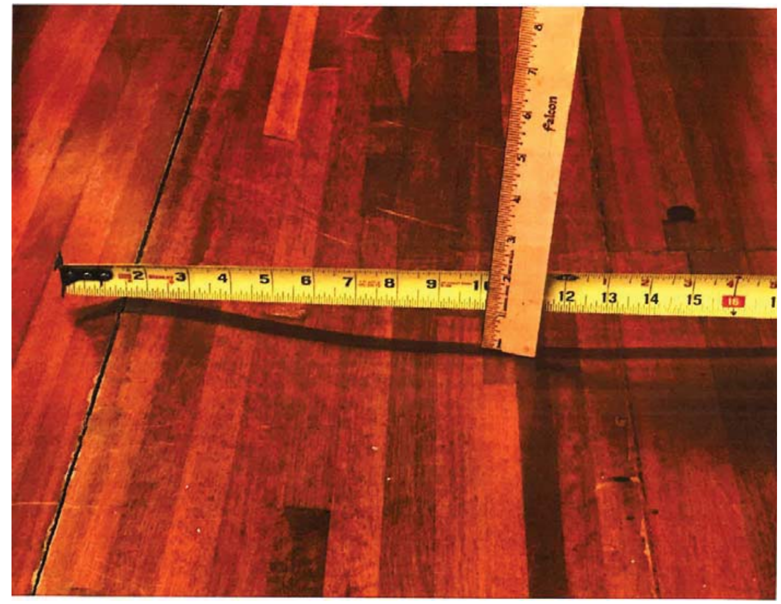
PROJECT SCOPE				ANNUAL ALLOCATION							
Expenditures	*Current Budget*	*Requested Change*	*Total Budget*	*Project to Date 12/31/19*	*Plan Year 2020*	*Plan Year 2021*	*Plan Year 2022*	*Plan Year 2023*	*Plan Year 2024*	*Plan Year 2025*	*Plan Year 2026*
Design	-	-	-	-	-	-	-	-	-	-	-
Land & Right of Way	-	-	-	-	-	-	-	-	-	-	-
Construction	-	115	115	-	-	115	-	-	-	-	-
Contingency	-	-	-	-	-	-	-	-	-	-	-
Total Expenditures	**-**	**115**	**115**	**-**	**-**	**115**	**-**	**-**	**-**	**-**	**-**

Funding Sources	*Current Budget*	*Requested Change*	*Total Budget*	*Project to Date 12/31/19*	*Plan Year 2020*	*Plan Year 2021*	*Plan Year 2022*	*Plan Year 2023*	*Plan Year 2024*	*Plan Year 2025*	*Plan Year 2026*
Private Contributions (Provine Estate)	-	51	51	-	-	51	-	-	-	-	-
Facility Repair & Replace Fund Transfer	-	64	64	-	-	64	-	-	-	-	-
Total Funding	**-**	**115**	**115**	**-**	**-**	**115**	**-**	**-**	**-**	**-**	**-**

OPERATING IMPACT				ANNUAL OPERATING IMPACT							
Operating Impact			*6 Year Total*		*2020*	*2021*	*2022*	*2023*	*2024*	*2025*	*2026*
Revenue	-	-	-		-	-	-	-	-	-	-
Expenses	-	-	-		-	-	-	-	-	-	-
Net Impact	**-**	**-**	**-**		**-**	**-**	**-**	**-**	**-**	**-**	**-**

Attachment #2

Activity Center Floor



Consent Calendar Item #4

A G E N D A   I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Amendment 2 to the Washington Multi-City Business License and Tax Portal Agency Interlocal Agreement (File Local)

ATTACHMENTS:
1. Amendment No. 2 to the Washington Multi-City Business License and Tax Portal Agency Interlocal Agreement
2. Interlocal Agreement

FOR AGENDA OF: April 22, 2021

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: April 16, 2021

CLEARANCES:
[ ] Community Development ____
[ ] Marina ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

CHIEF OPERATIONS OFFICER: ____________

[X] Legal /s/ TG
[X] Finance Bethlane Wrae
[ ] Courts ____
[ ] Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: ____________

Purpose and Recommendation

The purpose of this agenda item is for the City Council to authorize the City Manager to sign Amendment No. 2 to the Washington Multi-City Business License and Tax Portal Agency Interlocal Agreement extending the use of historical transaction counts for the Original Principals through 2024.

Suggested Motion

First Motion: "I move to authorize the City Manager to sign Amendment No. 2 to the Washington Multi-City Business License and Tax Portal Agency Interlocal Agreement extending the use of historical transaction counts, substantially in the form as attached."

Background

The City of Des Moines joined FileLocal in May 2020 and participates as a voting member and is considered a Principal city. The interlocal agreement requires that any changes to the contribution responsibilities of Principal cities must be approved by the legislative authorities of all Principals.

FileLocal was founded through an Interlocal Agreement ("ILA") signed in March 2014 by the cities of Bellevue, Everett, Seattle and Tacoma. These founding cities ("Principals") are considered the "Original Principals". The Original Principals created a web application gateway ("Portal") to collectively administer business licensing and tax collection that allows businesses in the Principal cities use a "one-stop" system for licensing and tax payments. Since the creation of FileLocal the cities of Lake Forest Park, Renton, Snoqualmie and Des Moines have joined as principal cities and the cities of Bremerton and Shoreline have joined as subscriber cities.

Discussion

The allocation method for the Original Principals is based on 2012 historical actual pre-Portal use transaction counts for years 2014 through 2021. Amendment No. 2 changes the interlocal agreement to extend the use of historical transaction counts for the Original Principals through 2024.

The FileLocal budget shall be generally allocated between all Participating Cities based on the number of transactions processed for each City on the Portal. This amendment does not change the budget or allocation method for the City of Des Moines and we do not anticipate any change to the amounts we have budgeted for the cost of using FileLocal.

Financial Impact

No change to the amount budgeted for the use of the FileLocal Tax Portal.

Recommendation

City Council approve the motion.

Attachment #1

RESOLUTION NO. 2021-01

A Resolution of the Washington Multi-City Business License and Tax Portal Agency Executive Board regarding an Amendment of the Interlocal Agreement to Extend Use of Historical Transaction Counts.

Whereas, the Washington Multi-City Business License and Tax Portal Agency ("Agency") was originally established under the Interlocal Agreement By and Between the Cities of Bellevue, Everett, Seattle, and Tacoma, dated March 1, 2014 ("Interlocal Agreement"); and

Whereas, Section 13.g. of the Interlocal Agreement was amended in 2017 via Resolution FL2017-04 to provide that, for the years 2014-2021, the allocation of Agency costs among the Original Principals shall generally be based on 2012 transaction counts of each Original Principal as set forth in Exhibit A to the Interlocal Agreement, and to further provide that, beginning in 2022 and afterward, Agency costs shall be allocated among the Original Principals based on the actual number of transactions processed through the Portal for each of such city; and

Whereas, due to various city-specific factors associated with implementation of the Portal in the Original Principal cities, the Original Principals have determined that converting to use of actual transaction counts as the basis for allocating Agency costs beginning in 2022 would be inequitable, and that continuing to use 2012 historical transaction counts of the Original Principals for an additional three years, through 2024, would be a preferable way to allocate Agency costs; and

Whereas, Section 18.e. of the Interlocal Agreement requires that any changes to the contribution responsibilities of Principal cities must be approved by the legislative authorities of all Principals;

Now Therefore, BE IT RESOLVED by the Executive Board of the Washington Multi-City Business License and Tax Portal Agency:

SECTION 1. Subject to the approval of each of the legislative bodies of the Principal Cities of Bellevue, Everett, Seattle, Tacoma, Lake Forest Park, Renton, and Des Moines, Section 13.g. of the Interlocal Agreement is hereby amended as reflected in Attachment 1 hereto.

SECTION 2. Each member of the Executive Board, or his or her designee, is directed to work with the legislative body of his or her city to obtain its approval of the Interlocal Agreement as reflected in Attachment 1, hereto.

ADOPTED this 18th **day of** March **, 2021.**

ATTEST:

Washington Multi-City Business License and Tax Portal Agency Executive Board
Seattle, Washington

Board Secretary

Board Chair

AMENDMENT NO. 2 TO THE WASHINGTON MULTI-CITY BUSINESS LICENSE AND TAX PORTAL AGENCY INTERLOCAL AGREEMENT BY AND BETWEEN THE CITIES OF BELLEVUE, EVERETT, SEATTLE, AND TACOMA

This Amendment modifies that certain Washington Multi-City Business License and Tax Portal Agency Interlocal Agreement, dated March 1, 2014 ("ILA"), entered into by and between the Cities of Bellevue, Everett, Seattle, and Tacoma (collectively, the "Original Principals"), and as amended by Amendment No. 1 thereto, pursuant to FileLocal Resolution No. FL2017-04, adopted on June 12, 2017.

WHEREAS, Section 13.g. of the ILA, as amended on June 12, 2017, pursuant to FileLocal Resolution No. FL2017-04, provides a method for allocating Agency costs among the Participating Cities for the years 2014-2021; and

WHEREAS, the Principals (the cities of Bellevue, Des Moines, Everett, Lake Forest Park, Renton, Seattle, and Tacoma) now desire to further amend Section 13.g. of the ILA to revise how Agency costs are allocated among Participating Cities during the years 2022-2024, so that the allocation method used in years 2014-2021 may continue to be used through 2024; and

WHEREAS, Section 18 of the ILA allows amendments to the ILA, and specifically allows amendments affecting the contribution responsibilities of the Principals, so long as such amendments are approved by the legislative authorities of all Principals;

NOW THEREFORE, the Principals hereby agree to amend the ILA as follows:

1. Section 13.g. of the ILA is hereby amended to read as follows:

g. Cost Allocation and Cost Recovery Principles. The PORTAL AGENCY budget shall be generally allocated between all Participating Cities based on the number of Transactions processed for each City on the Portal. In years 2014 through 2024, the number of Transactions for the Original Principals shall be based on 2012 historical actual pre-Portal use Transaction Counts (as set forth in Exhibit A). In years 2014 through 2021, the City Transaction Count for any other Participating City shall be based on the most recent historical data for that City prior to it joining the Portal. From and after 2022, the allocation among other Participating Cities will be determined by considering the actual number of Transactions (if the City had joined before 2022), historical tax and license information, and the experience of the Original Principals as to how quickly businesses have adopted use of the Portal since its launch. The details of the cost allocation calculation shall be set forth in the Portal Operations Policy. Nothing in this Agreement shall be construed to prohibit the Executive Board from including factors in addition to the number of City Transactions in the cost allocation formulas as between Participating Cities, so long as the primary basis for allocation remains the City Transaction count.

2. All other terms of the ILA remain in full force and effect.

//

AGREED TO BY:

City of Bellevue

City Manager

Date

Approved as to Form:

City Attorney

Date

City of Everett

Mayor

Date

Approved as to Form:

City Attorney

Date

City of Seattle

Mayor

Date

Approved as to Form:

City Attorney

Date

City of Tacoma

City Manager

Date

Approved as to Form:

City Attorney

Date

Finance Director

Date

Attest:

City Clerk

AGREED TO BY:

City of Lake Forest Park

____
Mayor

____
Date

Approved as to Form:

____
City Attorney

____
Date

City of Renton

____
Mayor

____
Date

Approved as to Form:

____
City Attorney

____
Date

City of Des Moines

____
City Manager

____
Date

Attest as to form:

____
City Attorney

____
Date

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Attachment #2

WASHINGTON MULTI-CITY BUSINESS LICENSE AND TAX PORTAL AGENCY INTERLOCAL AGREEMENT

BY AND BETWEEN THE CITIES OF

BELLEVUE

EVERETT

SEATTLE

and

TACOMA

DATED AS OF MARCH 1, 2014

TABLE OF CONTENTS

WASHINGTON MULTI-CITY BUSINESS LICENSE AND TAX PORTAL AGENCY INTERLOCAL AGREEMENT

THIS AGREEMENT, incorporating all exhibits hereto, is entered into by and between the Cities of Bellevue, Everett, Seattle and Tacoma (collectively, the "Principals") pursuant to the Interlocal Cooperation Act Ch. 39.34 RCW and has been authorized by the legislative body of each Principal.

RECITALS

WHEREAS, each of the Principals is a city, a general purpose municipal corporation authorized by state law to issue local business licenses and collect a variety of local taxes; and

WHEREAS, the Principals seek to make it easier and more efficient for businesses to apply for local business licenses and file local taxes, while retaining local control over local licensing and tax collection functions and policies; and

WHEREAS, the Principals seek to accomplish these goals by jointly facilitating the creation of an internet web application gateway (the "Portal") where tax collection and business licensing functions can be collectively administered, and where businesses operating in multiple cities can use a "one-stop" system for tax payment or business license application filing; and

WHEREAS, the Principals have engaged in extensive outreach with other cities, state legislators, taxpayers and the business community to understand the interests of these stakeholders in relation to development of the Portal; and

WHEREAS, the creation of an intergovernmental entity, in the form of a governmental nonprofit corporation whose members are Principals to oversee the operation of the Portal will enable each Principal to participate in management of the Portal, provide economies of scale to participating cities, and ensure continued control by each Principal of its tax and licensing policy and local tax collections; and

WHEREAS, the collection of local taxes is an exclusively governmental activity of each of the cities party to this Agreement; and

WHEREAS, the creation of an intergovernmental entity as described in this Agreement will enable the Principals to carry out this exclusively governmental activity as a joint instrumentality; and

WHEREAS, it is anticipated that additional cities will elect to use the Portal over time, and that some may wish to do so as subscribers of the Portal's services rather than as principals; and

WHEREAS, The City of Seattle has provided start-up funding for the development of the Portal and has conducted a competitive procurement process in which staff from each of the Principals participated with Seattle staff in selecting a preferred vendor to provide portal development, hosting and maintenance services; and

WHEREAS, The City of Seattle has entered into a contract with the preferred vendor, and the vendor has begun work to develop the Portal with continued input from staff from each of the Principals;

NOW THEREFORE, in consideration of the promises and agreements contained in this Agreement and subject to the terms and conditions set forth, it is mutually understood and agreed by the Parties as follows:

SECTION 1. CREATION OF WASHINGTON MULTI-CITY BUSINESS LICENSE AND TAX PORTAL AGENCY.

The Washington Multi-City Business License and Tax Portal Agency, ("PORTAL AGENCY") is hereby created as authorized by the Interlocal Cooperation Act (Ch. 39.34 RCW), and shall be a municipal instrumentality of the Principals, jointly organized by the Principals as a nonprofit corporation under Chapter 24.06 RCW as expressly authorized by RCW 39.34.030(3)(b). The Principals each assign to PORTAL AGENCY the responsibility for overseeing the development, operation and maintenance of an internet web application gateway to administer city business licensing and tax collection functions as exclusively governmental activities, all as described herein.

SECTION 2. TERM OF AGREEMENT.

This Agreement shall have an initial term of approximately five years, ending on December 31, 2019, (the "Initial Term"), and shall thereafter be perpetual, subject to the termination provisions in Section 19 of this Agreement. During the Initial Term no Principal may withdraw from the Agreement, provided that a Principal may convert or be converted to Subscriber status as provided in Sections 8.a, 13.d and 13.k, and may upon action of the Executive Board be terminated from participation in the Agreement as provided in Section 13.k.

SECTION 3. DEFINITIONS.

a. Agreement. The "Agreement" is this interlocal agreement, as it may hereafter be amended or modified, together with all exhibits and appendices hereto, as they may hereafter be amended or modified.

b. Articles of Incorporation. The "Articles of Incorporation" or "Articles" are terms defining aspects of the PORTAL AGENCY corporate formation under 39.34.030(3)(b) and consistent with RCW 24.06.025, as they may hereafter be amended by the Executive Board.

c. Board Member. A "Board Member" or "Executive Board Member" is the individual representing a Principal on the Executive Board, whether the Chief Financial Officer of such Principal or his/her designated alternate.

d. Business and Occupation Taxes. "Business and Occupation Taxes" are Gross Receipt Taxes imposed by a Participating City as an exclusively governmental activity authorized by state law and as defined in RCW 35.102.030.

e. Business Licenses. "Business Licenses" are licenses required to be obtained by businesses in order to operate within a Participating City, consistent with state law.

f. Bylaws. "Bylaws" as adopted and amended from time to time by the Executive Board shall govern the operations of the PORTAL AGENCY Executive Board, Operations Committee, and the officers thereof.

g. Capital Cost Recovery Charge. The "Capital Cost Recovery Charge" is an annual fee charged to all Participating Cities other than the City of Seattle, for the purposes of reimbursing Seattle for a portion of the funding it provided to pay for start-up of the PORTAL AGENCY, as further described in Section 13.j.

h. Capped Costs. "Capped Costs" means all items in the PORTAL AGENCY budget *excluding*:

i. Labor Costs unrelated to increases in full or partial staff positions;
ii. Costs payable pursuant to the Portal Services Contract with the Vendor;
iii. State Auditor's Office Audit costs;
iv. Accounting services;
v. Insurance;
vi. Bank fees;
vii. Any unanticipated expenses outside the normal course of business, for example, costs of litigation or damages, uninsured losses, tax or other liabilities resulting from a change in law, and events of force majeure (e.g. fire, explosion, accident, volcanic eruption, flood, epidemic, civil disturbance).

i. CPI-U Limit. "CPI-U Limit" means the percentage increase (or decrease) equal to the percentage increase (or decrease) year to year in the Consumer Price Index – Urban for the Seattle/ Tacoma/Bremerton metropolitan area, April –April, calculated by the Federal Bureau of Labor Statistics, or its successor index.

j. Executive Board. The "Executive Board" is the body described in Section 7 and shall be the governing body of the PORTAL AGENCY.

k. Gross Receipts Taxes. "Gross Receipts Taxes" are taxes imposed by Participating Cities which are based on the gross receipts of certain businesses, specifically to include Business and Occupation Taxes as defined by RCW 35.102.030 as well as other taxes imposed by Participating Cities on utilities or businesses that are collected on basis of such gross receipts in accordance with applicable law. For purposes of this Agreement, Gross Receipts Taxes also includes square footage taxes imposed by a Participating City for the act or privilege of doing business in that city and calculated based on the amount of space occupied and used for those business activities within that city.

l. Initial Term. The "Initial Term" is the period from the effective date of this Agreement through December 31, 2019.

m. Labor Costs. "Labor Costs" include salary, benefits and other compensation provided to Portal Agency employees (if any) and/or loaned staff.

n. Licensees. "Licensees" are businesses or individuals that apply for a Business License from a Participating City or Cities using the Portal.

o. Manager. The "Manager" is the chief operating officer for PORTAL AGENCY appointed by and serving at the pleasure of the Executive Board.

p. New Participant Capped Cost Increment. The "New Participant Capped Cost Increment" is an amount calculated each budget period to identify the maximum amount by which Capped Costs may increase in the Executive Board approved draft or final budget for such period without unanimous approval of the Executive Board Members representing all Original Principals, as further described in Section 13.b.iv.1 and Exhibit D.

q. New Participant Labor Cost Increment. The "New Participant Labor Cost Increment" is an amount calculated each budget period to identify the maximum amount by which Labor Costs may increase to provide for additional full or partial staff positions in the Executive Board approved draft or final budget for such period without requiring unanimous approval of the Executive Board Members representing all Original Principals, as further described in Section 13.b.iv.2 and Exhibit D.

r. Operations Committee. The "Operations Committee" or "Tax and Finance Operations Committee" is the committee described in Section 9.

s. Original Principals. The Original Principals are those four cities initially signing this Agreement: the cities of Bellevue, Everett, Seattle and Tacoma.

t. Participating Cities. All Principals, and all Subscribers, as they may be so constituted from time to time, are collectively referred to as the "Participating Cities" or "Participants," and individually referred to as a "Participating City" or "Participant."

u. Population. "Population" is the residential population of a City, according to the most recent annual report issued by the State Office of Financial Management each year determining the population of each city for purposes of taxation and allocation of certain state shared revenues in the following calendar year.

v. Portal. The "Portal" is an internet web application gateway owned, operated and maintained by the Vendor under contract with the PORTAL AGENCY that affords Taxpayers and businesses a single access point through which they may apply for business licenses from, and pay taxes and fees to, Participating Cities, and receive information related to these functions.

w. PORTAL AGENCY. "PORTAL AGENCY" means the Washington Multi-City Business License and Tax Portal Agency.

x. Portal Operations Policy. The "Portal Operations Policy" is a separate document adopted by Supermajority Vote of the Executive Board, as it may be amended from time to time, which describes how data will be shared between the Participating Cities and the PORTAL AGENCY, and sets forth operating procedures and rules for the Portal.

y. Portal Services Contract. The 'Portal Services Contract" is that certain contract dated as of September 6, 2013 between The City of Seattle and eGov Systems, a Louisiana corporation, to develop software for, and host the Portal operations. The Portal Services Contract is to be assigned to the PORTAL AGENCY by The City of Seattle pursuant to Section 12 of this Agreement.

z. Principal. A "Principal" is a general purpose municipal corporation formed as a city under the laws of the state of Washington which imposes a Business and Occupations Tax and which has accepted the terms of and is a party to this Agreement and has paid its share of initial costs as may be required by the Executive Board as a condition to becoming a Principal. Principals shall receive services offered by the PORTAL AGENCY according to such terms and conditions as may be established by the Executive Board.

aa. Representative. The term "Representative" refers to the individual representing a Principal or a Subscriber on the Operations Committee, or his/her designated alternate.

bb. Simple Majority Vote. A "Simple Majority Vote" of the Executive Board means a majority (more than 50%) of the votes of the Board Members present constituting a quorum, with each Board Member that is present and voting having one vote.

cc. Subscriber. A "Subscriber" is a general purpose municipal corporation, formed as a city under the laws of Washington which has agreed to pay the PORTAL AGENCY for services according to such terms and conditions as may be established by the Executive Board and evidenced by separate contract between the PORTAL AGENCY and such entity. A Principal may convert or be converted to Subscriber status as provided in Sections 8, 13.d and 13.k and a Subscriber may convert to a Principal as described in Section 8.

dd. Supermajority Vote. A "Supermajority Vote" means Executive Board approval of an item accomplished by securing affirmative votes of not less than sixty-six percent (66%) of all voting Board Members of the Executive Board in number, and not less than sixty-six percent (66%) in number of the Original Principals.

ee. Taxpayers. "Taxpayers" are businesses subject to local city taxes imposed by a Principal or Subscriber, payment of which is or can be administered by the Portal.

ff. Transaction. A “Transaction” is a payment or filing for a Business License, or a payment or filing of an online tax form (where multiple taxes filed on the same online tax form are counted as a single Transaction), made on the Portal by a business to a Participating City; *provided, however,* that where historical actual Transactions counts are to be used (rather than payments and transactions made *on the Portal*), then Transactions includes the total actual Business License filings and Gross Receipts Tax filings (where multiple taxes filed on the same tax form are counted as a single Transaction) for the Participating City over the applicable period. The Executive Board may refine this definition from time to time by amending the Portal Operations Policy in order to accommodate expansion of services offered by the Portal or to address other issues.

gg. User Fees. “User Fees” are fees and charges imposed on businesses, Licensees or Taxpayers per Executive Board approval as part of PORTAL AGENCY’s budget approval process.

hh. Vendor. The Vendor is eGov Systems, a Louisiana corporation, which through the Portal Services Contract is providing services to develop, establish, host, own and maintain the Portal, associated online data storage and services. The Vendor has ownership of the Portal. The term Vendor shall also include any successor in interest to eGov Systems or any successor firm(s) or agency(s) with which the PORTAL AGENCY may contract to provide Portal development, hosting, maintenance, and associated online data storage and services.

SECTION 4. GUIDING PRINCIPLES AND GOALS.

a. Guiding Principles of PORTAL AGENCY. The Principals intend that the PORTAL AGENCY actions be guided by the following guiding principles:

i. Local Control – The PORTAL AGENCY will seek to respect and preserve each Participating Cities’ authority to set local tax policies.

ii. Integrity – The PORTAL AGENCY will be honest, truthful and straightforward.

iii. Accountability – The PORTAL AGENCY will be responsible for its actions and decisions, a good steward of public funds and transparent in its operations.

iv. Flexibility / Adaptability – The PORTAL AGENCY will strive to nimbly respond to a changing business, technology and policy environment.

v. Security – The PORTAL AGENCY will at all times seek to safeguard Taxpayer, Licensee and Participating City data.

vi. Accessibility – The PORTAL AGENCY will seek to be accessible and responsive to Taxpayers, Licensees and Participating Cities.

vii. Affordability – The PORTAL AGENCY will seek to be affordable to both Participating Cities and businesses and taxpayers using the Portal. Also, fees and charges will be structured so that the addition of new Cities using the Portal does not impose additional costs on prior Participating Cities.

b. Goals of the PORTAL AGENCY. The Principals acknowledge and support the following goals which they seek to accomplish by this Agreement and creation of the PORTAL AGENCY:

i. Taxpayers and Licensees utilizing the Portal will have a seamless, transparent, user-friendly and efficient experience.
ii. It will be easy and timely for Taxpayers and Licensees to access knowledgeable staff at each Participating City to respond to tax or licensing questions.
iii. The Portal will have error-free data collection, transmittal and tax payment allocation as between Participating Cities.
iv. There will be local control and oversight of tax collections and tax policy.
v. Participating Cities will be accountable for the accuracy and timeliness of information they provide to the PORTAL AGENCY and for their customer service response.
vi. Decision-making will by jointly exercised by the Principals through the Executive Board.
vii. The PORTAL AGENCY will seek to balance the interests of information technology, treasury, finance and tax staff within Participating Cities in the development of the Portal's capabilities and operating rules.
viii. The PORTAL AGENCY will comply with all legal requirements, including but not limited to public record-keeping, public meetings, public records, security, and audit requirements.
ix. The PORTAL AGENCY will be able to accommodate additional city partners as Principals or Subscribers over time, and be able to process additional types of local taxes and licenses over time.
x. The PORTAL AGENCY will support the ability to maximize use of the Portal by Taxpayers and Licensees so that Participating Cities do not need to replicate the Portal's services.
xi. The PORTAL AGENCY will maximize compatibility with Participating City's systems of record for data storage and processing.
xii. The PORTAL AGENCY will coordinate with the state Department of Revenue.
xiii. The PORTAL AGENCY will be a cost effective solution for Participating Cities.

SECTION 5. PORTAL AGENCY SERVICES.

a. Generally. The PORTAL AGENCY has the responsibility and authority for overseeing the Vendor's contractual responsibilities to develop, own, operate, maintain and manage the Portal and for managing the operations of the PORTAL AGENCY. It is expressly contemplated that this scope of services includes:

i. The implementation, operation and maintenance of replacement or upgrades of the Portal as necessary or appropriate.

ii. The development and adoption of rules for access, use and maintenance of the Portal by City Participants, Taxpayers and Licensees.

iii. Expansion of the scope of services offered through the Portal if approved per Subsection 5.c below.

iv. Other responsibilities reasonably necessary for the development, operation and maintenance of the Portal.

v. Other related or ancillary services.

b. Limitation on Authority. The PORTAL AGENCY shall have no authority to set tax rates or tax classifications for Participating Cities, to set local tax policy, tax rules, deductions or exemptions; or take enforcement action on behalf of any Participating City. The PORTAL AGENCY is created by the Principals to manage the Participating Cities' joint participation in the facilitation of an exclusively governmental activity, specifically, the collection of certain local taxes.

c. Expansion of Scope of Services. The Portal will be initially established with the capability to handle payment of Gross Receipts Taxes and filing of applications for Business Licenses. PORTAL AGENCY may provide additional capability to pay additional types of city taxes or application for additional types of city licenses through the Portal only upon approval of a Supermajority Vote of the Executive Board; *provided, however,* that the cost of service expansions will be allocated only to those Participating Cities electing to participate in such services.

d. Requirement of Participating Cities to Utilize Services of Portal**.**

i. Gross Receipts Tax Collection Services: Participating Cities shall be required to offer their Taxpayers the option of paying Gross Receipts Taxes through the Portal, if and to the extent such taxes are imposed by a Participating City.

ii. Other Services: Except as required by Subsection 5.d.i above, no Participating City shall be required to utilize any other service of the Portal without the prior written approval of such City.

iii. Provision of Alternate Collection Options by Participating Cities. Nothing in this Agreement shall be interpreted to preclude a Participating City from offering its Taxpayers or businesses additional means (other than through the Portal) for acquiring Business Licenses or paying any local taxes, including but not limited to payment of Gross Receipts Taxes.

iv. Operating Policies and Rules for Use of Portal. In order to protect sensitive Taxpayer data, and assure the relationship between the Portal and Participating Cities remains fully functional and secure, the Executive Board shall adopt a Portal Operations Policy. It is understood and agreed that the access and use of the Portal by any Principal or Subscriber is conditioned on that party consenting in writing to comply with the Portal Operations Policy. Such consent shall be signified by signature of the chief executive officer of each Participating City, or his/her designee, and shall not require further legislative action of the Participating City. The Portal Operations Policy will be regularly reviewed and updated by the Executive Board as necessary or appropriate.

e. Additional Activities of the PORTAL AGENCY. At the discretion of the Executive Board, the PORTAL AGENCY may, in addition to the services described in Section 5.a above:

i. Participate in forums for Participating Cities to discuss tax policy issues (including but not limited to the Association of Washington Cities Tax Policy Advisory Group or its successor in interest);

ii. Provide education to Taxpayers and Businesses regarding the Portal and the PORTAL AGENCY, and work to increase transparency about Participating City tax policies and activities;

iii. Provide a forum for businesses and others to provide feedback and suggestions on the use and functionality of the Portal and the taxes and licenses administered through the Portal; and

iv. Provide a forum for discussion, coordination and execution of coordinated enforcement activities, provided that the PORTAL AGENCY itself is not authorized to take any tax collection or license fee enforcement actions on behalf of a Participating City. The PORTAL AGENCY shall not use or authorize the use of the Portal or such forum for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.

v. The PORTAL AGENCY shall coordinate with the Washington State Department of Revenue with regard to the Portal's operations and functionality to minimize the need for Taxpayers and Licensees to enter data on the Portal and any separate state tax payment and licensing systems.

SECTION 6. PORTAL AGENCY POWERS.

Through its Executive Board**,** the PORTAL AGENCY shall have all powers allowed by law for interlocal agencies created under RCW 39.34.030 and Chapter 24.06 RCW, as authorized, amended, or removed by the Executive Board, as provided for in this Agreement and including but not limited to the following:

a. Recommend action to the legislative bodies of the Participating Cities;

b. Review and approve budget expenditures for the PORTAL AGENCY;

c. Establish policies for expenditures of budget items for the PORTAL AGENCY;

d. Review and adopt a personnel policy for the PORTAL AGENCY (if applicable);

e. Review and approve operating, Portal use, and financial policies for the PORTAL AGENCY;

f. Establish a fund or special fund or funds as authorized by RCW 39.34.030 for the operation of the PORTAL AGENCY;

g. Conduct regular and special meetings as may be designated by the Executive Board consistent with the state Open Public Meetings Act (Ch. 42.30 RCW) as now or hereafter amended;

h. Maintain and manage records in accordance with the state Public Records Act (Ch. 42.56 RCW) as now or hereafter amended, and other applicable state and federal laws and regulations;

i. Determine what services shall be offered and under what terms they shall be offered, consistent with Section 5.

j. Retain and terminate a Manager;

k. Create committees to review and make recommendations and carry out such functions and responsibilities as the Board may expressly provide;

l. Approve strategic plans;

m. Approve the addition of new Principals and new Subscribers and the terms of their participating in PORTAL AGENCY and receipt of PORTAL AGENCY services;

n. Enter into agreements with third parties for goods and services necessary to fully implement the purposes of this Agreement;

o. Establish fees and charges for services provided to Participating Cities or other parties, including but not limited to Taxpayers and Licensees using the services of the Portal;

p. Direct and supervise the activities of any committee established and/or any advisory boards, and the Manager;

q. Accept grants of funds from any federal, state, local or private agencies and receive and distribute such funds;

r. Receive all funds allocated to PORTAL AGENCY by Participating Cities;

s. Purchase, take, receive, lease, take by gift, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, in the name of PORTAL AGENCY;

t. Sell, convey, lease, exchange, transfer, and otherwise dispose of all of its property and assets;

u. Sue and be sued, complain and defend, in all courts of competent jurisdiction in PORTAL AGENCY's name;

v. Make and alter bylaws for the administration and regulation of its affairs; and

w. Any and all other lawful acts necessary to further PORTAL AGENCY's goals and purposes.

x. Notwithstanding the foregoing, the PORTAL AGENCY shall not have the authority to issue debt in its own name.

The Portal Agency, as a joint instrumentality of its municipal corporation members under Chapter 39.34 RCW, shall have no powers or authority that are not held by Washington cities.

SECTION 7. EXECUTIVE BOARD: COMPOSITION AND OPERATION.

a. Composition. The Executive Board shall be composed of one (1) Board Member from each Principal, plus at least one (1) non-voting Board Member representing PORTAL AGENCY Subscribers. Such representatives are referred to as a Board Member or Board Members of the Executive Board.

b. Powers. The Executive Board shall have final decision making authority upon all policy issues and shall exercise the powers described in Section 6**.** The Executive Board may delegate responsibility for execution of Executive Board policies and directives and for day-to-day operational decision-making to the Manager, including the hiring and supervision of additional staff positions authorized by the Executive Board, subject to the terms of Section 11.

c. Limitation on Total Number of Voting Board Members on Executive Board; Allocation of Executive Board Positions Among Multiple Principals. Notwithstanding the terms of Subsection 7.a, at no time shall the number of Executive Board Members exceed fifteen (15) voting members, and for so long as it remains a Principal, no Original Principal shall be required to share representation of its Board seat with another Principal. If the addition of a new Principal would cause the number of Executive Board voting Board Members to exceed fifteen (15), then the Principals with the smallest Population shall share a single Board Member position in order to reduce the number of Executive Board voting Board Members to fifteen (15); *provided that*, if over five (5) Principals would be represented by a single Board Member, then an additional

Board seat shall be converted for shared representation, to be shared by the Principals with the smallest Population. In the event that the number of Principals sharing representation is not evenly divisible by the number of shared seats, then the Principals with the larger Population shall be given the benefit of the allocation (e.g., if 7 Principals are to share 2 seats, then the 3 Principals with the largest Population (within the group sharing representation) shall share one (1) seat, and the four (4) Principals with the smallest populations shall share the second seat). If the number of Principals exceeds 59, then the same process as described above shall be repeated, that is, moving to a maximum of six (6) Principals sharing a seat, and so on (seven (7) Principals sharing a seat, etc.) as necessary to accommodate additional Principals.

d. Method of Determining Selection of Subscriber Representative(s) or Shared Voting Board Member(s). Subscribers shall initially share one (1) non-voting seat on the Executive Board. The Executive Board may by Supermajority Vote increase the number of non-voting seats for Subscribers, and may define how such additional seats are allocated among Subscribers. Unless otherwise described in the Bylaws, Subscribers sharing representation of the non-voting Board Member shall determine the means by which to select their Executive Board representative and shall inform the Board of their choice at the time of the biennial Executive Board Officer elections (or at such other times as may be required in the event of a vacancy). Similarly, those Principals sharing representation on a single Executive Board seat shall determine the means by which to select the position, and shall make the determination at the same time as the biennial Executive Board Officer elections (or at such other times as may be required in the event of a vacancy).

i. Unless otherwise described in the Bylaws, in the event that Subscribers or Principals are unable to agree on a shared representative or Board Member on a timely basis, the remaining Executive Board Members may make the selection for them by a vote of the Executive Board.

ii. Individuals representing multiple Subscribers or Principals are expected to confer with the Cities they represent.

e. Qualifications to Serve on Executive Board. To serve on the Executive Board, as either a voting or non-voting Board Member, a person must be the appointing city's Chief Financial Officer (e.g., finance director or city treasurer, or equivalent), or their deputy or equivalent. An individual representing multiple cities on a single Executive Board seat, or serving as the non-voting Subscriber representative shall similarly hold such a position within one of the Subscriber cities sharing such representation.

f. No Compensation for Serving on Executive Board. All Executive Board Members and their alternates shall serve without compensation from the PORTAL AGENCY. However, the PORTAL AGENCY may pay for or reimburse Executive Board Members and alternates for out-of-pocket costs related to service on the Executive Board.

g. Term of Office; Vacancies**.** Executive Board Members shall serve on the Executive Board for so long as they hold a position that qualifies them for the seat, unless the city they represent elects to appoint another individual. Executive Board Members representing multiple Cities (either as a Principal or Subscriber) shall serve until the next Board Officer elections. Any vacancies shall be promptly filled by the appointing Principal, group of Principals, Subscribers, or the Executive Board (per Section 7.d.i), as appropriate.

h. Alternates. Each Executive Board Member shall have a single alternate designated in writing. Alternates must meet the same qualification as the designated Board Member or have similar financial expertise and be in a management position within their city.

i. Quorum. A simple majority of the Board Members (or their alternates) in number (excluding any Board Member which per Section 17 has given notice of withdrawal or which has been terminated by vote of the Executive Board) shall constitute a quorum of the Executive Board for purposes of taking action.

j. Voting. The Executive Board shall strive to operate by consensus. All Executive Board decision on items not listed in Section 7.k shall require a Simple Majority Vote for approval. A Board Member may not split his or her vote on an issue. No voting by proxies or mail-in ballots will be allowed. Voting by a designated Alternate is not considered a vote by proxy. A Board Member representing a Principal that has given notice of withdrawal or which has been terminated by vote of the Executive Board shall be authorized to cast votes at the Executive Board only on budget items to be implemented prior to the withdrawal or termination date.

k. Items Requiring a Supermajority Vote for Approval:

i. Approval or amendment of the budget or draft budget. (Per Section 13.b.iv, approval of the draft and final budget or amendments thereto also requires unanimous approval of the Original Principals in certain instances).
ii. Approval or amendment of user fees and charges.
iii. Approval of the Portal Operations Policy or amendments thereto.
iv. Adoption or amendment of the Bylaws or amendment of the Articles of Incorporation.
v. A decision to acquire assets, equipment, real or personal property, or bind the PORTAL AGENCY to pay total or cumulative any contract amounts over $50,000, *provided that,* this threshold amount will be indexed on the fifth anniversary of the formation of the PORTAL AGENCY and every five (5) years thereafter by the CPI-U Seattle-Tacoma-Bremerton.
vi. Admission of a new Principal.

vii. Admission of a new Subscriber.
viii. The decision to create an additional non-voting seat for Subscribers on the Executive Board.
ix. Addition of any staff positions, or partial staff positions, to support PORTAL AGENCY operations. (Per Section 13.b.iv, approval of funding for increases in the number of staff positions also requires unanimous approval of the Original Principals in certain instances).
x. Appointing or removing the Manager.
xi. Merger, consolidation, sale of all or substantially all assets of the PORTAL AGENCY (See Section 16).
xii. Amendment of the Agreement (except for those amendments requiring approval of all legislative bodies of the Principals per Section 18).
xiii. Termination or dissolution of the PORTAL AGENCY (See Section 19).
xiv. Any other action actions requiring a sixty six-percent (66%) Supermajority vote under Chapter 24.06 RCW.

l. <u>Officers</u>. The Executive Board shall have four officers, a Chair, Vice-Chair, Secretary and Treasurer. It will be the function of the Chair to preside at the meetings of the Executive Board. The Vice-Chair shall assume this role in absence of the Chair. At the first meeting of the Executive Board following the effective date of this Agreement, the officers shall be elected, and shall serve in this capacity through April 1, 2016, whereupon a new Chair and Vice-Chair shall be elected by the Executive Board. Biennially thereafter, the Executive Board shall elect a new Chair and Vice-Chair for two (2) year terms commencing each April 1. In the event of a vacancy in the Chair position, the Vice-Chair shall assume the Chair for the balance of the term of the departed Chair. In the event of a vacancy in the Vice-Chair position, the Executive Board shall elect a new Vice-Chair to serve the balance of the term of the departed Vice-Chair. An officer elected to fill the unexpired term of his or her predecessor shall not be precluded from serving one or more full annual terms of office following the end of such unexpired term. Any officer appointed by the Executive Board may be removed by vote of the Executive Board, with or without cause, in which event the Executive Board shall promptly elect a new officer who shall serve until the next regular officers' board term begins. The Executive Board may appoint persons other than Board Members of the Executive Board to serve as Secretary and Treasurer of the PORTAL AGENCY. The duties of all officers shall be further described in the PORTAL AGENCY Bylaws.

m. <u>Staffing</u>. The Manager shall assign agency staff to support the Executive Board as he or she deems appropriate.

n. <u>Meetings</u>. The Executive Board shall meet as often as it deems necessary and not less than once a year, at a time and place designated by the Chair of the Executive Board or by a majority of its Board Members. Not less than fourteen (14) days advance notice of regular meetings shall be given. Special meetings may be called by the Chair or any two (2) Board Members upon giving all other Board Members not less than ten (10) days prior notice. In an emergency, the Executive Board may dispense with written notice requirements for special meetings, but must, in good faith, implement best efforts to provide fair and reasonable notice to all Executive Board Members. Board Members (or alternates) may participate in meetings by telephone conference or equivalent means of voice communication. At all times the Executive Board shall comply with Ch. 42.30 RCW (Open Public Meetings Act).

o. Articles of Incorporation and Bylaws. Unless otherwise provided in the Articles and Bylaws or by vote of the Executive Board, upon the request of any Board Member of the Executive Board, Robert's Revised Rules of Order shall govern any proceeding of the Executive Board.

p. Consultation with Operations Committee. It is the intent of this Agreement to seek the active participation and advice of Participating Cities in the determination of PORTAL AGENCY policies and management. To the extent practicable, all items to come before the Executive Board shall have been previously subject to the review, comment and recommendation of the Operations Committee and the Executive Board shall consider input from the Operations Committee in its deliberations.

q. Consultation with Businesses, Taxpayers and Participating Cities. Not less than once each year the Executive Board shall seek input from Taxpayers and Participating Cities for the purpose of securing feedback and information on the efficiency and effectiveness of the Portal and PORTAL AGENCY programs.

SECTION 8. CONVERSION OF STATUS OF PARTICIPATING CITIES; ADDITION OF NEW PRINCIPALS OR SUBSCRIBERS.

a. Loss of Principal Status. As described in Sections 13.d and 13.k hereof, a Principal shall be converted to Subscriber for failure to approve its share of the budget or for nonpayment or delinquency in payment of charges and fees. On the date of such conversion, said former Principal shall:

i. lose its representation on the Executive Board;
ii. lose its right to receive a share of the PORTAL AGENCY assets upon dissolution of the PORTAL AGENCY;
iii. become subject to payment of charges and fees in accordance with the then applicable payment formula for Subscribers; and
iv. be bound by the terms of the then current Subscriber service contract.

The conversion of a Principal to Subscriber shall not discharge or relieve any Principal of its obligations to the PORTAL AGENCY or any other Participating City.

b. Election to Convert to Subscriber. A Principal may elect to convert to Subscriber status effective the first day of the next budget period by giving notice of its intent to the Governing Board not less than eight (8) months in advance of such effective date; *provided that*, a Principal may not exercise such election to take effect within the Initial Term. Such conversion shall be effective as proposed without further action of the Executive Board, barring any basis for terminating the Principal and action thereon by the Executive Board.

c. New Principals. A city or town otherwise meeting the qualifications of a Principal in Section 3.z hereof may be admitted to the PORTAL AGENCY as a Principal upon Supermajority Vote of the Executive Board as required under Section 7.k and its approval and execution of a document confirm. Similarly, a Subscriber may apply to the Executive Board to be converted to Principal status. As a condition of becoming a Principal, whether by conversion or new admission, the Executive Board may require payment or other contributions or actions by the new Principal as the Executive Board may deem appropriate consistent with the Bylaws and Portal Operations Policy, and may set such start date for service as it deems appropriate, it being the intention that the addition of new Principals shall not cause then-existing Principals to incur additional costs.

d. New Subscribers. The determination of whether to accept Subscribers shall be made by the Executive Board in a manner similar, and subject to such terms and conditions, as that for accepting new Principals, it being the intention that the addition of new Subscribers shall not cause then-existing Principals or Subscribers to incur additional costs.

SECTION 9. TAX AND FINANCE OPERATIONS COMMITTEE.

a. Role and Responsibilities. A Tax and Finance Operations Committee (“Operations Committee”) shall be established to provide advice and recommendations to the Executive Board. The Executive Board may determine to direct the Operations Committee to perform specific responsibilities within Board-defined parameters. The Operations Committee shall endeavor to promote interagency collaboration, cooperation and information sharing between PORTAL AGENCY Principals and Subscribers. The Operations Committee shall:

i. Assist in the review and development of Portal Operations Policy and amendments thereto, Portal development options, proposed new service options, and such other matters as the Executive Board may direct;

ii. Make reports and recommendations to the Executive Board from time to time on matters the Operations Committee deems appropriate;

iii. Assist in the review and development of proposed PORTAL AGENCY budgets;

iv. Provide written recommendations with respect to the proposed budget to the Executive Board at the time the proposed budget is submitted to the Executive Board;

v. Provide advice, information and recommendations to the PORTAL AGENCY Manager and staff;

vi. Assist in communications to City Councils, legislators, business community on PORTAL AGENCY issues;

vii. Reach out to technology staff within their respective Cities for input and ideas, and to keep them apprised of PORTAL AGENCY issues;

viii. Brief their respective Executive Board Members in advance of Executive Board meetings.

b. Membership. Membership of the Operations Committee shall include one (1) Representative from each Principal, appointed by that Principal, plus at least one (1) representative, appointed by the Executive Board, to represent Subscribers. Each Principal shall also appoint in writing a designated alternate to serve on the Operations Committee in case of absence of the primary Representative**.**

c. Qualification to serve on Operations Committee. Representatives and their alternates shall be staff from the Principal they represent, with expertise in city tax policy and administration and/or city financial policy and administration. Persons serving on the Operations Committee are referred to as Representatives (or alternates) and shall serve without compensation from the PORTAL AGENCY.

d. Officers, Voting, Meeting Rules. The Operations Committee shall select a Chair and Vice-Chair from among the membership of the Operations Committee. Each Representative on the Committee shall have one vote. The meeting rules for the Operations Committee shall be further defined in the PORTAL AGENCY Bylaws.

e. Staffing. The Operations Committee shall be staffed by the Manager and such additional agency staffing as the Manager may deem appropriate.

SECTION 10. PORTAL AGENCY STAFFING.

a. The PORTAL AGENCY shall be staffed in such manner as the Executive Board determines, including but not limited to the use of loaned employees from Principals, consultants or other service providers, purchase of services from Principals or others, or hiring staff, or any combination of the foregoing.

b. As described in Section 13.b.iv.2 and Exhibit D, any increase in Labor Costs in excess of the New Participant Labor Cost Increment requires approval of a Supermajority Vote of the Executive Board as well as the approval of all Board Members representing all Original Principals.

SECTION 11. PORTAL AGENCY MANAGER.

a. Portal Agency Manager Appointment, Responsibilities and Authority. The Executive Board shall be responsible for the appointment and termination of a Manager of the PORTAL AGENCY, and shall request input from the Operations Committee, or any other standing committees created by the Executive Board, regarding any proposed appointment. The Manager shall:

i. Be responsible to the Executive Board and shall advise it from time to time on a proposed budget and other appropriate matters in order to fully implement the purposes of this Agreement;
ii. Administer the PORTAL AGENCY in its day-to-day operations consistent with the policies adopted by the Executive Board;
iii. Appoint persons to fill other staff positions, subject to confirmation by the Executive Board as the Board may require;
iv. Submit quarterly budget and operation performance reports to the Executive Board in a form acceptable to the Executive Board;
v. Undertake outreach to Taxpayers, Licensees and businesses, as well as to Participating Cities on the effectiveness of the PORTAL AGENCY operations and programs.
vi. Manage and oversee performance of the Vendor and other vendors or contractors providing services to the PORTAL AGENCY.
vii. Consult in advance with the Operations Committee on issues to come before the Executive Board, including but not limited to working with the Operations Committee in the development of the PORTAL AGENCY's budget and policies.

b. Qualifications, Retention and Termination. The Manager shall have experience in technical, financial and administrative fields and his or her appointment shall be on the basis of merit only. The Manager is an "at will" position and may be terminated from his or her position as Manager upon the Supermajority Vote of the Executive Board, without cause.

c. Legal Counsel, Accountants and Auditors. Only the Executive Board shall be authorized to hire or retain legal counsel and independent accountants and auditors. Other consultants may be designated in such manner as the Executive Board may determine subject to Sections 6 and 7.

d. Contracts and Support Services. Subject to the terms of the Bylaws, the Executive Board or the Manager with advice of the Operations Committee shall as necessary contract with appropriate local governments or other third parties for the use of space for its operations, and for staff and auxiliary services including, but not limited to, records, payroll, accounting, purchasing and data processing. Notwithstanding the foregoing, only the Executive Board may approve changes to the Portal Vendor(s) or Portal Vendor Services Contract.

SECTION 12. ASSIGNMENT OF PORTAL SERVICES CONTRACT FROM SEATTLE TO PORTAL AGENCY.

Promptly following the execution of this Agreement and the filing of such forms with the Washington Secretary of State as are necessary to incorporate the PORTAL AGENCY as a nonprofit corporation, The City of Seattle agrees to assign the Portal Services Contract to the PORTAL AGENCY, together with all rights and responsibilities appurtenant thereto and the PORTAL AGENCY shall agree to accept such assignment, rights and responsibilities, it being the intent of the parties to this Agreement that the PORTAL AGENCY shall assume all responsibility for overseeing and funding the work of the Vendor pursuant to such Portal Services Contract as soon as practicable following formation of the PORTAL AGENCY.

SECTION 13. BUDGET; COST ALLOCATION; CAPITAL COST RECOVERY CHARGES; PAYMENT OF CHARGES; DELINQUENCIES; RESERVE FUNDS.

a. Budget Fiscal Year. The budget fiscal year shall be either the calendar year, or two calendar years as the Executive Board may determine. The “budget period” corresponds to the fiscal year or years so determined by the Board.

b. Budget Approval. The Manager shall develop the proposed operating budget in consultation with the Operations Committee. The Manager and Executive Board shall use their best efforts to meet the budget schedule set forth below, but failure to meet a specified budget deadline shall not constitute a breach of this Agreement.

i. The Manager shall present a proposed budget to the Executive Board by no later than **May 1** prior to the commencement of the budget period, together with the Operation Committee’s recommendations with respect to the proposed budget.

ii. By no later than **June 15**, the Executive Board shall (1) review and revise the draft budget as it deems appropriate; (2) approve the draft budget (including proposed charges to Participating Cities and any user fees to

Taxpayers and Licensees) by Supermajority Vote; and (3) forward same to Principals. The approved draft budget, and all proposed fees and charges shall be forwarded to Subscribers no later than **July 1**.

iii. The final budget shall be adopted by vote of the Executive Board effective no later than **December 31** prior to commencement of the budget period, after receiving information as to:

1. which Subscribers will be continuing to contract with the PORTAL AGENCY; and

2. which Principals have or will approve their shares of the PORTAL AGENCY budget, based on action or information from such Principals received by the PORTAL AGENCY no later than **December 1**.

iv. Vote Required to Approve Budget. Per Section 7.k.i, a Supermajority Vote of the Executive Board is required to approve the draft and final budget, *provided* that unanimous approval of the Executive Board Members representing all Original Principals shall also be required to approve any budget or budget amendment that includes:

1. An increase in Capped Costs greater than the maximum amount allowed per calculation of the New Participant Capped Cost Increment, as further described in Exhibit D.

2. An increase in Labor Costs to increase the number of full or partial staff positions greater than the maximum amount allowed per calculation of the New Participant Labor Cost Increment, as further described in Exhibit D.

v. 2014 Budget. Notwithstanding the foregoing, the PORTAL AGENCY budget for the year 2014 will be formally adopted by action of the Executive Board promptly following incorporation of the PORTAL AGENCY and need not be submitted for approval by the Original Principals. The proposed 2014 budget is set forth at Exhibit A. By approving this Agreement each Original Principal also approves their contribution to the 2014 budget in an amount not to exceed that shown in Exhibit A, promptly following the date the PORTAL AGENCY is incorporated.

c. Payment of Charges. The Board shall determine the timing of payments by Participating Cities, which shall be set forth in the Portal Operations Policy.

d. Failure of a Principal to Approve Budget Share. Failure of a Principal to approve its share of the budget before the commencement of the budget period shall result in the Principal being converted to Subscriber status effective as of the first day of the budget period for which the budget was not approved.

e. Notification of Final Adopted Budget. Promptly following final adoption of the budget by the Executive Board, the Manager shall provide notice to all Principals and Subscribers as to the terms of the final adopted budget, including their share of PORTAL AGENCY costs, charges and fees, and the payment schedule.

f. Budget Modifications. Modifications to the budget shall be approved by a Supermajority Vote of the Executive Board (and also unanimous consent of the Original Principals if required by Section 13.b.iv above) as necessary from time to time to account for changes in expenditures and revenues.

g. Cost Allocation and Cost Recovery Principles. The PORTAL AGENCY budget shall be generally allocated between all Participating Cities based on the number of Transactions processed for each City on the Portal. In years 2014 through 2018, the number of Transactions for the Original Principals shall be based on 2012 historical actual pre-Portal use Transaction Counts (set forth in Exhibit A) and the City Transaction Count for any other Participating City shall be based on the most recent historical data for that City prior to it joining the Portal. From and after 2019, the number of Transactions allocated to Original Principals shall be based on the most recent actual annual number of Transactions processed on the Portal for each such City (thus for 2019, the 2017 actual Transaction count will be used); for other Participating Cities, the allocation will be determined considering the actual number of Transactions (if the City had joined before 2019), historical tax and license information, and the experience of Original Principals as to how quickly businesses have adopted use of the Portal since its launch. The details of the cost allocation calculation shall be set forth in the Portal Operations Policy. Nothing in this Agreement shall be construed to prohibit the Executive Board from including factors in addition to the number of City Transactions in the cost allocation formulas as between Participating Cities, so long as the primary basis for allocation remains the City Transaction count.

h. User Fees. The PORTAL AGENCY shall impose such reasonable user fees as the Executive Board may determine on Taxpayers and Licensees utilizing the Portal to file tax returns or file business license applications in order to recoup costs of PORTAL AGENCY operations, the Portal operation and maintenance, reserves and any other PORTAL AGENCY costs.

i. Estimated Six Year Operating Costs**.** Exhibit B sets forth a general estimate of the annual costs to establish and operate the PORTAL AGENCY between 2014 and 2020, assuming the Original Principals are the only Participating Cities, and includes estimated payment of Vendor's charges pursuant to the Portal Services Contract and other estimated operating costs. This Exhibit is an estimate and is not binding on any of the parties to this Agreement, nor is it binding on the PORTAL AGENCY.

j. Capital Cost Recovery Charge. In order to reimburse the City of Seattle for approximately one third of the costs Seattle paid to fund start-up of the Portal Agency, each Participating City other than the City of Seattle will be charged an annual Capital Cost Recovery Charge, in an amount described in Exhibit C. Such Charges shall be imposed each year from and after 2015 until such time as the total Capital Cost Recovery Charges paid reaches $1,400,000. The Capital Cost Recovery Charges will be paid by Participating Cities to the Portal Agency and the Portal Agency shall thereafter remit the total annual amount to Seattle. The Capital Cost Recovery Charge is not considered part of the Portal Agency budget for purposes of calculating Capped Costs or CPI-U limitations on the growth of such costs.

k. Payment and Delinquencies. Principals shall promptly pay fees and charges allocable to them. Interest on fees and charges allocable to any Principal not paid when due shall begin accruing interest immediately at the Federal Reserve Prime Rate as of the date the payment was originally due, plus 3% per year. The PORTAL AGENCY shall, within seven (7) days of the due date, send notice to any delinquent Principal and provide a 60-day cure period from the original due date of the payment. If such fees and interest penalties are not paid in full within 60 days of the original due date, then the Principal delinquent in payment of fees shall upon such 60th day be deemed immediately converted to the status of a Subscriber and subject to penalty as described in Section 8. In the event a Principal converted to Subscriber status by non-payment of fees shall not have paid in full all fees and interest owing by six (6) months after the original due date, then the Executive Board may terminate provision of the PORTAL AGENCY'S services to that former Principal. After one (1) year, the nonpaying former Principal shall be deemed to have withdrawn from this Agreement, but the termination of services shall not absolve the former Principal of its obligation to pay all fees and charges past due, together with interest.

l. Terms of Subscriber Contracts. Subscriber contracts shall include terms consistent with these delinquency provisions, that is, interest shall accrue on delinquent payments at the same rate as provided herein, and service may be terminated if fees and interest are not paid in full within six months.

m. Reserve Funds. The Executive Board may establish and fund reserve funds to support operations or capital investments for the PORTAL AGENCY, at levels the Executive Board determines to be appropriate; *provided* that general reserve funds may only be used to support general PORTAL AGENCY operations, maintenance and capital costs and may not be used in support of developing projects or services that will not be utilized by all Principals; and *provided further*, that no Principal shall be required to contribute to special reserves established exclusively in support of projects or services that the Principal has certified it does not intend to utilize or make available to its Taxpayers and Licensees.

n. Use of Funds. Consistent with any use imposed on particular funds by statute, ordinance, contract, this Interlocal Agreement or any bylaws adopted by PORTAL AGENCY, the PORTAL AGENCY may use any available funds for any purpose authorized by this Agreement in connection with an authorized project.

SECTION 14. RETAINED AUTHORITY AND RESPONSIBILITY OF PARTICIPATING AGENCIES.

Each Participating City shall retain the responsibility and authority for its operational departments and for such equipment and services as are required at its place of operation to connect to PORTAL AGENCY operations, including but not limited to each Participating City's computer and data systems managing processes that provide services the Portal delivers (the City's system of record). Each Participating City shall also retain the responsibility and authority for managing and maintaining the security and privacy of all data that the Participating City links to the Portal. Inter-connecting equipment and services will not be included in PORTAL AGENCY'S budget and operational program, except as the Executive Board may determine.

SECTION 15. OWNERSHIP OF PROPERTY.

a. Ownership of Property. Excepting the Portal which is owned by the Vendor, all property both real and personal, as well as intellectual property rights or licenses purchased or otherwise acquired pursuant to or in connection with this Agreement shall be owned or held in the name of the PORTAL AGENCY; provided, however, that the Executive Board may convey ownership of specific property, property or use rights.

b. Loaned Property. If any Participating City provides equipment or furnishings for PORTAL AGENCY'S use, title to the same shall rest with the respective local entity unless that equipment or furnishing is acquired by the PORTAL AGENCY.

c. Data. Each Participating City shall retain ownership of its own data and property that may be used in connection with Portal or PORTAL AGENCY operations.

SECTION 16. MERGER OR CONSOLIDATION, OR SALE OF ALL OR SUBSTANTIALLY ALL ASSETS.

Approval of the merger or consolidation of PORTAL AGENCY with another entity, or the sale of all or substantially all assets of PORTAL AGENCY, shall require a Supermajority Vote.

SECTION 17. WITHDRAWAL BY, OR TERMINATION OF, A PRINCIPAL.

a. Notice and Timing. Any Principal may withdraw its membership and terminate its participation in this Agreement by providing written notice to the Executive Board on or before December 31 in any year, and the Executive Board shall promptly inform all other Principals of such notice. That withdrawal shall become effective on the last day of the next calendar year. Notwithstanding the foregoing, no Principal may terminate its participation in this Agreement effective prior to the end of the Initial Term.

b. Obligations of departing Principal. A Principal who withdraws, is terminated, changes or is changed to Subscriber status ("departing Principal") shall hold the remaining Principals and Subscribers harmless against any resultant increased capital and/or operating costs allocated to them for the following two (2) budget years (plus the remainder of the current budget year, if applicable), with respect to any Executive Board approved project (excluding the initial launch of the Portal) in which the departing Principal is participating or has agreed to participate prior to notice of withdrawal or notice of change to Subscriber status, but such obligation shall exclude the cost of any Capital Cost Recovery Charges. Such obligation shall be reduced to the extent new Principals or Subscribers are allocated these costs that would otherwise have been chargeable to the departing Principal. After recouping such costs, the Executive Board may authorize reimbursement to the remaining Principals and Subscribers based on a depreciated value of the withdrawing or converting Principal's contribution.

c. Rights of departing Principal. Departing Principals shall have rights to copies of all data held by the PORTAL AGENCY relating to that Principal's Taxpayers and Licensee and other data relating specifically to the Principal.

d. The termination and/or withdrawal of a Principal shall not discharge or relieve any Principal of its obligations to the PORTAL AGENCY or other Participating Cities.

SECTION 18. AMENDMENT OF AGREEMENT.

This Agreement may be amended upon approval of a Supermajority Vote of the Executive Board except that any amendment affecting the following shall require consent of the legislative authorities of all Principals:

a. Expansion of the scope of services provided by the PORTAL AGENCY beyond the scope of expansion authorized in Section 5.c.
b. The terms and conditions of membership on the Executive Board.
c. Voting rights of Executive Board Members.
d. Powers of the Executive Board.
e. Principal contribution responsibilities.
f. Hold harmless and indemnification requirements.
g. Provisions regarding duration, termination or withdrawal.
h. The conditions of this Section.

This section shall not be construed to require legislative authority consent for the addition of a new Principal or agreement to serve an additional Subscriber, or to expand or contract the services purchased by any Principal or Subscriber or offered by the PORTAL AGENCY.

SECTION 19. TERMINATION OF AGREEMENT; DISSOLUTION OF AGENCY.

a. Generally. This Agreement may be terminated upon the approval of a Supermajority Vote of the Executive Board. The termination shall be by direction of the Executive Board to wind up business by a date specified by the Executive Board, which date shall be at least one (1) year following the date of the vote to terminate. Upon the final termination date, this Agreement shall be fully terminated.

b. Distribution of Property on Termination of Agreement. Upon termination of this Agreement, all property acquired during the life of the Agreement remaining in ownership of PORTAL AGENCY shall be disposed of in the following manner:

i. Real or Personal Property. All real or personal property purchased pursuant to this Agreement and all unexpended funds or reserve funds, net of all outstanding PORTAL AGENCY liabilities, shall be distributed to those Principals still participating in the PORTAL AGENCY on the day prior to the termination date and shall be apportioned between Principals based on the ratio that the average of each Principals' contributions to the operating budget over the preceding five (5) years bears to the total of all then remaining Principals' user fees paid during such five-year period. The Executive Board shall have the discretion to allocate the real or personal property and funds as it deems appropriate, and the apportionment, determined consistent with the preceding sentence, need not be exact.

ii. Intellectual Property Rights. The Vendor will own, or have rights to, all its intellectual property per the terms of the Portal Services Contract, including the right to license the Portal operating system exclusively to the PORTAL AGENCY, its Principals and Subscribers. The Portal license rights, and all rights granted relating thereto, terminate with the termination of the Portal Services Contract. Notwithstanding this termination, the Principals and Subscribers shall retain the right after termination of the Portal license rights to acquire any and all information and data, including but not limited to Taxpayer, Licensee and their respective City data, then currently held by the Vendor or the PORTAL AGENCY. Upon termination of the Portal Development and Services Contract or the dissolution of the PORTAL AGENCY, any and all intellectual property owned by the PORTAL AGENCY (which excludes the Portal and any other intellectual property owned by the Vendor) will be transferred in its entirety to Principal with the largest Population. If said Principal does not agree to accept the intellectual property owned by the PORTAL AGENCY, it shall then be transferred in its entirety to the Principal with the next largest population, and so on should that Principal not agree to accept the intellectual property. If no Principal agrees to accept the intellectual property, then the Executive Board will attempt to sell the intellectual property at fair market value and distribute the proceeds in proper proportion to the current Principals in accordance with Subsection 19.b.i.

iii. Loaned Property. In the event of dissolution or termination of the PORTAL AGENCY, assigned or loaned assets shall be returned to the lending entity.

iv. Allocation of Liabilities. In the event outstanding liabilities of the PORTAL AGENCY exceed the value of personal and real property and funds on hand, all Principals shall contribute to retirement of those liabilities in the same manner as which they would share in the distribution of properties and funds.

c. Notwithstanding the foregoing, the Agreement may not be terminated if to do so would abrogate or otherwise impair any outstanding obligations of the PORTAL AGENCY, unless provision is made for those obligations.

SECTION 20. DISPUTE RESOLUTION.

a. Whenever any dispute arises between a Principal or the Principals or between the Principals and the PORTAL AGENCY (referred to collectively in this section as the “parties”) under this Agreement which is not resolved by routine meetings or communications, the parties agree to seek resolution of such dispute by the process described in this section, which shall also be binding on Subscribers**.**

b. The parties shall seek in good faith to resolve any such dispute or concern by meeting, as soon as feasible. The meeting shall include the Chair of the Executive Board, the Manager, and a representative(s) of the Principal(s), if a Principal(s) is involved in the dispute, and/or a person designated by the Subscriber(s), if a Subscriber(s) is involved in the dispute.

c. If the parties do not come to an agreement on the dispute or concern, any party may request mediation through a process to be mutually agreed to in good faith between the parties within 30 days, which may include binding or nonbinding decisions or recommendations (whichever is mutually agreed to). The mediator(s) shall be mutually agreed upon and shall be skilled in the legal and business aspects of the subject matter of this Agreement. The parties shall share equally the costs of mediation and assume their own costs.

SECTION 21. INSURANCE.

The Executive Board, Manager, and Operations Board shall take such steps as are reasonably practicable to minimize the liability of the Participating Cities, including but not limited to the utilization of sound business practice. The Executive Board shall determine which, if any, insurance policies may be reasonably practicably acquired to cover the operations of the Portal Agency and the activities of the Parties pursuant to this Agreement (which may include Directors and Officers, Commercial General Liability, Auto, Workers' Compensation, Stop Gap/Employer's Liability, errors and omissions, crime/ fidelity insurance, CyberRisk), and shall direct the acquisition of same. [

SECTION 22. INDEMNIFICATION AND HOLD HARMLESS.

Each Principal shall indemnify and hold other Principals, their officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of that Principal's negligent acts or omissions in connection with the performance of its obligations under this Agreement, except to the extent the injuries or damages are caused by another Principal.

a. Each Principal shall indemnify and hold the PORTAL AGENCY and its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of that Principal's negligent acts or omissions in connection with the performance of its obligations under this Agreement, except to the extent the injuries and damages are caused by the PORTAL AGENCY.

b. As provided in its Articles of Incorporation, the PORTAL AGENCY shall indemnify and hold each Principal its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of the PORTAL AGENCY'S acts or omissions in connection with the performance of its obligations under this Agreement, except to the extent the injuries and damages are caused by any Principal.

c. Subscribers shall be required to agree to indemnify and hold harmless each Principal and the Portal Agency, their officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of Subscribers negligent acts or omissions in connection with its use of the Portal. To such degree as the Executive Board determines to be reasonable, appropriate, and consistent with applicable law and to be in the best interests of the Portal Agency, the Portal Agency may also indemnify and hold harmless Subscribers.

d. Should a court of competent jurisdiction determine that this Agreement 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 a party hereto and the PORTAL AGENCY, its officers, officials, employees, and volunteers, the party's liability hereunder shall be only to the extent of the party's negligence. It is further specifically and expressly understood that the indemnification provided in this Section constitutes the party's waiver of immunity under Industrial Insurance Title 51 RCW, solely for the purpose 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 Agreement.

e. Each party shall give the other parties proper notice as provided in Section 24, of any claim or suit coming within the purview of these indemnities. Termination of this Agreement, a Principal's withdrawal from the PORTAL AGENCY, or a Principal's conversion to Subscriber status (collectively for purposes of this subparagraph "Termination"), shall not affect the continuing obligations of each of the parties as indemnitors hereunder with respect to those indemnities and which shall have occurred prior to such Termination.

SECTION 23. INTERGOVERNMENTAL COOPERATION.

The PORTAL AGENCY shall cooperate with local, state and federal governmental agencies in order to maximize the utilization of any grant funds for equipment and operations and to enhance the effectiveness of the PORTAL AGENCY's operations and minimize costs of service delivery.

SECTION 24. NOTICE.

Notices required to be given to the PORTAL AGENCY under the terms of this Agreement shall be directed to the following unless all Principals are otherwise notified in writing:

Chair, PORTAL AGENCY Executive Board
c/o his/her Principal agency's address

Notices to Principals or Subscribers, Board Members or Representatives required hereunder may be given by mail, overnight delivery, facsimile or email (with confirmation of transmission), telegram, or personal delivery. Each Principal shall provide the Chair of the PORTAL AGENCY Executive Board written notice of the address for providing notice to said Principal. Any Principal wishing to change its mail or email address shall promptly notify the Chair of the Executive Board. Notice or other written communication shall be deemed to be delivered at the time when the same is postmarked in the mail or overnight delivery services, sent by facsimile or email (with confirmation of transmission), sent by telegram, or received by personal delivery.

SECTION 25. VENUE.

The venue for any action related to this Agreement shall be in the Superior Court in and for King County, Washington at Seattle, or if applicable, in Federal District Court, Western District of Washington.

SECTION 26. FILING.

As provided by RCW 39.34.040, this Agreement shall be filed prior to its entry in force with the King County Department of Executive Services Division of Records and Licensing Services, or its successor, Records and Elections, or, alternatively, listed by subject on a Principal's web site or other electronically retrievable public source.

SECTION 27. NO THIRD PARTY BENEFICIARIES.

There are no third-party beneficiaries to this Agreement. No person or entity other than a party to this Agreement shall have any rights hereunder or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.

SECTION 28. SEVERABILITY.

The invalidity or any clause, sentence, paragraph, subdivision, section or portion of this agreement shall not affect the validity of the remainder of the Agreement.

SECTION 29. RATIFICATION.
All prior acts taken by the Principals and the PORTAL AGENCY consistent with this Agreement are hereby ratified and confirmed.

SECTION 30. EXECUTION, COUNTERPARTS AND EFFECTIVE DATE.

This Agreement and any amendments thereto, shall be executed on behalf of each Principal by its duly authorized representative and pursuant to an appropriate motion, resolution or ordinance. This Agreement may be executed in any number of counterparts, each of which shall be an original, but those counterparts will constitute one and the same instrument. This Agreement shall be deemed adopted and effective as of March 1, 2014, subject to prior approval by the legislative bodies of all four Original Principals, execution by each Original Principal, and prior filing of same as required by Section 26.

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IN WITNESS WHEREOF, this Agreement has been executed by each party on the dates set forth below.

City of Bellevue

City Manager

Date

Approved as to Form:

City Attorney

Date

City of Everett

Mayor

Date

Approved as to Form:

City Attorney

Date

The City of Seattle

Mayor

Date

Approved as to Form:

City Attorney

Date

City of Tacoma

City Manager

Date

Approved as to Form:

City Attorney

Date

List of Exhibits

A. Proposed 2014 PORTAL AGENCY BUDGET SUMMARY (including number of Transactions used for cost allocation as between Original Principals)

B. 2015-2020 Estimated PORTAL AGENCY Operating Budget Summary

C. Capital Cost Recovery Charges

D. Calculation of New Participant Capped Cost Increment and New Participant Labor Cost Increment

Exhibit A

Proposed 2014 PORTAL AGENCY OPERATING BUDGET SUMMARY
(including number of Transactions used for cost allocation as between Original Principals)
(June to December 2014)

Labor Total[1]	152,649
Contracts Total[2]	27,000
Overhead Total[3]	12,500
Vendor Costs[4]	180,208
Operating Reserves	55,854
Total Budgeted Costs	**428,210**
Total Budgeted Revenues	**428,210**
Estimated User fee Revenues[5]	72,566
Estimated Revenue from City Cost Allocations[6]	355,644
City of Seattle Cost Allocation[7]	*245,394*
City of Bellevue Cost Allocation	*35,654*
City of Tacoma Cost Allocation	*56,903*
City of Everett Cost Allocation	*17,782*

This budget estimates a six month budget beginning after the Multi-City Business License and Tax Portal is up and running in mid-2014, the first six months are covered by the Portal

1 This budget includes 2.5 FTE: the Portal Manager, a half-time administrative assistant and a full-time IT Project Manager/Business Analyst. The personnel for these positions will be provided by the City of Seattle and the costs in this budget include the fully-funded (salary, benefits, etc.) labor costs for all 2.5 positions. A separate loaned staffing agreement will be entered into between the Portal Agency and the City of Seattle in 2014 for these staff.

2 Includes contracts for outside services such as Accounting, Insurance, Bank and the State Auditor.

3 Funding for miscellaneous overhead items such as legal fees, office and operating supplies, printing and licenses/memberships.

4 Includes costs estimated payable to-Gov Systems under the Portal Services Contract in 2014, from and after the Portal goes "live." For the first five years of Portal operation,.e-Gov Systems will charge the Portal Agency $1.25 every time a business or taxpayer makes an online Portal filing, whether or not tax is owing.

5 Assumes the Executive Board approves a proposed user fee of $4 per online session per City (the proposed fee would be payable only when tax is owed; multiple tax and/or license filings on the same session would incur only one fee). This user fee is based on an estimated Portal use adoption rate by business and taxpayers of 15%. This adoption rate is expected to grow considerably each year.

6 Cost Allocations are based on the 2012 Transaction count for each Original Principal, shown in the table at the End of this Exhibit A.

7 Excludes Seattle's contributions to start-up costs in 2014. Also excludes labor and operating costs for which Seattle will be reimbursed from the Total Budget shown above, per the loaned staffing agreement.

Implementation Project costs funded by Seattle. This budget estimates also assumes only four cities participate in 2014.

Transaction Counts Calculations used for Cost Allocation as between Original Principals

Transaction Counts	Based on 2012 actual business license filings, business and occupations and gross receipts tax filings for each Original Principal				
	Seattle	**Bellevue**	**Tacoma**	**Everett**	**Total**
Transactions	212,457	30,927	50,000	14,392	307,776
% Allocation	69%	10%	16%	5%	100%

Exhibit B:

Multi-City Business License and Tax Portal Agency
2015-2020 Estimated Operating Budget Summary

This budget is an estimated six year budget and assumes only four cities participating.

	2015	2016	2017	2018	2019	2020
Labor Total[8]	314,740	324,182	333,908	343,925	354,243	364,870
Contracts Total[9]	55,188	56,402	57,643	58,911	60,207	61,532
Overhead Total[10]	15,330	15,667	16,012	16,364	16,724	17,092
Vendor Total[11]	344,888	383,360	421,832	460,304	479,540	498,776
Operating Reserve - 15%	53,668	7,420	7,467	7,516	4,681	4,733
Total Estimated Budget	783,814	787,031	836,862	887,021	915,396	947,003
Estimated User Fee Revenue[12]	193,510	241,888	290,266	338,643	362,832	387,021
Estimated City Cost Allocation Revenues[13]	602,057	555,622	557,306	559,322	563,749	571,414
City of Seattle[14]	415,419	383,379	384,541	385,932	388,987	394,276
City of Bellevue	60,206	55,562	55,731	55,932	56,375	57,141
City of Tacoma	96,329	88,900	89,169	89,492	90,200	91,426
City of Everett	30,103	27,781	27,865	27,966	28,187	28,571

[8] This budget includes 2.5 FTE: the Portal Manager, a half-time administrative assistant and a full-time IT Project Manager/Business Analyst. The personnel for these positions will be provided by the City of Seattle and the costs in this budget include the fully-funded (salary, benefits, etc.) labor costs for all 2.5 positions. A separate loaned staffing agreement will be entered into between the Portal Agency and the City of Seattle in 2014 for these staff.

[9] Includes contracts for outside services such as Accounting, Insurance, Bank and the State Auditor.

[10] Funding for miscellaneous overhead items such as legal fees, office and operating supplies, printing and licenses/memberships.

[11] Includes costs estimated payable to-Gov Systems under the Portal Services Contract in 2014, from and after the Portal goes "live." e-Gov Systems will charge the Portal Agency $1.25 every time a business or taxpayer makes an online Portal filing, whether or not tax is owing. This per-filing cost is fixed for the first five years of Portal operation.

[12] Assumes the Executive Board approves a proposed user fee of $4 per online session per City (the proposed fee would be payable only when tax is owed; multiple tax and/or license filings on the same session would incur only one fee). This user fee is based on an estimated Portal use adoption rate by business and taxpayers of 15%. This adoption rate is expected to grow considerably each year.

[13] Cost Allocations are based on the 2012 Transaction count for each Original Principal, shown in Table 2.

[14] Excludes Seattle's contributions to start-up costs in 2014. Also excludes labor and operating costs for which Seattle will be reimbursed from the Total Budget shown above, per the loaned staffing agreement.

Transaction Counts Calculations used for Cost Allocation as between Original Principals

Transaction Counts	Based on 2012 actual business license filings, business and occupations and gross receipts tax filings for each Original Principal				
	Seattle	**Bellevue**	**Tacoma**	**Everett**	**Total**
Transactions	212,457	30,927	50,000	14,392	307,776
% Allocation	69%	10%	16%	5%	100%

Estimated Adoption Rates

e-Gov Systems Recommended Adoption Rate	This is the recommended rate of adoption from e-Gov systems based on previous implementations.					
	2015	**2016**	**2017**	**2018**	**2019**	**2020**
Adoption Rate	40%	50%	60%	70%	75%	80%

CPI-U Rates Forecast

	2014	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
CPI-U Forecast (Bellevue)	2.20%	2.20%	2.20%	2.30%	2.30%	2.30%	2.30%

Exhibit C

Capital Cost Recovery Charges

Beginning in 2015, every Participating City other than the City of Seattle will pay a yearly Capital Cost Recovery Charge to the Portal Agency which in turn will remit the annual total of such Charges paid to the City of Seattle. The Charges will remain in place until the total amount of $1,400,000 has been remitted to Seattle.

The Executive Board shall determine the timing for payment of the Capital Cost Recovery Charges.

Each Participating City's Capital Cost Recovery Charge will be determined based on the number of Transactions allocated to such City in the budget year in which the Charge will be collected, and in accordance with the following table:

Category:	**Smallest City**	**Smaller City**	**Small City**	**Medium City**	**Large City**
Transaction Count allocated to the City in the budget year	< 1000	1001 - 4000	4,001 to 14,400	14,401 to 31,000	>31,001
Capital Cost Recovery Charge payable annually	**$500**	**$1000**	**$2000**	**$4000**	**$6000**

Exhibit D

Calculation of New Participant Capped Cost Increment and New Participant Labor Cost Increment

New Participant Capped Cost Increment.

The New Participant Capped Cost Increment is an amount calculated in the development of each budget (or budget amendment) to identify the maximum amount by which Capped Costs may increase in the budget period *without requiring unanimous consent of the Executive Board Members representing all four Original Principals*. The Increment is determined by identifying the "CPI-U Limit for Capped Costs per Transaction" for the applicable budget period, assuming the Portal Agency has the same number of Participating Cities as the prior budget period and the Capped Costs from the previous period are inflated by the CPI-U Limit. The Capped Cost per Transaction is then multiplied by the number of Transactions attributable to new Participating Cities joining the Portal Agency in the budget period, and the resulting total is the maximum amount by which the Capped Costs in the new budget period may be increased over and above the Status Quo Capped Cost *without requiring unanimous consent*.

Illustration: **Calculation of New Member Capped Cost Increment for Year X** *Assuming: 1 year budget period; addition of 2 member cities proposed in Year X*	
Part 1: Calculating CPI-U Limit for Capped Costs Per Transaction	
CPI-U Limit for Capped Cost for Year X, • Inflate Capped Costs for the previous year by the CPI-U Limit.	$16,000
Estimated Transaction Count for Year X from currently Participating Cities • Includes all Cities participating as Principals or Subscribers in the previous year. • Transaction count is that used for purposes of estimating the cost allocations of these Participating Cities in Year X.	125,000
Capped Cost Per Transaction ($16,000 ÷ 125,000)	**$0.128**
Part 2: Calculating New Member Capped Cost Increment	
New Member Transaction Count • Total Transactions assigned to the 2 new Participating Cities for purposes of budget allocation in Year X	10,000
New Member Capped Cost Increment for Year X ($0.13 x 10,000)	**$1,280**
Capped Costs in Year X may be increased by Supermajority Vote to a level of $17,280. Capped Costs in excess of that amount would require Supermajority Vote and unanimous approval by Board Members representing the Original Principals.	

New Member Participant Labor Cost Increment.

The New Participant Labor Cost Increment is an amount calculated in the development of each budget (or budget amendment) to identify the maximum amount by which Labor Costs may increase in the budget period *without requiring unanimous consent of the Executive Board Members representing all four Original Principals*. The Increment is determined by identifying the "Status Quo Labor Cost per Transaction" for the applicable budget period, assuming the Portal Agency has the same number of Participating Cities and staff as the prior budget period. The Labor Cost per Transaction is then multiplied by the number of Transactions attributable to new Participating Cities joining the Portal Agency in the budget period, and the resulting total is the maximum amount by which the Labor Costs in the new budget period may be increased over and above the Status Quo Labor Cost *without requiring unanimous consent*.

Illustration: **Calculation of New Participant Labor Cost Increment for Year X** *Assuming: 1 year budget period; addition of 2 member cities proposed in Year X*	
Part 1: Labor Cost Per Transaction	
Status Quo Labor Costs for Year X • Assuming same number of staff (including employees, if any, and loaned staff) as were engaged by the Portal Agency in the previous year, and adding any estimated increases in costs of salary, benefits, etc. for those same personnel over and above the previous year's costs.	$350,000
Estimated Transaction Count for Year X from Currently Participating Cities • Includes all Cities participating as Principals or Subscribers in the previous year. • Transaction count is that used for purposes of estimating the cost allocations of these Participating Cities in Year X.	125,000
Labor Cost Per Transaction ($350,000 ÷ 125,000)	**$2.80**
Part 2: New Participant Labor Cost Increment	
New Participant Transaction Count • Total Transactions assigned to the 2 new Participating Cities for purposes of budget allocation in Year X	10,000
New Participant Labor Cost Increment for Year X ($2.80 x 10,000)	**$28,000**
Labor Costs in Year X may be increased by Supermajority Vote to a level of $378,000. Labor Costs in excess of that amount would require Supermajority Vote ***and*** *unanimous approval by Board Members representing the Original Principals.*	

IN WITNESS WHEREOF, this Agreement has been executed by each party on the dates set forth below.

City of Bellevue

City Manager

1-31-14

Date

Approved as to Form:

City Attorney

Date

City of Everett

Mayor

Date

Approved as to Form:

City Attorney

Date

The City of Seattle

Mayor

Date

Approved as to Form:

City Attorney

Date

City of Tacoma

City Manager

Date

Approved as to Form:

City Attorney

Date

IN WITNESS WHEREOF, this Agreement has been executed by each party on the dates set forth below.

City of Bellevue

City Manager

Date

Approved as to Form:

City Attorney

Date

City of Everett

Ray Stephanson

Mayor

1-27-2014

Date

Approved as to Form: attest: Sharon Fuller City Clerk

James D. Iles

City Attorney

1/27/14

Date

The City of Seattle

Mayor

Date

Approved as to Form:

City Attorney

Date

City of Tacoma

City Manager

Date

Approved as to Form:

City Attorney

Date

IN WITNESS WHEREOF, this Agreement has been executed by each party on the dates set forth below.

City of Bellevue

City Manager

Date

Approved as to Form:

City Attorney

Date

City of Everett

Mayor

Date

Approved as to Form:

City Attorney

Date

The City of Seattle

Mayor

1/29/14

Date

Approved as to Form:

By:

For: City Attorney

2-4-14

Date

City of Tacoma

City Manager

Date

Approved as to Form:

City Attorney

Date

IN WITNESS WHEREOF, this Agreement has been executed by each party on the dates set forth below.

City of Bellevue

City Manager

Date

Approved as to Form:

City Attorney

Date

City of Everett

Mayor

Date

Approved as to Form:

City Attorney

Date

The City of Seattle

Mayor

Date

Approved as to Form:

City Attorney

Date

City of Tacoma

City Manager

12/19/2013

Date

Approved as to Form:

Debra Casp. Deputy

City Attorney

12-13-13

Date

12-18-2013

Andy Cherullo Date

Director of Finance

Attest:

Doris Sorum 12-23-2013

Doris Sorum Date

City Clerk

v. 11.5.13

ORIGINAL

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Consent Calendar Item #5

A G E N D A   I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Addendum No 1. to Interlocal Agreement for Emergency Dispatch Services

ATTACHMENTS:
1. Addendum No 1. to Interlocal Agreement for Emergency Dispatch Services (Level of Service Requirements)
2. Interlocal Agreement for Emergency Dispatch Services 2017

FOR AGENDA OF: April 22, 2021

DEPT. OF ORIGIN: POLICE

DATE SUBMITTED: April 8, 2021

CLEARANCES:
[ ] Community Development ____
[ ] Marina ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

CHIEF OPERATIONS OFFICER: ____________

[X] Legal /s/ TG
[ ] Finance
[ ] Courts
[X] Police /s/ Ken Thomas

APPROVED BY CITY MANAGER
FOR SUBMITTAL: ____________

Purpose and Recommendation

The purpose of this agenda item is to request Council's approval of Addendum No 1 to the 2017 Interlocal agreement for emergency dispatch services with Valley Communications. The following motion will appear on the consent calendar:

Suggested Motion

Motion 1: "I move to approve Addendum No 1 to the Interlocal Agreement for Emergency Dispatch Services between the City and Valley Communications, and authorize the City Manager to sign the Addendum substantially in the form as attached."

Background
Valley Communications and the Des Moines Police Department established the most current interlocal agreement in 2017. This agreement contracted with Valley Com for emergency call receiving, radio communication, dispatch and other related services. In addition, the agreement defined certain responsibilities and expectations. Recently, the Valley Com Administrative Board has proposed additional amendments to the ILA that are necessary to further define and establish level of service requirements for both parties.

Discussion
This addendum adds these new sections:

1. New Section 4A "Valley Com Level of Service Responsibilities" which defines protocol for Valley Com.
2. New section 5A added "Subscribing Agency Level of Service Responsibilities" defines protocol for Subscribing Agency (City of Des Moines).
3. New Section 7A the "Project Approval Process" of which defines the project approval selection parameters and process, adopted in March of 2016 by the Valley Com Administration Board but not included in the previous contract.
4. New section 5B added "Systems and Services Support" which defines hours of operation and protocol for reaching technical support at Valley Com.

Alternatives
Not approve the Addendum (Not recommended).

Financial Impact
None.

Recommendation
Staff recommends approval of this Addendum No 1 to the existing 2017 agreement for dispatch services with Valley Communications.

Attachment #1

ADDENDUM NO. 1

TO

INTERLOCAL AGREEMENT FOR EMERGENCY DISPATCH SERVICES

(LEVEL OF SERVICE REQUIREMENTS)

This ADDENDUM NO. 1 amends the Interlocal Agreement for Emergency Dispatch Services (ILA) entered into on ____________________________________, between **Valley Communications Center,** a governmental administrative agency formed under Chapter 39.34 Revised Code of Washington, ("Valley Com"), and **Des Moines Police Department** a Washington municipal corporation ("Subscribing Agency")[1].

RECITALS

A. Valley Com and Subscribing Agency previously entered into an agreement ("ILA") where Valley Com and Subscribing Agency agreed to meet certain responsibilities so that Valley Com could provide specific public safety dispatch services.

B. Although the existing ILA sets out responsibilities and expectations for the parties, the parties have determined it appropriate to establish level of service requirements that would apply to both parties in the provision of these dispatch services.

C. This Addendum No. 1 is intended to establish these services.

D. This Addendum will be reviewed as needed and may be modified by mutual consent.

ADDENDUM

1. The following new definitions will be added to ILA Section 2, "Definitions":

   "APCO" means the "Association of Public-Safety Communications Officers," an international association with State Chapters.

   "CAD" means the "Computer Aided Dispatch" system owned by Valley Com.

   "Call" means any request for public safety assistance, regardless of the media used to make the request, including voice, text, video, or data.

---

[1] "Subscribing Agency," as used in this Agreement has the same meaning as the term, "Contract Agency," in the Valley Communications Center Interlocal Agreement, as amended and restated on April 17, 2000, as it may be further amended from time to time.

"Contract Agency" or "Contract Agencies" means the municipal corporations, and other local agencies, other than Member Cities, that contract with Valley Com 911 for services.

"Mission Critical Systems" means those systems which, should they fail, would significantly delay or stop the Subscribing Agency's ability to receive an incident dispatch of a call for service from Valley Com.

"NENA" means "National Emergency Number Association."

"Project Approval Process" means the process approved by the Valley Com Administration Board by which new initiatives become projects that Valley Com will implement.

2. The following new section 4A, "Valley Com Level of Service Responsibilities," will be inserted into the ILA immediately after section 4, "Valley Com Responsibilities":

4A. **VALLEY COM LEVEL OF SERVICE RESPONSIBILITIES:** During the term of this Agreement, Valley Com will:

4A.1 Receive emergency & non-emergency calls for service, interview and dispatch following Valley Com policies; 24x7x365.

4A.2 Collaborate with the Valley Com Operations Board when effecting changes in Valley Com practices and policies related to call interviewing and dispatching of units.

4A.3 Recognize the following national and/or local standards and report as performance objectives at least annually. For each standard, management will work with the Agency and Valley Com Operations Board to develop mutually agreeable strategic plans to address any gaps.

4A.3.2 NENA call answering standard

4A.3.3 APCO/NENA ANS Standard for the Establishment of a Quality Assurance and Quality Improvement Program for PSAPs

4A.3.4 Washington State training requirement for Telecommunicators

4A.4 Ensure Operations staff are appropriately trained and prepared to perform their role.

4A.5 Ensure that a continuity of operation plan exists, is current, and is routinely exercised.

4A.6 Hold Technical User Group meetings comprised of Valley Com and Subscribing Agency technical staff as a forum to share information, explore solutions, and inform the technology plan.

4A.7 Record and retain as required by law appropriate telephone, radio and electronic communications.

4A.8 Provide available CAD incident data for Subscribing Agency's records management and other systems.

4A.9 Disallow access to Subscribing Agency owned systems without prior permission from the Subscribing Agency.

4A.10 Provide Subscribing Agency with prior notice of service impacting maintenance to the extent reasonable under the circumstances.

4A.11 In the event Valley Com becomes aware of a cyber-security breach of Valley Com's system(s), Valley Com will notify Subscribing Agency as soon as reasonably possible.

4A.12 Route complaints and/or inquiries as to Subscribing Agency personnel performance or conduct through Valley Com's chain of command to Subscribing Agency's Supervisory or Management staff.

4A.13 Provide information, data inquiries, and other related tasks, should agency be unable to directly access information.

4A.14 When practical, regularly attend Valley Police Chief meetings, Patrol Commander meetings, King County Police Chief Association meetings, and other similar regional police meetings.

4A.15 Because Valley Com has limited technical resources, track time spent on Subscribing Agency ad hoc work requests that are not related to an approved project, and when Valley Com believes the effort is impacting other project deliverables, the Subscribing Agency will be consulted to develop a mutually agreeable work plan or other resolution.

4A.16 Avoid interaction with Subscribing Agency's contractor(s) to request service which would create a financial obligation on the Subscribing Agency.

3. The following new section 5A, "Subscribing Agency Level of Service Responsibilities," will be inserted into the ILA immediately after section 5, "Subscribing Agency Responsibilities":

5A. **SUBSCRIBING AGENCY LEVEL OF SERVICE RESPONSIBILITIES.** During the term of this Agreement, the Subscribing Agency will:

5A.1 Provide reasonable notice of annexations, incorporations, changes to Subscribing Agency jurisdiction boundaries and response plans to allow sufficient time for Valley Com to incorporate changes.

5A.2 Follow the established radio communications protocols approved by the Valley Com Operations Board.

5A.3 Train Subscribing Agency personnel to be familiar with and appropriately use radio and CAD equipment.

5A.4 Participate in the Valley Com Tech User Group meetings.

5A.5 Follow the Project Approval Process as defined in this agreement.

5A.6 Not commit Valley Com to an action, work or purchase without prior agreement from Valley Com.

5A.7 Not allow Subscribing Agency personnel to access Valley Com systems without prior permission from Valley Com.

5A.8 Not interact with Valley Com's contractor(s) to request service which would create a financial obligation for Valley Com.

5A.9 In the event the Agency becomes aware of a cyber-security breach of agency systems that touch Valley Com systems, notify Valley Com as soon as reasonably possible.

5A.10 Complaints and/or inquiries as to Valley Com performance or conduct will be routed through the Subscribing Agency's chain of command to Valley Com's Supervisory or Management staff.

5A.11 Ask Valley Com for records and routine data only when/if not able to access information through internal resources.

5A.12 Include/advise Valley Com management of agency and/or County-wide changes that may affect Valley Com's operations.

4. The following new section 5B, "Systems and Services Support," will be inserted immediately after section 5A, "Subscribing Agency Level of Service Responsibilities":

5B. **SYSTEMS AND SERVICES SUPPORT:** The following support and service levels and obligations apply to Valley Com and the Subscribing Agency:

5B.1 Normal business hours for Valley Com technical support are Monday through Friday, 8:00 am to 4:30 pm, excluding holidays and weekends. After hours, the on-duty supervisory staff will triage issues and will call out Tech Support if required.

5B.2 The Subscribing Agency recognizes that its internal systems and connectivity may be integral to the performance of a Valley Com owned or managed system. The Agency agrees to troubleshoot issues prior to calling out Valley Com Technical staff.

5B.3 To report issues during normal business hours, the Subscribing Agency will notify Valley Com via email to support@valleycom.org or by calling the Help Desk at 253-372-1575.

5B.4 The following definitions and response times guidelines will be used by the Subscribing Agency and Valley Com, whether during or outside of normal business hours:

- Priority 1 (Mission critical) – significant delay or prohibits Agency's ability to receive notification of a call for service. Immediate call out.
- Priority 2 – core operations unaffected but impacts efficiency. Initial response in 12-24 hours.
- Priority 3 – inconvenient or annoying but clear workarounds exist. Initial response in 24-72 hours.
- Priority 4 – non-emergent, non-impacting. Initial response in 72 or more hours.

5B.5 Contacts outside normal business hours for affected systems are as follows:

Priority	After Hours	Systems	Notes
1 – Mission Critical Immediate Call Out	Com Room Supervisor 253-372-1490	VHF Paging Radio (See Note*)	Widespread outages, not individual radio or paging issues.
2 – Response in 12-24 hours	Com Room Supervisor 253-372-1490	WebQUERY MobileCOM NetMotion	Agency internal Tech Support available for consult.
3 – Response in 24-72 hours	253-372-1575 or Support@valleycom.org	UDS transfer to RMS Active 911** (See Note)	
4 – Response 72 or more hours	253-372-1575 or Support@valleycom.org	ESRI Dashboards	

* Radio note – Valley Com contracts with King County Radio Shops for radio maintenance. Should there be system-wide radio issues, the Valley Com supervisor will notify the Shops for response. When PSERN Operator assumes ownership of the radio system, all responsibility will transition to PSERN.

** Third Party applications are governed by contracts between the vendor and Agency. Valley Com will verify CAD data is being passed to these systems but cannot address issues within these types of applications.

5B.6 Future Systems and Service priorities will be mutually agreed to as part of implementation and may be added to this agreement.

5. The following new section 7A, "Project Approval Process," will be inserted immediately after section 7, "Other Programs":

7A. **New Project Approval:** The parties will utilize the following project approval selection parameters and process, which were adopted by the Valley Com Administration Board on March 4th, 2016, and which are subject to further Administration Board amendments enacted after that date:

7A.1 The purpose of this section 7A is to allow for a thorough review of Subscribing Agency requests requiring use of Valley Com resources and to assess impacts to the project schedule. Valley Com should not engage in projects without being able to make a reliable, sustainable commitment to completion of the project. Implementing this process will allow for more collaboration with Subscribing Agency and reduce independent implementation, instead creating more system-wide opportunities to allow for and establish or re-assess project priorities.

7A.2 For the purposes of this Section 7A, the following definitions will control:

7A.2.1 Project – Any operational or technical change to Valley Com. Examples include, without limitation:

- Applications requiring interface or integration to existing systems
- Introduction of stand-alone applications
- Changes in policy or practice that affect com room workflow
- Changes in service area
- Other requests as determined by Valley Com

7A.2.2 Project Champion/Sponsor – single point of contact within the Requesting Agency. This person will assist in presenting the project to the stakeholder groups.

7A.2.3 Project Request Document – an internal document created and used by Valley Com

7A.2.4 Stakeholder Group – may include one or more of the following groups:

- Advisory Committee on Technology (ACT)
- Patrol Commanders
- Z3 Ops Chiefs
- Operating Board
- Administration Board

7A.3 The parties will utilize the following process to evaluate and decide whether to adopt a potential new project, if requested by Subscribing Agency:

7A.3.1 the Subscribing Agency provides an introductory proposal which must include a brief description of the project, the business need, and the timeline needed for implementation. Valley Com and Requesting Agency's Project Sponsor will jointly review the project to determine baseline information and complete a Project Request Document.

7A.3.2 Valley Com further evaluates the request to determine the following:

- Level of effort required
- Whether proposed solution meet expected outcomes
- Potential for discipline-wide/Center-wide implementation
- Whether solution introduces other issues
- Operational and technical impacts
- Estimated project timeline for implementation
- Ongoing support requirements
- Ability to support project; personnel, finance, current project schedule

7A.3.3 Valley Com will then prepare and present a recommendation to Project Sponsor, reviewing results of evaluation and supporting documentation. If Valley Com determines the project proposal is feasible and warrants more consideration, Valley Com and/or the Project Sponsor will conduct further analysis to prepare a scope of work draft.

7A.3.4 Valley Com and Project Sponsor will present the project proposal to appropriate stakeholder group(s) to inform them of project details including scope, cost, timelines, and impacts to schedule, if any. The stakeholder group will then make a recommendation whether to approve or not approve the project to the remaining stakeholder groups, if any, all subject to final approval from the Valley Com Administration Board, except for project requests that are minor in scope.

7A.4 If Valley Com deems a project request to be minor in scope and to not adversely impact Operations, Tech Services or Valley Com's project schedule, Valley Com may opt to approve and implement the request without further process.

6. Except as set forth in this Addendum No. 1, all other terms and conditions in the ILA remain in full force and effect. In the event of a conflict or inconsistency between the ILA and this Addendum, the terms of the ILA will control.

SUBSCRIBING AGENCY VALLEY COMMUNICATIONS CENTER

_______________________________	_______________________________
By _____________________________	By Lora Ueland
Its _____________________________	Its Executive Director
Date: ___________________________	Date: ___________________________

ORIGINAL

Attachment #2

INTERLOCAL AGREEMENT FOR EMERGENCY DISPATCH SERVICES

This **INTERLOCAL AGREEMENT FOR EMERGENCY DISPATCH SERVICES** ("Agreement") is entered into between the **VALLEY COMMUNICATIONS CENTER**, a governmental administrative agency formed pursuant to RCW 39.34.030(3) ("Valley Com"), and **DES MOINES POLICE DEPARTMENT,** a Washington municipal corporation ("Subscribing Agency" and together with Valley Com, the "Parties" and each a "Party").

RECITALS

WHEREAS, Valley Com was formed pursuant to the Valley Communications Center Interlocal Agreement, as amended and restated on April 17, 2000, as it may be further amended from time to time (the "Valley Com Interlocal Agreement"), as a governmental administrative agency pursuant to chapter 39.34 RCW for the purpose of providing police, fire and medical aid service communication services in south King County and surrounding regions; and

WHEREAS, under the Valley Com Interlocal Agreement, Valley Com is authorized to provide emergency dispatch services to its Member Cities (as defined in the Valley Com Interlocal Agreement) and other municipal corporations that exist within the logical, physical service area of Valley Com and that are in need of emergency service communications; and

WHEREAS, the Subscribing Agency is in need of emergency dispatch services; and

WHEREAS, the Parties hereto now desire to enter into this Agreement for the purpose of establishing the terms and conditions under which Valley Com will provide dispatching services to the Subscribing Agency;

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the premises, terms and conditions set forth below, it is agreed by and between the Parties as follows:

AGREEMENT

1. **EFFECTIVE DATE**. This Agreement shall become effective on **June 1, 2017**, and shall be automatically renewed on January 1st of each year thereafter for a period of 15 years unless otherwise terminated pursuant to the provisions of this Agreement.

2. **DEFINITIONS**. As used in this Agreement, the following terms shall have the following meanings. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Valley Com Interlocal Agreement.

   "ACCESS" means "A Central Computerized Enforcement Service System", the data system supporting all law enforcement agencies within the State of Washington and is owned and operated by the Washington State Patrol.

"Calls for Service" means any request for service resulting in the dispatch of an officer(s) as well as any officer initiated activity requiring interaction with Valley Com, as outlined in Valley Communications Center Standard Operating Procedures.

"E911 Agreement" has the meaning set forth in Section 13 of this Agreement.

"Fee Schedule" means the fee schedule for services provided by Valley Com, as it may be amended, revised, and replaced from time to time.

"Interlocal Cooperation Act" means chapter 39.34 RCW, as it may be amended from time to time.

"Subscribing Agency" means the public-safety agency receiving services from Valley Com under the terms of this Agreement, as described in the first paragraph of this Agreement.

"Valley Communications Center Standard Operating Procedures" means the list of approved and signed procedures enacted by Valley Com, as it may be amended, modified and/or restated from time to time.

"Valley Com" means the Valley Communication Center, a governmental administrative agency formed pursuant to RCW 39.34.030(3).

"Valley Com Dispatch Center" means the Valley Com dispatch center located at 27519 108th Avenue SE, Kent, Washington 98030, and other locations and facilities used in the operation of Valley Com.

"Valley Com Interlocal Agreement" means the Valley Communications Center Interlocal Agreement effective April 17, 2000, as it may be amended, modified and/or restated from time to time.

3. **PURPOSE**. The purpose of this Agreement is to set forth the terms pursuant to which Valley Com will provide the Subscribing Agency with emergency call receiving, radio communication, dispatch and other related services. Services to be provided under the term of this Agreement shall be provided twenty-four (24) hours, seven (7) days per week, unless otherwise provided herein.

4. **VALLEY COM RESPONSIBILITIES**. During the term of this Agreement, Valley Com shall:

4.1 Receive and accept all emergency fire, police, public safety, and medical Calls for Service from within the boundaries of the Subscribing Agency or from within the boundaries of areas served by the Subscribing Agency.

4.2 Transmit police and public safety requests for service and dispatch the equipment and other resources according to the procedures established by Valley Com with input from the Subscribing Agency.

4.3 Maintain radio and support communications with the Subscribing Agency from the time of the initial dispatch until conclusion of the emergency and to provide additional assistance as needed.

4.4 Prepare and make available to the Subscribing Agency a record of all emergency Calls for Service received, calls transmitted, and vehicles and other resources dispatched.

4.5 Provide communication services to process requests from the Subscribing Agency for support assistance from utilities, medical services, police services, and other services to aid the Subscribing Agency.

4.6 Provide telephone lines and call numbers as agreed upon between the Parties consistent with this Agreement.

4.7 Pay the cost for telephone line service charges between Valley Com and any receiver located in the Subscribing Agency except as provided herein.

4.8 Provide the Subscribing Agency with a copy of the Valley Communications Center Standard Operating Procedures, including any amendments to such procedures.

4.9 Provide access to Valley Com's F.C.C. licensed radio system resources, subject to those constraints and restrictions established and imposed by the Valley Com Administration Board.

4.10 Provide information from the Washington State Patrol Law Enforcement Data Communication System.

5. **SUBSCRIBING AGENCY RESPONSIBILITIES**. During the term of this Agreement, the Subscribing Agency shall:

5.1 Provide and maintain written alarm response procedures, on forms acceptable to Valley Com, designating equipment and other resources to be dispatched for all alarms within the Subscribing Agency.

5.2 Pay fees for services under this Agreement as provided in Section 6 hereof pursuant to the Fee Schedule then in effect.

5.3 Pay any additional costs agreed to by the Subscribing Agency and incurred by Valley Com for providing equipment or services requested by the Subscribing Agency, and agreed to be provided by Valley Com, that benefit the Subscribing Agency.

5.4 Comply with and conform operational policies, practices and apparatus numbering configurations to those established by Valley Com Operations and/or Valley Com Administration Board. Apparatus renumbering will not be concluded without consultation with Valley Com.

5.5 Agree that the Valley Com Administration Board has the exclusive right to grant new requests to use Valley Com's F.C.C. licensed radio system resources for member or non-member agencies.

5.6 If applicable to the Subscribing Agencies, comply with all Criminal Justice Information Services (CJIS) policies and requirements.

6. **FEE FOR SERVICES**.

6.1 The Subscribing Agency shall pay to Valley Com, as consideration for the services provided by Valley Com under the terms of this Agreement, an annual fee in accordance with the Fee Schedule then in effect.

6.2 Valley Com may revise the Fee Schedule from time to time during the term of this Agreement. Valley Com shall give advance notice of any change to the Fee Schedule in order to allow the Subscribing Agency sufficient time to adjust its annual budget. Unless otherwise agreed to by Valley Com and the Subscribing Agency, any new annual fees under a new Fee Schedule shall become effective on January 1 of the following year. The Subscribing Agency shall acknowledge receipt of the Fee Schedule in writing.

6.3 The Subscribing Agency shall pay Valley Com the annual fee provided for in the then-applicable Fee Schedule provided for in Section 6.1 above, in monthly installments within thirty (30) days of receipt of billing.

6.4 ACCESS user fees shall be charged pursuant to the Fee Schedule. The Subscribing Agency and Valley Com agree to comply with all terms and conditions of the agreements related to ACCESS.

6.5 The Subscribing Agency shall pay the fee for services as provided in the Fee Schedule then in effect and any additional fees as provided for in this Agreement until a new Fee Schedule is executed or additional fees are revised, in accordance with this Agreement and as applicable, despite changes in services so long as Valley Com continues to incur costs related to such services.

7. **OTHER PROGRAMS**. Valley Com is currently, and may in the future, consider other programs and services not specifically related to services described in this Agreement. This Agreement does not provide for or otherwise address such additional programs and services. It is the intent of Valley Com and the Subscribing Agency that additional programs or services shall be subject to further negotiations and agreement of the Parties.

8. **RECORDS**. Valley Com and the Subscribing Agency shall maintain all records, reports, and documents created, held or maintained under this Agreement and the services to be provided hereunder in accordance with chapter 42.56 RCW (the Washington Public Records Act), chapter 40.14 RCW (Preservation and Destruction of Public Records) and all other applicable federal, state and local laws and regulations.

Valley Com agrees to record and maintain records of radio and telephone communications relating to all emergency incidents as required by law, including but not limited to chapter 40.14 RCW, unless requested by the Subscribing Agency to retain any particular record for a longer time. Valley Com shall also make available a copy of any record, report or document maintained pursuant to this Agreement for the Subscribing Agency at mutually agreeable times upon request by the Subscribing Agency.

To the extent permitted by law, Valley Com shall notify the Subscribing Agency upon receipt of a request for disclosure of any record or recording maintained for calls received from within the Subscribing Agency when Valley Com reasonably determines or has actual knowledge that the record relates to an incident currently subject to ongoing criminal investigation by the Subscribing Agency.

9. **INDEMNIFICATION**. Valley Com shall indemnify and hold harmless the Subscribing Agency and its officers, officials, employees or assigns, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from a negligent act or omission of Valley Com, its agents, officers, employees or assigns, in performing any act or service pursuant to this Agreement.

The Subscribing Agency shall indemnify and hold harmless Valley Com and its officers, officials, employees or assigns, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, which are caused by or result from a negligent act or omission of the Subscribing Agency, its officers, employees, assigns or third party contractors, in performing any act or service pursuant to this Agreement.

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 Valley Com and the Subscribing Agency, then each party's liability shall only be to the extent of its negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES EACH PARTY'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. This indemnification shall survive the expiration of this Agreement.

10. **INSURANCE**.

The Parties shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of this Agreement by the Subscribing Agency, its officers, officials, agents, representatives or employees and Valley Com, its officers, officials, agents, representatives or employees.

10.1 Minimum Scope of Insurance. Unless otherwise agreed to by the Parties, the Parties hereto shall each obtain insurance of the types described below:

10.1.1 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.

10.1.2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury.

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

10.2. Minimum Amounts of Insurance. The Parties shall each maintain the following insurance limits:

10.2.1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

10.2.2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

10.2.3. Employer's Liability each accident $1,000,000, Employer's Liability Disease each employee $1,000,000, and Employer's Liability Disease-Policy Limit $1,000,000.

10.3. Other Insurance Provisions. The insurance policies obtained by the Parties are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

10.3.1. Each Party's insurance coverage shall be primary insurance as respects the other Party. Any insurance, self-insurance, or insurance pool coverage maintained by each Party shall be excess of that Party's insurance and shall not contribute with it.

10.3.2. Each Party shall provide to the other Party at least 30 days advance notice of any cancellation, suspension or material change in coverage.

10.3.3. Each Party's insurance shall be endorsed acknowledging that the other Party will not waive their right to subrogation.

10.3.4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provide to the other Party.

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

10.5. Verification of Coverage. Each Party shall furnish the other Party with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Agreement. If either or both Parties are members of a self-insured risk pool, an Evidence of Coverage letter may be substituted for an original certificate and amendatory endorsements.

10.6 If the Subscribing Agency is self-insured for any of the above insurance requirements, a certificate of self-insurance, if acceptable to Valley Com, shall constitute compliance with this section.

10.7 Valley Com's membership in the self-insured governmental risk pool Washington Cities Insurance Authority (WCIA) shall satisfy all conditions set forth in Section 10 of this Agreement.

11. **LIMITATION OF AGREEMENT**. This Agreement is entered into for the benefit of the Parties to this Agreement only. The Agreement is not intended to confer any benefits on any other parties and therefore no other or third party shall be entitled to rely on the terms of this Agreement or anticipate receipt of any benefit as a result of the performance of this Agreement.

12. **OPERATIONAL REVIEW PROCEDURE**. It is agreed that representatives of Valley Com and the Subscribing Agency shall meet periodically, if requested by either Party, to review operational or procedural matters of the Valley Com Dispatch Center and/or the Subscribing Agency.

13. **E911 PARTICIPATION**.

13.1 Valley Com has entered into an agreement with King County related to participation in enhanced 911, as it may be amended and restated from time to time (the "E911 Agreement"). The Subscribing Agency and Valley Com agree to comply with all terms and conditions of the E911 Agreement.

13.2 Any Party initiating termination of this Agreement without cause pursuant to Section 14.1 agrees to pay all costs, if any, associated with relocating, modifying or transferring any equipment or services provided by the E911 Agreement (incurred by either Valley Com or the Subscribing Agency) as the direct result of the termination. All E911 Agreement costs to be charged against the Party initiating termination shall be itemized and justified by the other Party within six (6) months of receipt of the written notice of termination. Where termination occurs pursuant to Section 14.2 or by mutual consent, each Party shall pay its own resulting costs.

14. **TERMINATION**.

14.1 Without Cause. This Agreement may be terminated, without cause, prior to the date specified above in Section 1, by either Party providing the other Party sixty (60) days advance written notice of the termination.

14.2 For Cause or Impossibility. Either Party shall have the right to terminate this Agreement if: (1) the other Party is in material breach of any term of this Agreement; (2) the terminating Party has sent the breaching Party written notice of its intent to terminate this Agreement under this section by certified mail, return receipt requested describing with reasonable specificity the basis for the termination; and (3) the breaching Party has failed to cure the breach within thirty (30) days, unless the Parties agree in writing to a longer cure period.

This Agreement may also be terminated by either Party upon thirty (30) days advance written notice to the other Party in the event the duties, obligations or services required herein become impossible, illegal or infeasible, by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of such Party. Nothing in this Section 14.2 shall limit, waive or extinguish any right or remedy provided by this Agreement or law that either Party may have in the event that the obligations, terms and conditions set forth in this Agreement are breached by the other Party.

15. **VALLEY COM EQUIPMENT**. All transmitters, consoles, alerting devices, call receiving equipment, and related facilities located at the Valley Com Dispatch Center and other locations and facilities used in the operation of Valley Com shall be purchased, operated, and maintained by Valley Com, except as otherwise provided herein, and Valley Com is deemed the sole owner thereof.

16. **SUBSCRIBING AGENCY EQUIPMENT**. All transmitters, consoles, alerting devices, and related facilities located in the Subscribing Agency and other locations and facilities used in the operation of the Subscribing Agency shall be purchased, operated and maintained by the Subscribing Agency as required by Valley Com in order to interconnect to Valley Com; except as otherwise provided herein, and the Subscribing Agency is deemed the sole owner thereof.

17. **RESERVATION OF OPERATIONAL RIGHTS**. Valley Com retains sole authority to determine the technical operation and equipment needs of the Valley Com systems. This is necessary to insure maintenance of Valley Com's high standards and the highest degree of compatibility and effectiveness among member/user agencies.

18. **INDEPENDENT CONTRACTOR; RIGHTS OF VALLEY COM OVER EMPLOYEES**. In providing services under this Agreement, Valley Com is an independent contractor and neither it nor its officers, nor its agents nor its employees are employees of the Subscribing Agency for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability.

Valley Com retains sole authority and control over its personnel, including but not limited to the authority to set standards of performance and discipline for Valley Com employees and any other matters related to control over Valley Com personnel and performance of its employees.

19. **HIPAA AND HITECH COMPLIANCE**. The Parties shall comply with all requirements of the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Health Information and Technology for Economic and Clinical Health Act (HITECH Act) as applicable, which relate to the Parties' responsibilities under this Agreement, as well as state laws and regulations including chapter 70.02 RCW.

20. **MISCELLANEOUS.**

20.1 Equal Opportunity. Neither Party shall discriminate against any person based on any ground prohibited under federal, state or local law including race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, veterans and military status, political affiliation or belief or the presence of any sensory, mental or physical handicap in violation of any applicable federal law, Washington State Law Against Discrimination (chapter 49.60 RCW) or the Americans with Disabilities Act (42 USC 12110 et seq.).

20.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If any dispute arises between the Subscribing Agency and Valley Com under any of the provisions of this Agreement, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the King County Superior Court, King County, Washington.

20.3 Attorney's Fees. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit; however, nothing in this subsection shall limit the each Parties' right to indemnification under Section 9 of this Agreement.

20.4 Written Notice. All notices, requests, demands or other communications required by this Agreement shall be in writing and shall be sent to the Parties at the addresses listed on the signature page of this Agreement, unless otherwise notified. Any written notice shall become effective upon delivery, provided that any notice shall be deemed delivered three (3) calendar days after the date of mailing by registered or certified mail, if not received sooner, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement.

20.5 Assignment. This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred by the Subscribing Agency without the prior consent of Valley Com. Any assignment of this Agreement by the Subscribing Agency without such prior written consent of the Valley Com shall be void.

This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by Valley Com to any other person or entity without the prior written consent of the Subscribing Agency, which consent shall not be unreasonably withheld. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Valley Com stated herein.

20.6 Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless evidenced in writing signed by duly authorized representatives of both the Subscribing Agency and Valley Com.

20.7 Non-Waiver of Breach. The failure of either Party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

20.8 Severability. If this Agreement, or any portion of this Agreement, is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

20.9 Filing. A copy of this Agreement shall be filed and/or posted pursuant to the Interlocal Cooperation Act.

20.10 No Joint Venture or Partnership. No joint venture, separate administrative or governmental entity, or partnership is formed as a result of this Agreement.

20.11 Compliance with all Laws. The Parties hereto shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement, including without limitation Valley Com policies and procedures.

20.12 Entire Agreement. This Agreement, together with any subsequent amendments, constitutes the entire Agreement between the Parties and supersedes all prior agreements for emergency dispatch services. Any and all prior verbal statements made by any representative of Valley Com shall not be construed as forming a part of or altering this Agreement in any manner. This Agreement may be executed in one or more counterparts.

[Signature Page Follows]

DATED this __1__ day of __June__, 20__17

VALLEY COMMUNICATIONS CENTER	**DES MOINES POLICE DEPARTMENT**
27519 108th Avenue S.E.	21900 – 11th Avenue S
Kent, Washington 98030	Des Moines, Washington 98198-6319
By: Lora Ueland	By:
EXECUTIVE DIRECTOR	AUTHORIZED REPRESENTATIVE

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Consent Calendar Item #6

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Surface Water Capital Projects – Construction Contract Award

ATTACHMENTS:
1. Public Works Construction Contract, between City of Des Moines and R.W. Scott Construction
2. 2020-2021 On-Call General Civil Engineering Services, Parametrix, Task Order Amendment #2020-04 (Schedule A)
3. 2020-2021 On-Call General Civil Engineering Services, Parametrix, Task Order Amendment #2020-05 (Schedule B)
4. 2020-2021 On-Call General Civil Engineering Services, Parametrix, Task Order Amendment #2020-06 (Schedule C/D)
5. Interlocal Agreement Amendment between the City of Des Moines and Lakehaven Water & Sewer District and ILA
6. Proposed Budget Amendment
7. Surface Water Capital Projects, Bid Summary

FOR AGENDA OF: April 22, 2021

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: April 15, 2021

CLEARANCES:
[ ] Community Development ____
[ ] Marina ____
[ ] Parks, Recreation & Senior Services ____
[X] Public Works R. B____

CHIEF OPERATIONS OFFICER: ____

[X] Legal /s/ TG
[X] Finance ____
[ ] Courts ____
[ ] Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL:____________

Purpose and Recommendation

The purpose of this agenda item is to request Council approval to award the Public Works Contract for the construction of the Surface Water Capital Projects (Attachment 1). References have been reviewed and staff recommends approval of the contract to R.W. Scott Construction. This project combines three separate capital improvement projects into one construction contract under separate schedules of work. The following projects are included:

- Schedule A - 6th Ave S and S 239th St Pipe Project
- Schedule B - Soundview/Redondo Beach Dr Pipe Project
- Schedule C/D - 8th Ave S (264th - 265th) Pipe Project

In addition, approval from Council is requested for three separate Task Order Assignments with Parametrix (Attachments 2, 3, and 4) to provide construction management services for each schedule during the construction of the project. Approval is also requested for an Interlocal Agreement

Amendment (Attachment 5) and Budget Amendment (Attachment 6) for Lakehaven Water & Sewer District's work associated with Schedule D. The following motions will appear on the Consent Calendar:

Suggested Motions

Motion 1: "I move to approve the award of the construction contract of the Surface Water Capital Projects to R.W. Scott Construction, in the amount of $1,282,248.20 including sales tax, authorize a project contingency in the amount of $128,000.00, and authorize the City Manager to sign said contract substantially in the form as submitted."

Motion 2: "I move to approve the Task Order Assignment with Parametrix, that will provide construction management services for Schedule A - 6th Ave S and S 239th St Pipe Project in the amount of $132,042.01, plus a contingency in the amount of $13,000.00, and authorize the City Manager to sign said Task Order Assignment, substantially in the form as submitted."

Motion 3: "I move to approve the Task Order Assignment with Parametrix, that will provide construction management services for Schedule B - Soundview/Redondo Beach Drive Pipe Project in the amount of $66,104.64, plus a contingency in the amount of $7,000.00, and authorize the City Manager to sign said Task Order Assignment, substantially in the form as submitted."

Motion 4: "I move to approve the Task Order Assignment with Parametrix, that will provide construction management services for Schedule C/D - 8th Avenue (264th to 265th) Pipe Project in the amount of $111,889.65, plus a contingency in the amount of $11,000.00, and authorize the City Manager to sign said Task Order Assignment, substantially in the form as submitted."

Motion 5: "I move to approve the Interlocal Agreement Amendment between the City of Des Moines and the Lakehaven Water & Sewer District, and further authorize the City Manager to sign said Interlocal Agreement Amendment substantially in the form as submitted."

Motion 6: "I move to direct Administration to submit a CIP budget amendment for the 8th Ave South (South 264th St to South 265th St) Stormwater Pipe Project to incorporate the Lakehaven Utility construction costs."

Background

The 8th Ave S (264th-265th) and the 6th Ave S and 239th St pipe projects, are listed in the 2015 Comprehensive Plan as high-ranked projects. The capital program as described in the 2015 Comprehensive Plan plans to fund all high-ranked projects by 2025.

The Soundview/Redondo Beach Drive Pipe Project, however is an addition to the CIP list that occurred after the 2015 Comprehensive Plan update. The project was given a high-priority because of the seasonal flooding and maintenance challenges that the existing system creates, particularly the storm system below Redondo Beach Drive near the storm outfall whereby a backwater condition has previously caused pavement damage.

With Council approval and in conjunction with Des Moines Surface Water Management Department, Parametrix began design on all three projects beginning March 18th, 2019.

Schedule D was added to the project on November 24^{th}, 2020 after a Council approved Interlocal Agreement (ILA) was executed between the City of Des Moines and Lakehaven Water and Sewer District. The ILA allowed for the integration of the District's Water Main Replacement Project into the City's 8^{th} Ave S (264^{th} – 265^{th}) pipe project. The ILA provides for a formal arrangement under which the District will pay the City for Parametrix's design and construction services as well as associated construction costs.

Discussion

Schedule A consists of approximately 80 linear feet of 18" HDPE storm sewer pipe, 178 linear feet of 18" corrugated polyethylene storm sewer pipe, four catch basins, demolition of wooden stair structure, and erection of new stair structure at the intersection of S 239th St and 6th Ave S. The schedule will also include grinding and overlaying hot mix asphalt pavement. This project will mitigate flooding impacts from the current undersized drainage system and establish a permanent outfall at this location.

Schedule B consists of approximately 75 linear feet of 12" HDPE storm sewer pipe, 168 linear feet of 12" CPEP storm sewer pipe, 46 linear feet of 24" reinforced concrete storm sewer pipe, and seven catch basins along Sound View Drive South and Redondo Beach Drive South. The schedule will also include grinding and overlaying hot mix asphalt pavement. The new storm system will bypass the existing system, which currently conveys storm flows through private properties and has a history of creating flooding impacts. There will also be minor improvements to an adjacent system to improve hydraulics, including a new storm sewer manhole on Soundview Drive and realignment immediately upstream of the outfall on Redondo Beach Drive.

Schedule C consists of approximately 963 linear feet of 12" corrugated polyethylene storm sewer pipe and nine catch basins along 8th Avenue South between South 265th Street and South 264th Street. The schedule will also include grinding and overlaying hot mix asphalt pavement. The project is needed to capture storm runoff that would otherwise drain to the properties on the west side of 8^{th} Ave S, which sits on top of a bluff that is critical area for landslide hazards.

Schedule D consists of approximately 1,060 linear feet of 8" ductile iron pipe, 50 linear feet of 6" ductile iron pipe, 28 water service replacements, 2 hydrant assemblies, removal of approximately 1,082 linear feet of 6" asbestos concrete pipe, and decommissioning of approximately 595 linear feet 4" asbestos concrete pipe along 8th Avenue South between South 265th Street and South 264th Street. The schedule will also include property restoration.

Construction Contract:

Six bids were received as shown on Attachment 7. The low bid was received from R.W. Scott Construction and was $194,083 lower than the engineer's estimate. R.W. Scott Construction is an established company with more than 49 years of construction experience, including grading, underground utilities, excavation, and general contracting projects. The contract time is 100 working days. The work will be occurring during the 2021 window of May to September.

Construction Management Task Assignment:

Three Task Order Assignments with Parametrix are proposed to provide construction management services for each schedule, combining schedules C and D under one task order. The scopes of work for Parametrix are for construction support services and include construction engineering, documentation and project control, construction observation, material testing, during the construction of the project.

ILA Amendment:

The Interlocal Agreement between the City of Des Moines and Lakehaven Water and Sewer District (Attachment 5) for the 8th Ave S (264th-265th) Schedule D requires a minor amendment to accurately reflect the Construction Management costs included in Task Order Assignment 2020-06.

Financial Impact
A copy of each schedule's budget is provided as Attachment 6.

- Schedule A - 6th Ave S and S 239th St Pipe Project
  - Construction Cost $256,930.00
  - Construction Management Cost $132,042.01
  - Total Cost $388,972.01
  - Total Contingency $39,000

  At this time, no budget amendment is necessary, as there is sufficient funding to cover the construction contracts and contingencies, which equals $490,000 as well as city staff costs.

- Schedule B - Soundview/Redondo Beach Dr Pipe Project
  - Construction Cost $192,741.00
  - Construction Management Cost $66,104.64
  - Total Cost $258,845.64
  - Total Contingency $26,000

  At this time, no budget amendment is necessary, as there is sufficient funding to cover the construction contracts and contingencies, which equals $376,000 as well as city staff costs.

- Schedule C/D - 8th Ave S (264th - 265th) Pipe Project
  - (C) Construction Cost $231,380.00
  - (C) Construction Management Cost $58,964.17
  - (C) Total Cost $290,344.17
  - (C) Total Contingency $29,000

  At this time, no budget amendment is necessary for Schedule C, as there is sufficient funding to cover the construction contracts and contingencies, which equals $459,000 as well as city staff costs.

  - (D) Construction Cost $601,197.20
  - (D) Constriction Management Cost $52,925.48
  - (D) Total Cost $654,122.68
  - (D) Total Contingency $65,000

  A CIP budget Amendment will be needed in order to incorporate the associated construction and construction management costs for the Districts work in Schedule D. The Interlocal Agreement with Lakehaven Sewer & Water District would secure the reimbursement of associated costs. This removes any financial impacts for the City. See the proposed budget amendment in Attachment 6.

Alternatives
Reject the R.W. Scott bid and instruct staff to re-bid the projects separately. This alternative is not recommended as it would likely result in increased costs and an extended construction timeline.

Recommendation/Conclusion
Staff requests that Council approve the proposed motions.

Concurrence
Legal, Public Works and the Finance Departments concur. Lakehaven Sewer & Water District is in agreement and will be seeking District Board of Commissioners approval for Schedule D and related items on April 22, 2021.

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Attachment #1

PUBLIC WORKS CONTRACT
between City of Des Moines and

R.W. Scott Construction

THIS CONTRACT is made and entered into this day of , 2021, by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and R.W. Scott Construction organized under the laws of the State of Washington, located and doing business at 4005 West Valley Hwy N, Auburn, WA 98001, 253-351-0001, and Ryan Burks (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

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

Schedule A consists of approximately 80 l.f. of 18" HDPE storm pipe, 178 l.f. of 18" corrugated polyethylene storm pipe, four catch basins, demolition of wooden stair structure, and erection of new stair structure at the intersection of S 239th St and 6th Ave S.

Schedule B consists of approximately 75 l.f. of 12" HDPE storm pipe, 168 l.f. of 12" corrugated polyethylene storm pipe, 46 l.f. of 24" reinforced concrete storm pipe, and seven catch basins along Sound View Dr S and Redondo Beach Dr S.

Schedule C consists of approximately 963 l.f. of 12" corrugated polyethylene storm pipe and nine catch basins along 8th Ave S between S 265th St and S 264th St.

Schedule D consists of approximately 1,060 l.f. of 8" ductile iron pipe, 50 l.f. of 6" ductile iron pipe, 28 water service replacements, 2 hydrant assemblies, removal of approximately 1,082 l.f. of 6" asbestos concrete pipe, and decommissioning of approximately 595 l.f. 4" asbestos concrete pipe along 8th Ave S between S 265th St and S 264th St.

Exhibit A:Contract Documents; Special Provisions, Addendums, and Appendices

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, <u>including APWA General Special Provisions, if they are included</u>,
5. Contract Plans,
6. Amendments to the Standard Specifications,
7. <u>WSDOT</u> Standard Specifications <u>for Road, Bridge and Municipal Construction</u>,
8. <u>Contracting Agency's Standard Plans (if any)</u>, and
9. <u>WSDOT</u> Standard Plans <u>for Road, Bridge, and Municipal Construction</u>.

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 [100] working days or no later than September 30, 2021, whichever occurs sooner. 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 $1,282,248.20, plus any applicable Washington State Sales Tax, for the work and services contemplated in this Contract. If the work and services to be performed as specified in Exhibit A "Scope and Schedule of Work" is for street, place, road, highway, etc.

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

A. Retainage**.** The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted within 30 days upon entering into this Contract, through a bonding company meeting standards established by the City.

B. Defective or Unauthorized Work. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor. Notwithstanding the terms of this section, the City's payment to contractor for work performed shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.

C. Final Payment: Waiver of Claims. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

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

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

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

A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract work.

B. The Contractor's failure to complete the work within the time specified in this Contract.

C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.

D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.

E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.

F. The Contractor's breach of any portion of this Contract.

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

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

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

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

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

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

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **$1,923.37** 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, 294 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 limited to the additional insured endorsement, evidencing insurance of the Contractor before commencement of the work.

F. Subcontractors

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

E. Notice of Cancellation

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

F. Failure to Maintain Insurance

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

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

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

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

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

XXII. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

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

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

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

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

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

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

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

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

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

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

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

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

CONTRACTOR:	**CITY OF DES MOINES:**
By:________________________________	By:________________________________

(signature) Print Name:_____________ Its____________________________ *(Title)* DATE:_______________________________	*(signature)* Print Name: Michael Matthias Its City Manager *(Title)* DATE:_______________________________ Approved as to Form: ____________________ City Attorney DATE:________________

NOTICES TO BE SENT TO: **CONTRACTOR:** Ryan Burks R.W. Scott Construction 4005 West Valley Hwy N Auburn, WA 98001 253-351-0001 (telephone) 253-351-0055 (facsimile)	**NOTICES TO BE SENT TO:** **CITY OF DES MOINES:** Tyler Beekley, P.E. City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-870-6869 (telephone) 206-870-6596 (facsimile)

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Attachment #2

FORMAL TASK ASSIGNMENT DOCUMENT

Task Number 2020-04

The general provisions and clauses of Agreement 19-162 Consultant Services Contract between the City of Des Moines and Parametrix, Inc. for 2020-2021 On-Call General Civil Eng. Services

Shall be in full force and effect for this Task Assignment.

Location of Project: 6th Avenue South/239th Street, Des Moines, Washington 98198

Project Title: CIP 39 – 6th Avenue South/239th Street Pipe Replacement Construction Support Services

Maximum Amount Payable Per Task Assignment: $132,042.01

Completion Date: December 31, 2021

Description of Work: Provide Construction Support Services for construction of the 6th Avenue South/239th Street Pipe Replacement project as described on the attached Scope of Work and Budget Estimate.

Agency Project Manager Signature: ____________________ Date: ____________

Oral Authorization Date: ____________ See Attachment Dated: ____________

Consultant Signature: John Perlic Date: 4/8/2021

Agency Approving Authority: ____________________ Date: ____________

Parametrix
ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES

SCOPE OF WORK

City of Des Moines
CIP 39 – 6th Avenue S/239th Street
Pipe Replacement Construction Support Services

The City of Des Moines (City) has requested that Parametrix provide construction support services for construction of the 6th Avenue S/239th Street Pipe Replacement project.

A detailed scope for the Contract follows:

GENERAL ASSUMPTIONS

- The budget estimate for this project assumes that hours will be shared evenly across all three of the CIP projects that were advertised together for CIP 39, CIP 40, and Soundview when the activity benefits all three projects. Task-specific assumptions are included where necessary.
- The proposed project team will include one part-time construction manager, one part-time project controls specialist, one part-time construction observer (during construction activities when work is being performed), and periodic engineering support from the design team.
- The level of service is based on project duration as expressed in the contract for construction in working days (see below).
- It is anticipated that the City will review and execute the insurance, bonds, and the contract for construction.
- It is anticipated that all Community Outreach, if required, will be completed by the City.
- Engineers from Parametrix will be available to answer questions during construction and review Responsibility Assignment Matrices (RAMs), review submittals and shop drawings, and answer Requests for Information (RFIs).
- Services will be performed in accordance with the contract for construction and City of Des Moines standards.
- Franchise utilities will provide field inspection for all work surrounding the construction or relocation of those utility systems not constructed by the City's Contractor, if necessary.
- City/Field Office: There are no provisions for a field office for this project. All project files shall be kept in a City of Des Moines office. Parametrix staff shall work from vehicles and remotely as much as practicable.
- All deliverables will be in electronic format unless specifically stated otherwise in this scope of work (SOW).

The objective and purpose of this Construction Management Services Agreement is for Parametrix to assist the City in successfully completing the construction of the proposed improvements.

TASK 01 – CONSTRUCTION ENGINEERING

Preconstruction Conference

Parametrix shall prepare for and conduct a preconstruction conference with the Contractor prior to the Contractor beginning work. Parametrix will develop an agenda and relevant project distribution information for the City's review and approval prior to the conference. Parametrix will distribute notices of and facilitate the meeting which will be held at a location designated by the City. Parametrix will prepare and distribute meeting minutes within 7 days of the conference to all attendees and affected agencies, staff, etc.

At the preconstruction conference, Parametrix will facilitate discussions with the Contractor concerning the plans; specifications; schedules; issues with utilities; unusual conditions; federal, state, and local requirements; equal employment opportunity (EEO); disadvantaged business enterprise (DBE) requirements; and any other items that will result in better project understanding among the parties involved.

Construction Engineering

Following the preconstruction conference, other construction engineering services will be provided. Specific activities are undefined but will be completed up to the specified budget amount and may include:

- Responses to RFIs and submittals.
- Prepare and maintain a Record of Materials (ROM).
- Review project schedule and milestones.
- Materials submittal reviews.
- Design clarifications.
- Shop drawing reviews.
- Support/review/preparation of change orders.
- Support/review for preparation of monthly progress payments to Contractor.
- Support/assistance for preparation of periodic cost to complete analysis.

Assumptions

- The budget estimate includes 2 hours for the Construction Manager and Project Controls Specialist to assist the City in preparation for the preconstruction conference.
- The budget estimate assumes the preconstruction conference will not exceed 2 hours.
- The budget estimate for engineering support includes a reasonable amount of effort given the project scale and anticipated duration. Requests by the City for more extensive reviews or unforeseen conditions may require additional time, and Parametrix will keep the City project manager apprised of the status of the engineering support budget.
- The presence or duties of Parametrix's personnel at a construction site, whether as on-site representatives or otherwise, do not make Parametrix or Parametrix's personnel in any way responsible for those duties that belong to the City and/or the Contractors or other entities, and do not relieve the Contractors or any other entities of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for

coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health or safety precautions required by such construction work.

- As the Construction Manager on this project, Parametrix's project authority shall be as prescribed for the Project Engineer in Section 1-05.2 of the Washington State *Standard Specifications for Road, Bridge, and Municipal Construction,* 2021 Edition (Standard Specifications). Parametrix has no authority to exercise any control over others' health and safety but will notify affected personnel of any site conditions posing an imminent danger to them which Parametrix observes.
- The presence of Parametrix's personnel at a construction site is for the purpose of providing a greater degree of confidence to the City that the completed construction work will conform generally to the construction documents and that the integrity of the design concept, as reflected in the construction documents, has been implemented and preserved by the Contractor(s).
- The City agrees to include in all construction contracts any provisions providing Contractor indemnification of City for Contractor's negligence as equal indemnification of Parametrix and Parametrix personnel.
- The City shall require Contractor(s) to name City and Parametrix as additional insureds on the Contractor's general liability insurance policy.

Deliverables

- Materials RAM form responses.
- Shop drawing reviews.
- Responses to RFIs.
- Change orders.

TASK 02 – DOCUMENTATION AND PROJECT CONTROL

Document Management

Parametrix will implement its system and set of procedures for managing, tracking, and storing all relevant documents between the Contractor, Parametrix, and the City produced during the construction and closeout phases of the project that are in compliance with the requirements set forth by the City. Parametrix will, in coordination with the City, maintain one set of hardcopy records, suitably organized, of all relevant documentation that will be turned over to the City at the completion and final closeout of the project. Parametrix and the City will agree on what documentation will be provided to the City during the course of construction.

Parametrix will also implement its procedures for the logging and tracking of all relevant correspondence and documents. Parametrix will assist the City in monitoring all outstanding decisions, approvals, or responses required from the City.

Parametrix will review record drawings prepared by the Contractor and will prepare and maintain a conformed set of field drawings based on Contractor-provided information and from inspection notes. The field record drawings will be verified for completeness and supplemented with inspection information. Parametrix will then forward the final conformed field drawings to the City.

Project Site Meetings

Parametrix will attend and facilitate weekly meetings with the Contractor and will prepare the agenda, meeting minutes, and action item list for each of the weekly project meetings. Parametrix may also be required to attend and participate in weekly safety toolbox meetings as conducted by the Contractor. No minutes will be provided for safety meetings but will be noted in the inspector's daily report. For budgeting purposes, it is assumed that up to ten (10) weekly project site meetings will be required.

Progress Payments

Parametrix will receive and review the Contractor's requests for payment. Parametrix will determine whether the amount requested reflects the progress of the Contractor's work and is in accordance with the contract for construction. Parametrix will track installed quantities, review Contractor's invoices for materials, and provide a monthly pay estimate for the City to make payment to the Contractor based on measured quantities of work performed for each bid item. Parametrix shall provide recommendations to the City as to the acceptability of the requests. Parametrix will advise the City as to the status of the total amounts requested, paid and remaining to be paid, under the terms of the contract for construction. Parametrix assumes four (4) requests for payment.

Correspondence and Communications

Minor Variations in the Work

The Parametrix Construction Observer will notify the City, via phone or email prior to issuing Field Directives, to confirm that variations fall within this authority of the Parametrix Construction Observer.

Coordinate Issuance of Changes

Parametrix will receive and review the Contractor's response to the request for change and will obtain such further information as is necessary to evaluate the basis for the Contractor's proposal. Parametrix will assist the City with negotiations of the proposal and, upon approval by the City, prepare final change order documents for execution by the City and Contractor. Up to two (2) City-initiated change orders are anticipated.

Review of Contractor's Requested Changes

Parametrix shall review all Contractor-requested changes to the contract for construction. Parametrix will make recommendations to the City regarding the acceptability of the Contractor's request and, upon approval of the City, assist the City in negotiations of the requested change. Upon agreement and approval, Parametrix will prepare final change order documents. Up to two (2) Contractor-initiated change orders are anticipated.

Claims, Disputes, and Change Orders

Parametrix will work to resolve day-to-day construction disputes which may occur during the course of the project and will promptly inform the City of notices of changes or claims/issues raised by the Contractor.

Parametrix will assist and work on behalf of the City in preparing and negotiating claims, change order costs, and time extensions by evaluating the Contractor's proposal and performing a preliminary evaluation of the contents of the change or claim to evaluate merit and entitlement. Parametrix will prepare independent cost estimates based on the alleged cause of claims or proposed changes submitted by the Contractor. Upon successful change order negotiations, Parametrix will prepare the final change order for execution by the City and the Contractor.

Where applicable, Parametrix will prepare alternate estimates based on varying scenarios of the change or claim cause. These estimates will be transmitted to the City and will be used in claim or change order rulings and negotiations. All delays and extra work will be monitored and tracked. Parametrix will advise the City of the acceptability of price and time extension prior to submittal to the Contractor for their signature.

Parametrix will coordinate with and obtain written concurrence from the Engineer of Record on the description of work for each change order, which will be included as an attachment to the change order.

Parametrix will prepare and maintain a Change Order Report which will be provided to the City on a weekly basis. The report will document and track change order information pertaining to proposed and executed change orders and their effect on the contract price as of the date of the report.

Parametrix will coordinate emergency change order work as directed by the City.

If necessary, Parametrix will provide dispute resolution procedures and expert witness deposition during litigation (associated time not included in current budget).

All minor items of work, per the contract bid item, will be approved by the City's Project Manager before Parametrix directs the Contractor to proceed with the work.

Contractor's Schedule Submittal

Parametrix will review the Contractor's construction schedule and verify that it is consistent with the requirements of the contract for construction. Parametrix will advise the Contractor of any areas where the schedule is not in compliance with the contract for construction. Parametrix will provide comments to the City to assist the City in approving, accepting, or taking other action on the Contractor's schedule, in accordance with the contract for construction.

Contractor's Schedule Updates

Parametrix will review and respond to the Contractor's updated construction schedule and compare with field-observed progress. Parametrix will monitor and regularly report to the City regarding schedule compliance. If issues arise, Parametrix will report to the City with suggested resolutions and coordinate with the Contractor in the development of recovery schedules, as needed, to address delays caused by either events or issues within Contractor's control or other events or issues beyond the Contractor's control.

Parametrix will advise the City and make recommendations for exercising the City's contract prerogatives, including giving the Contractor notice to accelerate the project progress, withhold payment for cause, and other prerogatives available in an effort to achieve contract and schedule compliance.

Effect of Change Orders

Parametrix will review information submitted by the Contractor regarding the effect of proposed or issued change orders upon the construction schedule, duration, and completion date. Parametrix will advise the City as to the potential impact of proposed or issued change orders. Parametrix will assist the City in discussions with the Contractor concerning the potential impact of proposed or issued change orders.

Project Communication

Parametrix will serve as the primary on-site contact for public inquiries about the project. Parametrix will develop and regularly maintain a communications log that documents all project inquires (by phone, e-mail, or in person) and their resolution. All calls will be recorded in a phone memorandum. Parametrix will develop responses to inquires within 24 hours and follow up as necessary. Parametrix will assist the City as requested for other public/City communications.

Materials Testing

Parametrix will coordinate and manage all materials testing required on the Project. Parametrix will document and evaluate results of testing and address deficiencies. Parametrix will use Otto Rosenau & Associates (Otto Rosenau) to perform necessary field and lab testing of structural concrete. All testing will be performed by Parametrix's subconsultant, Otto Rosenau, for those items requiring physical acceptance testing in accordance with the project plans and specifications. Testing will be done according to the Local Agency Guidelines (LAG) and the WSDOT *Construction Manual* (as modified by the LAG manual). Specifically, this includes Table 9-3.7 of the WSDOT *Construction Manual* as modified by Section 52.3, Quality Control of the LAG.

Assumptions

- Design and engineering services for Parametrix to prepare drawings and specifications for issuance to the Contractor as part of significant City-initiated changes shall be considered as Additional Services, entitling Parametrix to additional compensation.
- Parametrix will receive and review the Contractor's requests for payment. Parametrix will determine whether the amount requested reflects the progress of the Contractor's work and is in accordance with the contract for construction. It is assumed that no more than two (2) claims will be submitted by the Contractor during Parametrix's period of performance. Parametrix will not issue decisions on Contractor claims or disputes. Parametrix will not, except as part of Additional Services, undertake comprehensive and detailed investigation or analysis of Contractor's claims and disputes or participate in judicial or alternative dispute resolution procedures for the claims or disputes.
- Parametrix's review of the Contractor's schedule and associated comments shall not be considered as a guarantee or confirmation that the Contractor will complete the work in accordance with the contract for construction.
- Parametrix will follow LAG procedures for Change Order review and documentation. City will execute final change order documents.

Deliverables

- Three draft Requests for Payment (MS Word/Excel Format).
- Two draft change order files with correspondence, documentation, and back-up (MS Word/Excel Format).
- Change order log.
- Weekly construction meeting minutes (MS Word Format).
- Communications log.
- Issues log.
- Meeting agendas and minutes for all project meetings.

TASK 03 – CONSTRUCTION OBSERVATION

Parametrix will provide a part-time construction observer during construction activities to monitor the progress of the work. The construction observer will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City.

The construction observer will perform the following duties as a matter of daily activities (if applicable):

- Observe technical conduct of the construction, including providing day-to-day contact with construction Contractor, City, and other stakeholders, and monitor for adherence to the Contract Documents. The Parametrix personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the Standard Specifications.
- Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes and notify construction Contractor of noncompliance. Advise the City of any nonconforming work observed during site visits.
- Document all material delivered to the job site in accordance with the contract for construction.
- Prepare daily inspection reports, recording the construction Contractor's operations as actually observed by Parametrix including quantities of work placed that day, Contractor's equipment and crews, and other pertinent information. All daily inspection reports will adhere to WSDOT Local Agency Guidelines or be as directed by the City.
- Interpret Contract Documents in coordination with the City and the City's Contractor.
- Resolve questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction Contractor.
- Establish communications with adjacent property owners. Respond to questions from property owners and the general public.
- Coordinate with permitholders on the project to monitor compliance with approved permits, if applicable.
- Prepare field records and documents to help ensure the project is administered in accordance with funding City requirements.
- Collect and calculate delivery tickets and scaleman's daily reports of aggregate.
- Attend and actively participate in regular on-site weekly construction meetings.
- Take periodic digital photographs during the course of construction and record locations.
- Coordinate with the City's traffic operations and maintenance personnel.
- Punch List: Upon substantial completion of work, Parametrix will coordinate with the City and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or 'punch list' of items to be completed. A punch list and Certificate of Substantial Completion will be prepared by Parametrix and issued by the City.
- Review Contractor's mobilization and site-specific safety plan.
- Parametrix COVID Field Protocols Plan and Policy
- Parametrix will coordinate with the Contractor and the material testing firm which will be provided by the City under separate agreement.

Assumptions

- Parametrix will provide observation services, up to the agreed budget amount, for the entire time that the Contractor's personnel are on-site.
- The budget estimate for this task is based upon 38 (of the total 100 included in the contract for all three projects) working days from Notice to Proceed to substantial completions (assumed to be Monday through Friday for a maximum of 8 hours per day inclusive of travel time); an additional 2 days has been included for project closeout. Additional working days will require a supplement to this agreement.
- Parametrix monitoring of the construction Contractor's activities is to ascertain whether or not work is being performed in accordance with the Contract Documents. In case of noncompliance, Parametrix will reject nonconforming work and pursue other remedies in the interest of the City, as detailed in the Contract Documents. Parametrix cannot guarantee the construction Contractor's performance, and it is understood that Parametrix shall assume no responsibility for: proper construction means, methods, and techniques; project site safety; safety precautions or programs; or for the failure of any other entity to perform work in accordance with laws, contracts, regulations, or the City's expectations.

Deliverables

- Daily Construction Reports with project photos submitted on a weekly basis.
- Punch List and Certificate of Substantial Completion.

TASK 03SC – MATERIALS TESTING (OTTO ROSENAU & ASSOC.)

Otto Rosenau will provide materials testing and special inspection for the pin piles for this project. A separate proposal from Otto Rosenau has been enclosed that includes their specific scope of services, assumptions, deliverables, and budget estimate.

TASK 04 – TASK ADMINISTRATION

Parametrix will provide the tools for continuous tracking of the project schedule and budget, and status of deliverables to ensure that the project is executed as expected by the City.

Assumptions

- A 4-month project schedule is assumed.

Deliverables

- Routine correspondence to document project management issues.
- Monthly progress reports and invoices.

OTTO ROSENAU & ASSOCIATES, INC.
Geotechnical Engineering, Construction Inspection & Materials Testing
6747 M. L. King Jr. Way South, Seattle, Washington 98118-3216 USA
Tel: (206) 725-4600 • Toll Free: (888) OTTO-4-US • Fax: (206) 723-2221
WBE W2F5913684 • WABO Registered Agency • Website: www.ottorosenau.com

March 19, 2021
Proposal No.: 21.20-0503-1R

Austin Fisher
Parametrix, Inc.
719 2nd Avenue, Suite 200
Seattle, WA 98104

Re: Construction Inspection and Materials Testing Services
6th Ave S - S 239th Street SS Replacement
6th Avenue South & South 239th Street
Des Moines, WA

Dear Mr. Fisher:

Otto Rosenau & Associates, Inc. (ORA) is pleased to provide you and your firm with this updated proposal to provide special inspection and materials testing services in support of the referenced project. This proposal presents a project description, scope of work, and proposed fee. All work will be performed in accordance with the attached Terms, Definitions, and General Conditions.

PROJECT DESCRIPTION: The project involves replacing existing storm sewer and stairway access.

SCOPE OF WORK: The architect, civil engineer, structural engineer, and applicable building codes dictate which elements of the project require inspection or testing. Based on our understanding of your project, the anticipated scope of work for the testing and inspection services includes, but is not limited to, the following items:

- Pin pile installation
- Soil compaction
- Asphalt compaction
- Reinforced concrete

ORA proposes to provide appropriately licensed and qualified engineers or inspectors to perform the inspection and testing tasks. The results of field tests and inspections will be communicated to the owner's and contractor's representative as soon as practical. Items that do not conform to the project specifications will be logged and tracked until corrective action is completed. Handwritten reports will be prepared and left on-site after each inspection. Typewritten reports will be distributed to the appropriate project team members and jurisdiction.

PROPOSED FEE: Otto Rosenau and Associates, Inc. propose to provide the above described services on a unit fee basis where we will charge only for the services we perform. Our unit fees are presented on the attached Fee Schedule.

Based on our review of the project drawings and specifications dated April 1, 2021 and on our past experience on similar projects, we suggest a budget of **$13,655** be established for the inspection and testing services. The actual total fee for inspection and testing services is dependent on the efficiency, performance, and schedule of the general contractor, subcontractors, and material suppliers.

SCHEDULE: We are prepared to begin work on your project as required by the construction schedule. Appropriate personnel will be dispatched to the project on an on-call basis in response to requests from the authorized field representative. Though we may be able to respond to last minute or emergency calls for inspection, we request 48 hours' notice for inspections.

CLOSURE: Thank you for this opportunity to work with you on your project. If this proposal is accepted, please indicate so by signing and returning one copy to us via fax (206-723-2221), email (accounting@ottorosenau.com), or mail as an authorization to proceed.

This proposal, including the Terms and proposed unit fees, is accepted by:

____________________ Company Name	____________________ Signature
____________________ Date	____________________ Printed Name and Title

We look forward to working with you. If you have any questions, please contact us at (206) 725-4600.

Very truly yours,
OTTO ROSENAU & ASSOCIATES, INC.

Jeffrey D. Rabe
Project Manager

JDR:kjm

Attachments: Estimated Budget
Fee Schedule
Terms

ESTIMATED BUDGET				
Description of Services	**Quantity**	**Unit**	**Fee**	**Extension**
Professional Engineer *(oversight, final geotechnical review)* *- Assumes 1 trip*	2	Hr	$165.00	$330.00
Engineering Technician *(pin pile installation; up to 5 days due to terrain & contractor abilities)* *- Assumes 5 trips*	40	Hr	$105.00	$4,200.00
Soils Compaction Testing *- Assumes 5 inspection trips and 2 sample pick-up trips*	29	Hr	$86.00	$2,494.00
Soil Grain Size Distribution (Sieve Analysis; D422)	1	Ea	$112.00	$112.00
Soil Moisture-Density Relationship (Proctor; D1557)	1	Ea	$224.00	$224.00
Sand Equivalent (D2419; CSTC)	1	Ea	$133.00	$133.00
Fracture Face Count (Includes Sieve Analysis; D5821; CSTC)	1	Ea	$150.00	$150.00
Soil Moisture-Density Relationship (Proctor; D1557 - native & CSTC)	2	Ea	$224.00	$448.00
Asphalt Compaction Testing *- Assumes 2 inspection trips and 2 sample pick-up trips*	12	Hr	$86.00	$1,032.00
Asphalt Rice Density (D6307/WSDOT T-209)	2	Ea	$100.00	$200.00
Asphalt Oil Content by Ignition with Gradation	2	Ea	$224.00	$448.00
Reinforced Concrete Testing and Inspection *- Assumes 4 inspection trips and 4 sample pick-up trips*	20	Hr	$81.00	$1,620.00
Associated Mileage *(Portal to Portal)* *- Assumes 25 trips x 27 miles/round-trip*	675	Mile	$0.56	$378.00
Final Inspection/ Review/ Report	1	Hr	$105.00	$105.00
Project Management *(Report Review, Inspector Supervision)*	4.25	Hr		No Charge
Administrative *(Report Typing and Distribution)*	4.25	Hr		No Charge
Subtotal:				**$11,874.00**
15% Contingency ***(unforeseen circumstances, parking, overtime, etc.)***				**$1,781.10**
Estimated Budget:				**$13,655.10**

Notes:

1) Additional services are available, and will be provided upon request, at our published rates and fees.

FEE SCHEDULE

Description of Services	Unit	Fee
I. Labor (Personnel) Rates:		
Administrative Staff – Standard Report Typing & Distribution	Hour	**No Charge**
Project Manager – Standard Report Review & Inspector Supervision	Hour	**No Charge**
Project Manager – Attend Meetings, Consultation, etc. (If Required)	Hour	$105.00
Geotechnical Engineer (P.E.)	Hour	$165.00
Geologist	Hour	$125.00
Engineering Technician	Hour	$105.00
Soils/Asphalt Compaction Testing Technician	Hour	$86.00
Special Inspector: a) Reinforced Concrete (Includes Reinforcing Steel) b) Prestressed Concrete c) Shotcrete d) Structural Masonry e) Proprietary Anchors – Epoxy, Expansion Anchors, etc. f) Framing – Cold Form Steel, Structural Wood, etc. g) Miscellaneous – Spray-Applied Fireproofing, Seismic Ties, etc.	Hour	$81.00
Structural Steel and Welding Inspector	Hour	$86.00
Nondestructive Testing Technician (UT/MT/PT)	Hour	$91.00
Certified Welding Inspector/ Consultant (American Welding Society – CWI)	Hour	$91.00
Pull Testing Technician (2-Man Crew)	Hour	$185.00
II. Laboratory (Materials) Testing:		
Soil Grain Size Distribution – Sieve Analysis (D422)	Each	$112.00
Soil Moisture-Density Relationship – Proctor (D1557)	Each	$224.00
Asphalt Oil Content by Ignition with Gradation	Each	$224.00
Asphalt Rice Density (D2041/ WSDOT T-209)	Each	$100.00
Compressive Strength Test – Concrete Cylinders/ Grout/ Mortar (C39/C109/C1019)	Each	$22.00
Fireproofing Density Specimens (E605)	Each	$79.00
Fireproofing Cohesion/Adhesion Tests (E736)	Each	$34.00
Masonry Prisms/ Concrete Masonry Units (C1314)	Each	$110.00
Shotcrete Test Panel (Includes 4 Cores; C1140)	Each	$212.00
Sawcutting of Test Specimens	Each	$6.00
III. Miscellaneous/Reimbursable Expenses:		
Associated Mileage (Portal to Portal)	Mile	$0.68
Project Associated Reimbursable Items (e.g. Parking Fees, Consumable Safety Gear, Cure Box, Temperature Recording Device, Subcontractor Services, etc.)	Lot	Cost + 20%
Final Inspection/ Review/ Report	Hour	$105.00

Note: Additional services are available, and will be provided upon request, at our published rates and fees.

Client: City of Des Moines

Project: TA2020-04 6th Avenue South/239th Street Pipe Replacement Construction Support Services

Task	SubTask	Description	Labor Dollars	Labor Hrs	Austin Fisher Regional Division Manager	Steven Wagner Sr Engineer	John M. Betzvog Designer IV	Bryan T. Nicholson Sr Construction Mgr	Wendy L. Fitzgerald Project Controls Specialist	Christy Pope Sr Project Control Specialist
01		**Construction Support Services**	**$115,137.01**	**635**	**22**	**16**	**16**	**390**	**175**	**12**
	0101	Construction Engineering	$13,955.96	68	16	16	16	10	10	
	0102	Documentation & Project Control	$29,612.85	225				60	165	
	0103	Construction Observation	$67,638.40	320				320		
	0104	Task Administration	$3,929.80	22	6					12
		Labor Totals:	$115,137.01	635	22	16	16	390	175	12
		Totals:	**$115,137.01**		**$6,796.68**	**$3,487.84**	**$2,385.28**	**$82,434.30**	**$17,956.75**	**$1,645.68**

Subconsultants	
Otto Rosenau & Associates Inc	$13,655.00
Subconsultants Total:	**$13,655.00**

Other Direct Expenses	
Mileage - $0.575/mile	$3,250.00
Other Direct Expenses Total:	**$3,250.00**

Project Total **$132,042.01**

4/13/2021

Attachment #3

FORMAL TASK ASSIGNMENT DOCUMENT

Task Number 2020-05

The general provisions and clauses of Agreement 19-162 Consultant Services Contract between the City of Des Moines and Parametrix, Inc. for 2020-2021 On-Call General Civil Eng. Services

Shall be in full force and effect for this Task Assignment.

Location of Project: Soundview Drive/Redondo Beach Drive, Des Moines, Washington 98198

Project Title: Soundview/Redondo Beach Drive Storm Sewer Project Construction Support Services

Maximum Amount Payable Per Task Assignment: $66,104.64

Completion Date: December 31, 2021

Description of Work: Provide Construction Support Services for construction of the Soundview Drive/Redondo Beach Drive project as described on the attached Scope of Work and Budget Estimate.

Agency Project Manager Signature: ____________________ Date: ____________

Oral Authorization Date: ______________ See Attachment Dated: ____________

Consultant Signature: John Perlic Date: 4/8/2021

Agency Approving Authority: ____________________ Date: ____________

SCOPE OF WORK

City of Des Moines
Soundview/Redondo Beach Drive Storm Sewer Project
Construction Support Services

The City of Des Moines (City) has requested that Parametrix provide construction support services for construction of the Soundview/Redondo Beach Drive Storm Sewer project.

A detailed scope for the Contract follows:

GENERAL ASSUMPTIONS

- The budget estimate for this project assumes that hours will be shared evenly across all three of the CIP projects that were advertised together for CIP 39, CIP 40, and Soundview when the activity benefits all three projects. Task-specific assumptions are included where necessary.
- The proposed project team will include one part-time construction manager, one part-time project controls specialist, one part-time construction observer (during construction activities when work is being performed), and periodic engineering support from the design team.
- The level of service is based on project duration as expressed in the contract for construction in working days (see below).
- It is anticipated that the City will review and execute the insurance, bonds, and the contract for construction.
- It is anticipated that all Community Outreach, if required, will be completed by the City.
- Engineers from Parametrix will be available to answer questions during construction and review Responsibility Assignment Matrices (RAMs), review submittals and shop drawings, and answer Requests for Information (RFIs).
- Services will be performed in accordance with the contract for construction and City of Des Moines standards.
- Franchise utilities will provide field inspection for all work surrounding the construction or relocation of those utility systems not constructed by the City's Contractor, if necessary.
- City/Field Office: There are no provisions for a field office for this project. All project files shall be kept in a City of Des Moines office. Parametrix staff shall work from vehicles and remotely as much as practicable.
- All deliverables will be in electronic format unless specifically stated otherwise in this scope of work (SOW).

The objective and purpose of this Construction Management Services Agreement is for Parametrix to assist the City in successfully completing the construction of the proposed improvements.

TASK 01 – CONSTRUCTION ENGINEERING

Preconstruction Conference

Parametrix shall prepare for and conduct a preconstruction conference with the Contractor prior to the Contractor beginning work. Parametrix will develop an agenda and relevant project distribution information for the City's review and approval prior to the conference. Parametrix will distribute notices of and facilitate the meeting which will be held at a location designated by the City. Parametrix will prepare and distribute meeting minutes within 7 days of the conference to all attendees and affected agencies, staff, etc.

At the preconstruction conference, Parametrix will facilitate discussions with the Contractor concerning the plans; specifications; schedules; issues with utilities; unusual conditions; federal, state, and local requirements; equal employment opportunity (EEO); disadvantaged business enterprise (DBE) requirements; and any other items that will result in better project understanding among the parties involved.

Construction Engineering

Following the preconstruction conference, other construction engineering services will be provided. Specific activities are undefined but will be completed up to the specified budget amount and may include:

- Responses to RFIs and submittals.
- Prepare and maintain a Record of Materials (ROM).
- Review project schedule and milestones.
- Materials submittal reviews.
- Design clarifications.
- Shop drawing reviews.
- Support/review/preparation of change orders.
- Support/review for preparation of monthly progress payments to Contractor.
- Support/assistance for preparation of periodic cost to complete analysis.

Assumptions

- The budget estimate includes 4 hours for the Construction Manager and Project Controls Specialist to assist the City in preparation for the preconstruction conference.
- The budget estimate assumes the preconstruction conference will not exceed 2 hours total for all three projects.
- The budget estimate for engineering support assumes the activities to complete this task include a reasonable amount of effort given the project scale and anticipated duration. Requests by the City for more extensive reviews or unforeseen conditions may require additional time, and Parametrix will keep the City project manager apprised of the status of the engineering support budget.
- The presence or duties of Parametrix's personnel at a construction site, whether as on-site representatives or otherwise, do not make Parametrix or Parametrix's personnel in any way responsible for those duties that belong to the City and/or the Contractors or other entities, and do not relieve the Contractors or any other entities of their obligations, duties, and responsibilities, including, but not

limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health or safety precautions required by such construction work.

- As the Construction Manager on this project, Parametrix's project authority shall be as prescribed for the Project Engineer in Section 1-05.2 of the Washington State *Standard Specifications for Road, Bridge, and Municipal Construction,* 2021 Edition (Standard Specifications). Parametrix has no authority to exercise any control over others' health and safety but will notify affected personnel of any site conditions posing an imminent danger to them which Parametrix observes.
- The presence of Parametrix's personnel at a construction site is for the purpose of providing a greater degree of confidence to the City that the completed construction work will conform generally to the construction documents and that the integrity of the design concept, as reflected in the construction documents, has been implemented and preserved by the Contractor(s).
- The City agrees to include in all construction contracts any provisions providing Contractor indemnification of City for Contractor's negligence as equal indemnification of Parametrix and Parametrix personnel.
- The City shall require Contractor(s) to name City and Parametrix as additional insureds on the Contractor's general liability insurance policy.

TASK 02 – DOCUMENTATION AND PROJECT CONTROL

Document Management

Parametrix will implement its system and set of procedures for electronically managing, tracking, and storing all relevant documents between the Contractor, Parametrix, and City produced during the construction and closeout phases of the project that are in compliance with the requirements set forth by the City. Parametrix will, in coordination with the City, electronically maintain records, suitably organized, of all relevant documentation that will be turned over to the City at the completion and final closeout of the project. Parametrix and the City will agree on what documentation will be provided to the City during the course of construction.

Parametrix will also implement its procedures for the logging and tracking of all relevant correspondence and documents. Parametrix will assist the City in monitoring all outstanding decisions, approvals, or responses required from the City.

Parametrix will review record drawings prepared by the Contractor and will prepare and maintain a conformed set of field drawings based on Contractor-provided information and from inspection notes. The field record drawings will be verified for completeness and supplemented with inspection information. Parametrix will then forward the final conformed field drawings to the City.

Project Site Meetings

Parametrix will attend and facilitate weekly meetings with the Contractor and will prepare the agenda, meeting minutes, and action item list for each of the weekly project meetings. Parametrix may also be required to attend and participate in weekly safety toolbox meetings as conducted by the Contractor. No minutes will be provided for safety meetings but will be noted in the inspector's daily report. For budgeting purposes, it is assumed that up to twenty (20) weekly project site meetings will be required for the completion of all three projects.

Progress Payments

Parametrix will receive and review the Contractor's requests for payment. Parametrix will determine whether the amount requested reflects the progress of the Contractor's work and is in accordance with the contract for construction. Parametrix will track installed quantities, review Contractor's invoices for materials, and provide a monthly pay estimate for the City to make payment to the Contractor based on measured quantities of work performed for each bid item. Parametrix shall provide recommendations to the City as to the acceptability of the requests. Parametrix will advise the City as to the status of the total amounts requested, paid and remaining to be paid, under the terms of the contract for construction. Parametrix assumes four (4) requests for payment.

Correspondence and Communications

Minor Variations in the Work

The Parametrix Construction Observer will notify the City, via phone or email prior to issuing Field Directives, to confirm that variations fall within this authority of the Parametrix Construction Observer.

Coordinate Issuance of Changes

Parametrix will receive and review the Contractor's response to the request for change and will obtain such further information as is necessary to evaluate the basis for the Contractor's proposal. Parametrix will assist the City with negotiations of the proposal and, upon approval by the City, prepare final change order documents for execution by the City and Contractor. Up to two (2) City-initiated change orders are anticipated.

Review of Contractor's Requested Changes

Parametrix shall review all Contractor-requested changes to the contract for construction. Parametrix will make recommendations to the City regarding the acceptability of the Contractor's request and, upon approval of the City, assist the City in negotiations of the requested change. Upon agreement and approval, Parametrix will prepare final change order documents. Up to two (2) Contractor-initiated change orders are anticipated.

Claims, Disputes, and Change Orders

Parametrix will work to resolve day-to-day construction disputes which may occur during the course of the project and will promptly inform the City of notices of changes or claims/issues raised by the Contractor.

Parametrix will assist and work on behalf of the City in preparing and negotiating claims, change order costs, and time extensions by evaluating the Contractor's proposal and performing a preliminary evaluation of the contents of the change or claim to evaluate merit and entitlement. Parametrix will prepare independent cost estimates based on the alleged cause of claims or proposed changes submitted by the Contractor. Upon successful change order negotiations, Parametrix will prepare the final change order for execution by the City and the Contractor. Where applicable, Parametrix will prepare alternate estimates based on varying scenarios of the change or claim cause. These estimates will be transmitted to the City and will be used in claim or change order rulings and negotiations. All delays and extra work will be monitored and tracked. Parametrix will advise the City of the acceptability of price and time extension prior to submittal to the Contractor for their signature.

Parametrix will coordinate with and obtain written concurrence from the Engineer of Record on the description of work for each change order, which will be included as an attachment to the change order.

Parametrix will prepare and maintain a Change Order Report which will be provided to the City on a weekly basis. The report will document and track change order information pertaining to proposed and executed change orders and their effect on the contract price as of the date of the report.

Parametrix will coordinate emergency change order work as directed by the City.

If necessary, Parametrix will provide dispute resolution procedures and expert witness deposition during litigation (associated time not included in current budget).

All minor items of work, per the contract bid item, will be approved by the City's Project Manager before Parametrix directs the Contractor to proceed with the work.

Contractor's Schedule Submittal

Parametrix will review the Contractor's construction schedule and verify that it is consistent with the requirements of the contract for construction. Parametrix will advise the Contractor of any areas where the schedule is not in compliance with the contract for construction. Parametrix will provide comments to the City to assist the City in approving, accepting, or taking other action on the Contractor's schedule, in accordance with the contract for construction.

Contractor's Schedule Updates

Parametrix will review and respond to the Contractor's updated construction schedule and compare with field-observed progress. Parametrix will monitor and regularly report to the City regarding schedule compliance. If issues arise, Parametrix will report to the City with suggested resolutions and coordinate with the Contractor in the development of recovery schedules, as needed, to address delays caused by either events or issues within Contractor's control or other events or issues beyond the Contractor's control.

Parametrix will advise the City and make recommendations for exercising the City's contract prerogatives, including giving the Contractor notice to accelerate the project progress, withhold payment for cause, and other prerogatives available in an effort to achieve contract and schedule compliance.

Effect of Change Orders

Parametrix will review information submitted by the Contractor regarding the effect of proposed or issued change orders upon the construction schedule, duration, and completion date. Parametrix will advise the City as to the potential impact of proposed or issued change orders. Parametrix will assist the City in discussions with the Contractor concerning the potential impact of proposed or issued change orders.

Project Communication

Parametrix will serve as the primary on-site contact for public inquiries about the project. Parametrix will develop and regularly maintain a communications log that documents all project inquires (by phone, e-mail, or in person) and their resolution. All calls will be recorded in a phone memorandum. Parametrix will develop responses to inquires within 24 hours and follow up as necessary. Parametrix will assist the City as requested for other public/City communications.

Materials Testing

Parametrix will coordinate and manage all materials testing required on the Project. Parametrix will document and evaluate results of testing and address deficiencies. Parametrix will use Otto Rosenau & Associates (Otto Rosenau) to perform necessary field and lab testing of structural concrete and concrete for sidewalks and curbs, materials testing and compaction of hot mix asphalt (HMA), and compaction and gradation testing of trench backfill and roadway base. All testing will be performed by Parametrix's subconsultant, Otto Rosenau, for those items requiring physical acceptance testing in accordance with the project plans and specifications. Testing will be done according to the Local Agency Guidelines (LAG) and the WSDOT *Construction Manual* (as modified by the LAG manual). Specifically, this includes Table 9-3.7 of the WSDOT *Construction Manual* as modified by Section 52.3, Quality Control of the LAG.

Assumptions

- Design and engineering services for Parametrix to prepare drawings and specifications for issuance to the Contractor as part of significant City-initiated changes shall be considered as Additional Services, entitling Parametrix to additional compensation.
- Parametrix will receive and review the Contractor's requests for payment. Parametrix will determine whether the amount requested reflects the progress of the Contractor's work and is in accordance with the contract for construction. It is assumed that no more than two (2) claims will be submitted by the Contractor during Parametrix's period of performance. Parametrix will not issue decisions on Contractor claims or disputes. Parametrix will not, except as part of Additional Services, undertake comprehensive and detailed investigation or analysis of Contractor's claims and disputes or participate in judicial or alternative dispute resolution procedures for the claims or disputes.
- Parametrix's review of the Contractor's schedule and associated comments shall not be considered as a guarantee or confirmation that the Contractor will complete the work in accordance with the contract for construction.
- Parametrix will follow LAG procedures for Change Order review and documentation. City will execute final change order documents.

Deliverables

- Four draft Requests for Payment (MS Word/Excel Format).
- Two draft change order files with correspondence, documentation, and back-up (MS Word/Excel Format).
- Change order log.
- Weekly construction meeting minutes (MS Word Format).
- Communications log.
- Issues log.
- Meeting agendas and minutes for all project meetings.
- Record of Materials and copies of materials testing and inspection reports.

TASK 03 – CONSTRUCTION OBSERVATION

Parametrix will provide a full-time construction observer during construction activities to monitor the progress of the work. The construction observer will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City.

The construction observer will perform the following duties as a matter of daily activities (if applicable):

- Observe technical conduct of the construction, including providing day-to-day contact with construction Contractor, City, and other stakeholders, and monitor for adherence to the Contract Documents. The Parametrix personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the Standard Specifications.
- Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes and notify construction Contractor of noncompliance. Advise the City of any nonconforming work observed during site visits.
- Document all material delivered to the job site in accordance with the contract for construction.
- Prepare daily inspection reports, recording the construction Contractor's operations as actually observed by Parametrix including quantities of work placed that day, Contractor's equipment and crews, and other pertinent information. All daily inspection reports will adhere to WSDOT Local Agency Guidelines or be as directed by the City.
- Interpret Contract Documents in coordination with the City and the City's Contractor.
- Resolve questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction Contractor.
- Establish communications with adjacent property owners. Respond to questions from property owners and the general public.
- Coordinate with permitholders on the project to monitor compliance with approved permits, if applicable.
- Prepare field records and documents to help ensure the project is administered in accordance with funding City requirements.
- Collect and calculate delivery tickets and scaleman's daily reports of aggregate.
- Attend and actively participate in regular on-site weekly construction meetings.
- Take periodic digital photographs during the course of construction and record locations.
- Coordinate with the City's traffic operations and maintenance personnel.
- Punch List: Upon substantial completion of work, Parametrix will coordinate with the City and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or 'punch list' of items to be completed. A punch list and Certificate of Substantial Completion will be prepared by Parametrix and issued by the City.
- Monitor and document Contractor's compliance with approved mobilization, traffic control, and site-specific safety plans.
- Parametrix COVID Field Protocols Plan and Policy
- Parametrix will coordinate with the Contractor and the material testing firm which will be provided by the City under separate agreement.

Assumptions

- Parametrix will provide observation services, up to the agreed budget amount, for the entire time that the Contractor's personnel are on-site.
- The budget estimate for this task is based upon 24 (of the total 100 included in the contract for all three projects) working days from Notice to Proceed to substantial completions (assumed to be Monday through Friday for a maximum of 8 hours per day exclusive of travel time); an additional 3 days has been included for project closeout. Additional working days will require a supplement to this agreement.
- Parametrix monitoring of the construction Contractor's activities is to ascertain whether or not work is being performed in accordance with the Contract Documents. In case of noncompliance, Parametrix will reject nonconforming work and pursue other remedies in the interest of the City, as detailed in the Contract Documents. Parametrix cannot guarantee the construction Contractor's performance, and it is understood that Parametrix shall assume no responsibility for: proper construction means, methods, and techniques; project site safety; safety precautions or programs; or for the failure of any other entity to perform work in accordance with laws, contracts, regulations, or the City's expectations.

Deliverables

- Daily Construction Reports with project photos submitted on a weekly basis.
- Punch List and Certificate of Substantial Completion.

Task 03SC – Materials Testing (Otto Rosenau & Assoc.)

Otto Rosenau will provide materials testing for this project. A separate proposal from Otto Rosenau has been enclosed that includes their specific scope of services, assumptions, deliverables and budget estimate.

Task 04 – Task Administration

Parametrix will provide the tools for continuous tracking of the project schedule and budget, and status of deliverables to ensure that the project is executed as expected by the City.

Assumptions

- A 6-month project schedule is assumed.

Deliverables

- Routine correspondence to document project management issues.
- Monthly progress reports and invoices.

OTTO ROSENAU & ASSOCIATES, INC.

Geotechnical Engineering, Construction Inspection & Materials Testing

6747 M. L. King Jr. Way South, Seattle, Washington 98118-3216 USA
Tel: (206) 725-4600 • Toll Free: (888) OTTO-4-US • Fax: (206) 723-2221
WBE W2F5913684 • WABO Registered Agency • Website: www.ottorosenau.com

March 23, 2021
Proposal No.: 21-0226

Austin Fisher
Parametrix, Inc.
719 2nd Avenue, Suite 200
Seattle, WA 98104

Re: Construction Inspection and Materials Testing Services
Sound View-Redondo Beach Storm Sewer
28758 Sound View Drive South
Des Moines, WA

Dear Mr. Fisher:

Otto Rosenau & Associates, Inc. (ORA) is pleased to provide you and your firm with this updated proposal to provide special inspection and materials testing services in support of the referenced project. This proposal presents a project description, scope of work, and proposed fee. All work will be performed in accordance with the attached Terms, Definitions, and General Conditions.

PROJECT DESCRIPTION: The project involves construction of infrastructure modifications.

SCOPE OF WORK: The architect, civil engineer, structural engineer, and applicable building codes dictate which elements of the project require inspection or testing. Based on our understanding of your project, the anticipated scope of work for the testing and inspection services includes, but is not limited to, the following items:

- Soil Compaction
- Asphalt Compaction
- Reinforced Concrete

ORA proposes to provide appropriately licensed and qualified engineers or inspectors to perform the inspection and testing tasks. The results of field tests and inspections will be communicated to the owner's and contractor's representative as soon as practical. Items that do not conform to the project specifications will be logged and tracked until corrective action is completed. Handwritten reports will be prepared and left on-site after each inspection. Typewritten reports will be distributed to the appropriate project team members and jurisdiction.

PROPOSED FEE: Otto Rosenau and Associates, Inc. propose to provide the above described services on a unit fee basis where we will charge only for the services we perform. Our unit fees are presented on the attached Fee Schedule.

Based on our review of the project drawings and specifications dated March 1st, 2021 and on our past experience on similar projects, we suggest a budget of **$7,483.97** be established for the inspection and testing services. The actual total fee for inspection and testing services is dependent on the efficiency, performance, and schedule of the general contractor, subcontractors, and material suppliers.

SCHEDULE: We are prepared to begin work on your project as required by the construction schedule. Appropriate personnel will be dispatched to the project on an on-call basis in response to requests from the authorized field representative. Though we may be able to respond to last minute or emergency calls for inspection, we request 48 hours' notice for inspections.

CLOSURE: Thank you for this opportunity to work with you on your project. If this proposal is accepted, please indicate so by signing and returning one copy to us via fax (206-723-2221), email (accounting@ottorosenau.com), or mail as an authorization to proceed.

This proposal, including the Terms and proposed unit fees, is accepted by:

____________________	____________________
Company Name	Signature
____________________	____________________
Date	Printed Name and Title

We look forward to working with you. If you have any questions, please contact us at (206) 725-4600.

Very truly yours,
OTTO ROSENAU & ASSOCIATES, INC.

Jeffrey D. Rabe
Project Manager

JDR:kjm

Attachments: Estimated Budget
Fee Schedule
Terms

ESTIMATED BUDGET				
Description of Services	**Quantity**	**Unit**	**Fee**	**Extension**
Soils Compaction Testing *- Assumes 5 inspection trips and 2 sample pick-up trips*	24	Hr	$86.00	$2,064.00
Soil Grain Size Distribution (Sieve Analysis; D422)	2	Ea	$112.00	$224.00
Soil Moisture-Density Relationship (Proctor; D1557)	2	Ea	$224.00	$448.00
Asphalt Compaction Testing *- Assumes 2 inspection trips and 2 sample pick-up trips*	16	Hr	$86.00	$1,376.00
Asphalt Rice Density (D6307/WSDOT T-209)	2	Ea	$100.00	$200.00
Asphalt Oil Content by Ignition with Gradation	2	Ea	$224.00	$448.00
Reinforced Concrete Testing and Inspection *- Assumes 3 inspection trips and 3 sample pick-up trips*	15	Hr	$81.00	$1,215.00
Concrete Test Specimens (C39)	12	Ea	$22.00	$264.00
Associated Mileage *(Prevailing IRS Rate)* *- Assumes 15 trips x 32 miles/round-trip*	480	Mile	$0.560	$268.80
Project Management *(Report Review, Inspector Supervision)*	2	Hr		No Charge
Administrative *(Report Typing and Distribution)*	2	Hr		No Charge
Subtotal:				**$6,507.80**
15% Contingency ***(unforeseen circumstances, parking, overtime, etc.)***				**$976.17**
Estimated Budget:				**$7,483.97**

Notes:

1) Additional services are available, and will be provided upon request, at our published rates and fees.

FEE SCHEDULE

Description of Services	Unit	Fee
I. Labor (Personnel) Rates:		
Administrative Staff – Standard Report Typing & Distribution	Hour	**No Charge**
Project Manager – Standard Report Review & Inspector Supervision	Hour	**No Charge**
Project Manager – Attend Meetings, Consultation, etc. (If Required)	Hour	$105.00
Geotechnical Engineer (P.E.)	Hour	$165.00
Geologist	Hour	$125.00
Engineering Technician	Hour	$105.00
Soils/Asphalt Compaction Testing Technician	Hour	$86.00
Special Inspector: a) Reinforced Concrete (Includes Reinforcing Steel) b) Prestressed Concrete c) Shotcrete d) Structural Masonry e) Proprietary Anchors – Epoxy, Expansion Anchors, etc. f) Framing – Cold Form Steel, Structural Wood, etc. g) Miscellaneous – Spray-Applied Fireproofing, Seismic Ties, etc.	Hour	$81.00
Structural Steel and Welding Inspector	Hour	$86.00
Nondestructive Testing Technician (UT/MT/PT)	Hour	$91.00
Certified Welding Inspector/ Consultant (American Welding Society – CWI)	Hour	$91.00
Pull Testing Technician (2-Man Crew)	Hour	$185.00
II. Laboratory (Materials) Testing:		
Soil Grain Size Distribution – Sieve Analysis (D422)	Each	$112.00
Soil Moisture-Density Relationship – Proctor (D1557)	Each	$224.00
Asphalt Oil Content by Ignition with Gradation	Each	$224.00
Asphalt Rice Density (D2041/ WSDOT T-209)	Each	$100.00
Compressive Strength Test – Concrete Cylinders/ Grout/ Mortar (C39/C109/C1019)	Each	$22.00
Fireproofing Density Specimens (E605)	Each	$79.00
Fireproofing Cohesion/Adhesion Tests (E736)	Each	$34.00
Masonry Prisms/ Concrete Masonry Units (C1314)	Each	$110.00
Shotcrete Test Panel (Includes 4 Cores; C1140)	Each	$212.00
Sawcutting of Test Specimens	Each	$6.00
III. Miscellaneous/Reimbursable Expenses:		
Associated Mileage (Portal to Portal)	Mile	$0.68
Project Associated Reimbursable Items (e.g. Parking Fees, Consumable Safety Gear, Cure Box, Temperature Recording Device, Subcontractor Services, etc.)	Lot	Cost + 20%
Final Inspection/ Review/ Report	Hour	$105.00

Note: Additional services are available, and will be provided upon request, at our published rates and fees.

Client: City of Des Moines
Project: TA2020-05 Soundview/Redondo Drive Construction Support Services

Task	SubTask	Description	Labor Dollars	Labor Hrs	Austin Fisher Regional Division Manager	John M. Betzvog Designer IV	Bryan T. Nicholson Sr Construction Mgr	Jeff R. Sweet Engineer I	Wendy L. Fitzgerald Project Controls Specialist	Christy Pope Sr Project Control Specialist	Kassie N. Winters Project Accountant
01		**Construction Support Services**	**$56,995.64**	**406**	**14**	**16**	**108**	**144**	**108**	**12**	**4**
	0101	Construction Engineering	$7,791.38	42	8	16	10		8		
	0102	Documentation & Project Control	$20,829.50	150			50		100		
	0103	Construction Observation	$24,444.96	192			48	144			
	0104	Task Administration	$3,929.80	22	6					12	4
		Labor Totals:	$56,995.64	406	14	16	108	144	108	12	4
		Totals:	**$56,995.64**		**$4,325.16**	**$2,385.28**	**$22,827.96**	**$14,299.20**	**$11,081.88**	**$1,645.68**	**$430.48**

Subconsultants	
Otto Rosenau & Associates Inc	$7,484.00
Subconsultants Total:	**$7,484.00**

Other Direct Expenses	
Mileage - $0.575/mile	$1,625.00
Other Direct Expenses Total:	**$1,625.00**

Project Total **$66,104.64**

4/13/2021

Attachment #4

FORMAL TASK ASSIGNMENT DOCUMENT

Task Number 2020-06

The general provisions and clauses of Agreement 19-162 Consultant Services Contract between the City of Des Moines and Parametrix, Inc. for 2020-2021 On-Call General Civil Eng. Services

Shall be in full force and effect for this Task Assignment.

Location of Project: 8th Avenue South, Des Moines, Washington 98198

Project Title: CIP 40 – 8th Avenue South Pipe Replacement Construction Support Services

Maximum Amount Payable Per Task Assignment: $111,889.65

Completion Date: December 31, 2021

Description of Work: Provide Construction Support Services for construction of the 8th Avenue South Pipe Replacement project as described on the attached Scope of Work and Budget Estimate.

Agency Project Manager Signature: ________________________ Date: ________________

Oral Authorization Date: ____________________ See Attachment Dated: ________________

Consultant Signature: John Perlic Date: 4/13/2021

Agency Approving Authority: ______________________________ Date: ________________

Parametrix
ENGINEERING . PLANNING . ENVIRONMENTAL SCIENCES

SCOPE OF WORK

City of Des Moines
CIP 40 – 8th Avenue S Pipe Project
Pipe Replacement Construction Support Services

The City of Des Moines (City) has requested that Parametrix provide construction support services for construction of the 8th Avenue South Pipe Replacement project. The project includes two schedules of work. Schedule C is for the City's pipe replacement project and Schedule D is for the replacement of the water main owned by Lakehaven Utility District (LUD). The following scope of services covers both schedules of work and, where necessary, the budget estimate includes separate task identifiers so that costs can be tracked consistently with the City's Interlocal agreement with LUD.

A detailed scope for the Contract follows:

GENERAL ASSUMPTIONS

- The budget estimate for this project assumes that hours will be shared evenly across all three of the CIP projects that were advertised together for CIP 39, CIP 40, and Soundview when the activity benefits all three projects. Task-specific assumptions are included where necessary, and effort related to Schedule D will be tracked as described above.
- The proposed project team will include one part-time construction manager, one part-time project controls specialist, one part-time construction observer (during construction activities when work is being performed) and periodic engineering support from the design team.
- The level of service is based on project duration as expressed in the contract for construction in working days (see below).
- It is anticipated that the City will review and execute the insurance, bonds, and the contract for construction.
- It is anticipated that all Community Outreach, if required, will be completed by the City.
- Engineers from Parametrix will be available to answer questions during construction and review Responsibility Assignment Matrices (RAMs), review submittals, shop drawings, and answer Requests for Information (RFIs).
- Services will be performed in accordance with the contract for construction and City of Des Moines standards.
- Franchise utilities will provide field support for all work surrounding the construction or relocation of those utility systems not constructed by the City's Contractor, if necessary.
- City/Field Office: There are no provisions for a field office for this project. All project files shall be kept in a City of Des Moines office. Parametrix staff shall work from vehicles and remotely as much as practicable.
- All deliverables will be in electronic format unless specifically stated otherwise in this scope of work (SOW).

The objective and purpose of this Construction Management Services Agreement is for Parametrix to assist the City in successfully completing the construction of the proposed improvements.

Task 01 – Construction Engineering

Preconstruction Conference

Parametrix shall prepare for and conduct a preconstruction conference with the Contractor prior to the Contractor beginning work. Parametrix will develop an agenda and relevant project distribution information for the City's review and approval prior to the conference. Parametrix will distribute notices of and facilitate the meeting, which will be held at a location designated by the City. Parametrix will prepare and distribute meeting minutes within seven (7) days of the conference to all attendees and affected agencies, staff, etc.

At the preconstruction conference, Parametrix will facilitate discussions with the Contractor concerning the plans; specifications; schedules; issues with utilities; unusual conditions; federal, state, and local requirements; equal employment opportunity (EEO); disadvantaged business enterprise (DBE) requirements; and any other items that will result in better project understanding among the parties involved.

Construction Engineering

Following the preconstruction conference, other construction engineering services will be provided. Specific activities are undefined but will be completed up to the specified budget amount and may include:

- Responses to RFIs and submittals.
- Prepare and maintain a Record of Materials (ROM).
- Review project schedule and milestones.
- Materials submittal reviews.
- Design clarifications.
- Shop drawing reviews.
- Support/review/preparation of change orders.
- Support/review for preparation of monthly progress payments to Contractor.
- Support/assistance for preparation of periodic cost to complete analysis.

Assumptions

- The budget estimate includes 2 hours for the Construction Manager and Project Controls Specialist to assist the City in preparation for the preconstruction conference.
- The budget estimate assumes the preconstruction conference will not exceed 2 hours total for all three projects.
- The budget estimate for engineering support assumes the activities to complete this task includes a reasonable amount of effort given the project scale and anticipated duration. Requests by the City for more extensive reviews or unforeseen conditions may require additional time, and Parametrix will keep the City project manager apprised of the status of the engineering support budget.

- The presence or duties of Parametrix's personnel at a construction site, whether as on-site representatives or otherwise, do not make Parametrix or Parametrix's personnel in any way responsible for those duties that belong to the City and/or the Contractors or other entities and do not relieve the Contractors or any other entities of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health or safety precautions required by such construction work.
- As the Construction Manager on this project, Parametrix's project authority shall be as prescribed for the Project Engineer in Section 1-05.2 of the Washington State *Standard Specifications for Road, Bridge, and Municipal Construction,* 2021 Edition (Standard Specifications). Parametrix has no authority to exercise any control over others' health and safety but will notify affected personnel of any site conditions posing an imminent danger to them which Parametrix observes.
- The presence of Parametrix's personnel at a construction site is for the purpose of providing to the City a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept, as reflected in the construction documents, has been implemented and preserved by the Contractor(s).
- The City agrees to include in all construction contracts any provisions providing Contractor indemnification of City for Contractor's negligence as equal indemnification of Parametrix and Parametrix personnel.
- The City shall require Contractor(s) to name City and Parametrix as additional insureds on the Contractor's general liability insurance policy.

TASK 02 – DOCUMENTATION AND PROJECT CONTROL

Document Management

Parametrix will implement its system and set of procedures for managing, tracking, and storing all relevant documents between the Contractor, Parametrix, and City produced during the construction and closeout phases of the project that are in compliance with the requirements set forth by the City. Parametrix will, in coordination with the City, maintain one set of hardcopy records, suitably organized, of all relevant documentation that will be turned over to the City at the completion and final closeout of the project. Parametrix and the City will agree on what documentation will be provided to the City during the course of construction.

Parametrix will also implement its procedures for the logging and tracking of all relevant correspondence and documents. Parametrix will assist the City in monitoring all outstanding decisions, approvals, or responses required from the City.

Parametrix will review record drawings prepared by the Contractor and will prepare and maintain a conformed set of field drawings based on Contractor-provided information and from inspection notes. The field record drawings will be verified for completeness and supplemented with inspection information. Parametrix will then forward the final conformed field drawings to the City.

Project Site Meetings

Parametrix will attend and facilitate weekly meetings with the Contractor and will prepare the agenda, prepare meeting minutes, and the action item list for each of the weekly project meetings. Parametrix may also be required to attend and participate in weekly safety toolbox meetings as conducted by the Contractor. No minutes will be provided for safety meetings but will be noted in the inspector's daily report. For budgeting purposes, it is assumed that up to twenty (20) weekly project site meetings will be required for the completion of all three projects.

Progress Payments

Parametrix will receive and review the Contractor's requests for payment. Parametrix will determine whether the amount requested reflects the progress of the Contractor's work and is in accordance with the contract for construction. Parametrix will track installed quantities, review Contractor's invoices for materials, and provide a monthly pay estimate for the City to make payment to the Contractor based on measured quantities of work performed for each bid item. Parametrix shall provide recommendations to the City as to the acceptability of the requests. Parametrix will advise the City as to the status of the total amounts requested, paid and remaining to be paid, under the terms of the contract for construction. Parametrix assumes four (4) requests for payment.

Correspondence and Communications

Minor Variations in the Work

The Parametrix Construction Observer will notify the City, via phone or email prior to issuing Field Directives, to confirm that variations fall within this authority of the Parametrix Construction Observer.

Coordinate Issuance of Changes

Parametrix will receive and review the Contractor's response to the request for change and will obtain such further information as is necessary to evaluate the basis for the Contractor's proposal. Parametrix will assist the City with negotiations of the proposal and, upon approval by the City, prepare final change order documents for execution by the City and Contractor. Up to two (2) City-initiated change orders are anticipated.

Review of Contractor's Requested Changes

Parametrix shall review all Contractor-requested changes to the contract for construction. Parametrix will make recommendations to the City regarding the acceptability of the Contractor's request and, upon approval of the City, assist the City in negotiations of the requested change. Upon agreement and approval, Parametrix will prepare final change order documents. Up to two (2) Contractor-initiated change orders are anticipated.

Claims, Disputes, and Change Orders

Parametrix will work to resolve day-to-day construction disputes which may occur during the course of the project and will promptly inform the City of notices of changes or claims/issues raised by the Contractor.

Parametrix will assist and work on behalf of the City in preparing and negotiating claims, change order costs, and time extensions by evaluating the Contractor's proposal and performing a preliminary evaluation of the contents of the change or claim to evaluate merit and entitlement. Parametrix will prepare independent cost estimates based on the alleged cause of claims or proposed changes submitted by the Contractor. Upon successful change order negotiations, Parametrix will prepare the final change order for execution by the City and the Contractor. Where applicable, Parametrix will prepare alternate estimates based on varying scenarios of the change or claim cause. These estimates will be transmitted to the City and will be used in claim or change order rulings and negotiations. All delays and extra work will be monitored and tracked. Parametrix will advise the City of the acceptability of price and time extension prior to submittal to the Contractor for their signature.

Parametrix will coordinate with and obtain written concurrence from the Engineer of Record on the description of work for each change order, which will be included as an attachment to the change order.

Parametrix will prepare and maintain a Change Order Report which will be provided to the City on a weekly basis. The report will document and track change order information pertaining to proposed and executed change orders and their effect on the contract price as of the date of the report.

Parametrix will coordinate emergency change order work as directed by the City.

If necessary, Parametrix will provide dispute resolution procedures and expert witness deposition during litigation (associated time not included in current budget).

All minor items of work, per the contract bid item, will be approved by the City's Project Manager before Parametrix directs the Contractor to proceed with the work.

Contractor's Schedule Submittal

Parametrix will review the Contractor's construction schedule and verify that it is consistent with the requirements of the contract for construction. Parametrix will advise the Contractor of any areas where the schedule is not in compliance with the contract for construction. Parametrix will provide comments to the City to assist the City in approving, accepting, or taking other action on the Contractor's schedule, in accordance with the contract for construction.

Contractor's Schedule Updates

Parametrix will review and respond to the Contractor's updated construction schedule and compare with field-observed progress. Parametrix will monitor and regularly report to the City regarding schedule compliance. If issues arise, Parametrix will report to the City with suggested resolutions and coordinate with the Contractor in the development of recovery schedules, as needed, to address delays caused by either events or issues within Contractor's control or other events or issues beyond the Contractor's control.

Parametrix will advise the City and make recommendations for exercising the City's contract prerogatives, including giving the Contractor notice to accelerate the project progress, withhold payment for cause, and other prerogatives available in an effort to achieve contract and schedule compliance.

Effect of Change Orders

Parametrix will review information submitted by the Contractor regarding the effect of proposed or issued change orders upon the construction schedule, duration, and completion date. Parametrix will advise the City as to the potential impact of proposed or issued change orders. Parametrix will assist the City in discussions with the Contractor concerning the potential impact of proposed or issued change orders.

Project Communication

Parametrix will serve as the primary on-site contact for public inquiries about the project. Parametrix will develop and regularly maintain a communications log that documents all project inquires (by phone, e-mail, or in person) and their resolution. All calls will be recorded in a phone memorandum. Parametrix will develop responses to inquires within 24 hours and follow up, as necessary. Parametrix will assist the City as requested for other public/City communications.

Materials Testing

Parametrix will coordinate and manage all materials testing required on the Project. Parametrix will document and evaluate results of testing and address deficiencies. Parametrix will use Otto Rosenau & Associates to perform necessary field and lab testing of structural concrete. All testing will be performed by Parametrix's subconsultant, Otto Rosenau & Associates, for those items requiring physical acceptance testing in accordance with the project plans and specifications. Testing will be done according to the Local Agency Guidelines (LAG) and the WSDOT *Construction Manual* (as modified by the LAG manual). Specifically, this includes Table 9-3.7 of the WSDOT *Construction Manual* as modified by Section 52.3, Quality Control of the LAG.

Assumptions

- Design and engineering services for Parametrix to prepare drawings and specifications for issuance to the Contractor as part of significant City-initiated changes shall be considered as Additional Services, entitling Parametrix to additional compensation.
- Parametrix will receive and review the Contractor's requests for payment. Parametrix will determine whether the amount requested reflects the progress of the Contractor's work and is in accordance with the contract for construction. It is assumed that no more than two (2) claims will be submitted by the Contractor during Parametrix's period of performance. Parametrix will not issue decisions on Contractor claims or disputes. Parametrix will not, except as part of Additional Services, undertake comprehensive and detailed investigation or analysis of Contractor's claims and disputes or participate in judicial or alternative dispute resolution procedures for the claims or disputes.
- Parametrix's review of the Contractor's schedule and associated comments shall not be considered as a guarantee or confirmation that the Contractor will complete the work in accordance with the contract for construction.
- Parametrix will follow LAG procedures for Change Order review and documentation. City will execute final change order documents.

Deliverables

- Three draft Requests for Payment (MS Word/Excel Format).
- Two draft change order files with correspondence, documentation, and back-up (MS Word/Excel Format).
- Change order log.
- Weekly construction meeting minutes (MS Word Format).
- Communications log.
- Issues log.
- Meeting agendas and minutes for all project meetings.

TASK 03 – CONSTRUCTION OBSERVATION

Parametrix will provide a part-time construction observer during construction activities to monitor the progress of the work. The construction observer will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City.

The construction observer will perform the following duties as a matter of daily activities (if applicable):

- Observe technical conduct of the construction, including providing day-to-day contact with construction Contractor, City, and other stakeholders, and monitor for adherence to the Contract Documents. The Parametrix personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the Standard Specifications.
- Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes and notify construction Contractor of noncompliance. Advise the City of any nonconforming work observed during site visits.
- Document all material delivered to the job site in accordance with the contract for construction.
- Prepare daily inspection reports, recording the construction Contractor's operations as actually observed by Parametrix including quantities of work placed that day, Contractor's equipment and crews, and other pertinent information. All daily inspection reports will adhere to WSDOT Local Agency Guidelines or as directed by the City.
- Interpret Contract Documents in coordination with the City and the City's Contractor.
- Resolve questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction Contractor.
- Establish communications with adjacent property owners. Respond to questions from property owners and the general public.
- Coordinate with permitholders on the project to monitor compliance with approved permits, if applicable.
- Prepare field records and documents to help ensure the project is administered in accordance with funding City requirements.
- Collect and calculate delivery tickets and scaleman's daily reports of aggregate.
- Attend and actively participate in regular on-site weekly construction meetings.
- Take periodic digital photographs during the course of construction and record locations.
- Coordinate with the City's traffic operations and maintenance personnel.
- Punch List: Upon substantial completion of work, Parametrix will coordinate with the City and other affected agencies to perform a project inspection and develop a comprehensive list of deficiencies or 'punch list' of items to be completed. A punch list and Certificate of Substantial Completion will be prepared by Parametrix and issued by the City.
- Review Contractor's mobilization and site-specific safety plan.
- Parametrix COVID Field Protocols Plan and Policy

- Parametrix will coordinate with the Contractor and the material testing firm which will be provided by the City under separate agreement.

Assumptions

- Parametrix will provide observation services, up to the agreed budget amount, for the entire time that the Contractor's personnel are on-site.
- The budget estimate for this task is based upon 38 (of the total 100 included in the contract for all three projects) working days from Notice to Proceed to substantial completions (assumed to be Monday through Friday for a maximum of 8 hours per day inclusive of travel time); an additional 2 days has been included for project closeout. Additional working days will require a supplement to this agreement.
- Parametrix monitoring of the construction Contractor's activities is to ascertain whether or not work is being performed in accordance with the Contract Documents. In case of noncompliance, Parametrix will reject nonconforming work and pursue other remedies in the interest of the City, as detailed in the Contract Documents. Parametrix cannot guarantee the construction Contractor's performance, and it is understood that Parametrix shall assume no responsibility for: proper construction means, methods, and techniques; project site safety; safety precautions or programs; or for the failure of any other entity to perform work in accordance with laws, contracts, regulations, or the City's expectations.

Deliverables

- Daily Construction Reports with project photos submitted on a weekly basis.
- Punch List, Certificate of Substantial Completion.

TASK 03SC – MATERIALS TESTING (OTTO ROSENAU & ASSOC.)

Otto Rosenau will provide materials testing for Schedule C. A separate proposal from Otto Rosenau is enclosed that includes their specific scope of services, assumptions, deliverables, and budget estimate.

Lakehaven Utility District will provide materials testing for the construction of the water main (Schedule D).

TASK 04 – TASK ADMINISTRATION

Parametrix will provide the tools for continuous tracking of the project schedule and budget and status of deliverables to ensure that the project is executed as expected by the City.

Assumptions

- A 6-month project schedule is assumed.

Deliverables

- Routine correspondence to document project management issues.
- Monthly progress reports and invoices.

OTTO ROSENAU & ASSOCIATES, INC.

Geotechnical Engineering, Construction Inspection & Materials Testing

6747 M. L. King Jr. Way South, Seattle, Washington 98118-3216 USA
Tel: (206) 725-4600 • Toll Free: (888) OTTO-4-US • Fax: (206) 723-2221
WBE W2F5913684 • WABO Registered Agency • Website: www.ottorosenau.com

March 22, 2021
Proposal No.: 21-0224

Austin Fisher
Parametrix, Inc.
719 2nd Avenue, Suite 200
Seattle, WA 98104

Re: Construction Inspection and Materials Testing Services
8th Avenue Pipe Project
8th Avenue South (264th-265th)
Des Moines, WA

Dear Mr. Fisher:

Otto Rosenau & Associates, Inc. (ORA) is pleased to provide you and your firm with this updated proposal to provide special inspection and materials testing services in support of the referenced project. This proposal presents a project description, scope of work, and proposed fee. All work will be performed in accordance with the attached Terms, Definitions, and General Conditions.

PROJECT DESCRIPTION: The project involves construction of improvements to existing infrastructure.

SCOPE OF WORK: The architect, civil engineer, structural engineer, and applicable building codes dictate which elements of the project require inspection or testing. Based on our understanding of your project, the anticipated scope of work for the testing and inspection services includes, but is not limited to, the following items:

- Soil Compaction
- Asphalt Compaction
- Reinforced Concrete

ORA proposes to provide appropriately licensed and qualified engineers or inspectors to perform the inspection and testing tasks. The results of field tests and inspections will be communicated to the owner's and contractor's representative as soon as practical. Items that do not conform to the project specifications will be logged and tracked until corrective action is completed. Handwritten reports will be prepared and left on-site after each inspection. Typewritten reports will be distributed to the appropriate project team members and jurisdiction.

PROPOSED FEE: Otto Rosenau and Associates, Inc. propose to provide the above described services on a unit fee basis where we will charge only for the services we perform. Our unit fees are presented on the attached Fee Schedule.

Based on our review of the project drawings and specifications dated March 1st, 2021 and on our past experience on similar projects, we suggest a budget of **$15,015** be established for the inspection and testing services. The actual total fee for inspection and testing services is dependent on the efficiency, performance, and schedule of the general contractor, subcontractors, and material suppliers.

SCHEDULE: We are prepared to begin work on your project as required by the construction schedule. Appropriate personnel will be dispatched to the project on an on-call basis in response to requests from the authorized field representative. Though we may be able to respond to last minute or emergency calls for inspection, we request 48 hours' notice for inspections.

CLOSURE: Thank you for this opportunity to work with you on your project. If this proposal is accepted, please indicate so by signing and returning one copy to us via fax (206-723-2221), email (accounting@ottorosenau.com), or mail as an authorization to proceed.

This proposal, including the Terms and proposed unit fees, is accepted by:

Company Name	Signature
Date	Printed Name and Title

We look forward to working with you. If you have any questions, please contact us at (206) 725-4600.

Very truly yours,
OTTO ROSENAU & ASSOCIATES, INC.

Jeffrey D. Rabe
Project Manager

JDR:kjm

Attachments: Estimated Budget
Fee Schedule
Terms

ESTIMATED BUDGET				
Description of Services	**Quantity**	**Unit**	**Fee**	**Extension**
Soils Compaction Testing *- Assumes 10 inspection trips and 3 sample pick-up trips*	46	Hr	$86.00	$3,956.00
Soil Grain Size Distribution (Sieve Analysis; D422)	3	Ea	$112.00	$336.00
Soil Moisture-Density Relationship (Proctor; D1557)	3	Ea	$224.00	$672.00
Asphalt Compaction Testing *- Assumes 4 inspection trips and 4 sample pick-up trips*	40	Hr	$86.00	$3,440.00
Asphalt Rice Density (D6307/WSDOT T-209)	4	Ea	$100.00	$400.00
Asphalt Oil Content by Ignition with Gradation	4	Ea	$224.00	$896.00
Reinforced Concrete Testing and Inspection *- Assumes 5 inspection trips and 5 sample pick-up trips*	30	Hr	$81.00	$2,430.00
Concrete Test Specimens (C39)	20	Ea	$22.00	$440.00
Associated Mileage *(Prevailing IRS Rate)* *- Assumes 31 trips x 22 miles/round-trip*	682	Mile	$0.560	$381.92
Final Inspection/ Review/ Report	1	Hr	$105.00	$105.00
Project Management *(Report Review, Inspector Supervision)*	4.75	Hr		No Charge
Administrative *(Report Typing and Distribution)*	4.75	Hr		No Charge
			Subtotal:	**$13,056.92**
15% Contingency ***(unforeseen circumstances, parking, overtime, etc.)***				**$1,958.54**
			Estimated Budget:	**$15,015.46**

Notes:

1) Additional services are available, and will be provided upon request, at our published rates and fees.

FEE SCHEDULE

Description of Services	Unit	Fee
I. Labor (Personnel) Rates:		
Administrative Staff – Standard Report Typing & Distribution	Hour	**No Charge**
Project Manager – Standard Report Review & Inspector Supervision	Hour	**No Charge**
Project Manager – Attend Meetings, Consultation, etc. (If Required)	Hour	$105.00
Geotechnical Engineer (P.E.)	Hour	$165.00
Geologist	Hour	$125.00
Engineering Technician	Hour	$105.00
Soils/Asphalt Compaction Testing Technician	Hour	$86.00
Special Inspector: a) Reinforced Concrete (Includes Reinforcing Steel) b) Prestressed Concrete c) Shotcrete d) Structural Masonry e) Proprietary Anchors – Epoxy, Expansion Anchors, etc. f) Framing – Cold Form Steel, Structural Wood, etc. g) Miscellaneous – Spray-Applied Fireproofing, Seismic Ties, etc.	Hour	$81.00
Structural Steel and Welding Inspector	Hour	$86.00
Nondestructive Testing Technician (UT/MT/PT)	Hour	$91.00
Certified Welding Inspector/ Consultant (American Welding Society – CWI)	Hour	$91.00
Pull Testing Technician (2-Man Crew)	Hour	$185.00
II. Laboratory (Materials) Testing:		
Soil Grain Size Distribution – Sieve Analysis (D422)	Each	$112.00
Soil Moisture-Density Relationship – Proctor (D1557)	Each	$224.00
Asphalt Oil Content by Ignition with Gradation	Each	$224.00
Asphalt Rice Density (D2041/ WSDOT T-209)	Each	$100.00
Compressive Strength Test – Concrete Cylinders/ Grout/ Mortar (C39/C109/C1019)	Each	$22.00
Fireproofing Density Specimens (E605)	Each	$79.00
Fireproofing Cohesion/Adhesion Tests (E736)	Each	$34.00
Masonry Prisms/ Concrete Masonry Units (C1314)	Each	$110.00
Shotcrete Test Panel (Includes 4 Cores; C1140)	Each	$212.00
Sawcutting of Test Specimens	Each	$6.00
III. Miscellaneous/Reimbursable Expenses:		
Associated Mileage (Portal to Portal)	Mile	$0.68
Project Associated Reimbursable Items (e.g. Parking Fees, Consumable Safety Gear, Cure Box, Temperature Recording Device, Subcontractor Services, etc.)	Lot	Cost + 20%
Final Inspection/ Review/ Report	Hour	$105.00

Note: Additional services are available, and will be provided upon request, at our published rates and fees.

Client: City of Des Moines
Project: TA2020-06 8th Avenue South Pipe Replacement Construction Support Services

Task	SubTask	Description	Labor Dollars	Labor Hrs	Austin Fisher Regional Division Manager	John M. Betzvog Designer IV	John L. Wright Sr Engineer	M. Younis Mahmoodi Engineer III	Bryan T. Nicholson Sr Construction Mgr	Jeff R. Sweet Engineer I	Wendy L. Fitzgerald Project Controls Specialist	Christy Pope Sr Project Control Specialist	Kassie N. Winters Project Accountant
01		**Construction Services**	**$95,249.65**	**683**	**22**	**16**	**24**	**40**	**150**	**240**	**175**	**12**	**4**
	0101STORM	Construction Engineering - Storm	$10,468.12	52	16	16			10		10		
	0101WATER	Construction Engineering - Water	$10,497.28	64			24	40					
	0102STORM	Doc & Proj Control - Storm	$15,062.95	115					30		85		
	0102WATER	Doc & Proj Control - Water	$14,549.90	110					30		80		
	0103STORM	Construction Observation - Storm	$20,370.80	160					40	120			
	0103WATER	Construction Observation - Water	$20,370.80	160					40	120			
	0103SC-STORM	*Materials Testing - Storm*	*$7,507.50*										
	0103SC-WATER	*Materials Testing - Water*	*$7,507.50*										
	0104	Task Administration	$3,929.80	22	6							12	4
		Labor Totals:	$95,249.65	683	22	16	24	40	150	240	175	12	4
		Totals including Otto Rosenau:	**$110,264.65**		**$6,796.68**	**$2,385.28**	**$5,172.48**	**$5,324.80**	**$31,705.50**	**$23,832.00**	**$17,956.75**	**$1,645.68**	**$430.48**

Subconsultants

Otto Rosenau & Associates Inc (Task 0103SC)	(see task 0103SC)
Subconsultants Total:	**(see task 0103SC)**

Other Direct Expenses

Mileage - $0.575/mile	$1,625.00
Other Direct Expenses Total:	**$1,625.00**

Project Total **$111,889.65**

4/13/2021

Attachment #5

AMENDMENT TO THE INTERLOCAL AGREEMENT
BETWEEN LAKEHAVEN WATER & SEWER DISTRICT
AND THE CITY OF DES MOINES

8th Avenue South Pipe Project
(South 264th Street to South 265th Street)

Preamble

The Interlocal Agreement has established a formal arrangement under which the District will pay the City to incorporate the design and construction of the District work in the City's 8th Avenue South Pipe Project. This amendment is entered into to provide an updated cost estimate for the District's prorated share of engineering and construction management cost as provided by the City's engineering consultants.

THIS AMENDMENT is entered into between the CITY OF DES MOINES and LAKEHAVEN WATER & SEWER DISTRICT, and amends and attaches to and is part thereof of the existing Interlocal Agreement entered into between the parties on the 24th day of November 2020.

The parties agree to the following amendments:

Amendment 1: Section 4.A: Obligations of the District. d. Construction Management

The last paragraph of this section (4.A.d.) are amended to include an updated cost estimate and a revised payment schedule to match the language of section (4.A)

> The District's prorated share of engineering and construction management cost for the District Work has been estimated and negotiated by the Parties based on the engineer's estimate for the District Work to be a payment of $52,925.48. The District shall provide monthly payments as invoiced by the City to reimburse the City for the work done under these tasks.

Amendment 2: Section 6.C: Payment Schedule

The first two sentences of this section (6.C) are amended to include an updated cost estimate and a revised payment schedule to match the language of section (4.A)

> The cost incurred by the City for construction engineering and management, and construction costs incurred by the City for the District Work on the Project has been pre-determined and illustrated in Section 4 of this Agreement. The District shall provide monthly payments to the City to reimburse the City for the work done under these tasks and as invoiced by the City for the amount not to exceed $52,925.48.

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

This document shall be attached to the existing Interlocal Agreement.

Reviewed and approved as authorized by motion of the City of Des Moines City Council on the _____ day of ___________, ________.

CITY OF DES MOINES

By: ______________________________

Michael Matthias, City Manager

Date: ____________________________

ATTEST:

____

City Clerk

APPROVED AS TO FORM:

____

Des Moines City Attorney

Reviewed and approved as authorized by motion of the Lakehaven Water and Sewer District Board of Commissioners on the _____ day of __________, ________.

By: ____________________________

John Bowman, General Manager

Date: _________________________

INTERLOCAL AGREEMENT
CITY OF DES MOINES AND LAKEHAVEN WATER & SEWER DISTRICT

8th Avenue South Pipe Project
(South 264th Street to South 265th Street)

RECITALS

WHEREAS, the City of Des Moines, Washington ("City") is undertaking a capital improvement project known as the 8th Avenue South Pipe Project ("the Project"); and

WHEREAS, Chapter 39.34 RCW authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities; and

WHEREAS, Lakehaven Water & Sewer District ("District") owns and operates certain water & sewer utilities located in the 8th Avenue South (South 264th Street to South 265th Street) right-of-way within and adjacent to the Project limits and the District has a franchise agreement to operate in said right-of-way; and

WHEREAS, the City intends to construct improvements to 8th Avenue South (South 264th Street to South 265th Street); and

WHEREAS, the District is interested in replacing a 8-inch water main within the right-of-way limits of the City's project between South 264th Street to South 265th Street with a 8-inch water main, along with other improvements ("District Work"); and

WHEREAS, integrating the District Work into the City's design and construction of the Project would be more expedient, less expensive, and less disruptive to the public than if the District undertook the District Work separately; and

WHEREAS, the City and the District (individually a "Party" and collectively the "Parties") mutually desire to establish a formal arrangement under which the District will pay the City in consideration of the City's incorporating the District Work into the design and construction of the Project; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs, and liabilities regarding this undertaking; and

WHEREAS, the City Council of the City has taken appropriate action to approve the City's approval of and entry into this Agreement ("Agreement"); and

WHEREAS, the District Board of Commissioners has taken appropriate action to approve the District's approval of and entry into this Agreement;

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, the Parties agree as follows:

AGREEMENT

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which the District will pay the City to incorporate the design of the District Work into the Project contract documents and to construct the District Work in conjunction with the City's design and construction of the Project. The terms, conditions, and covenants of this Agreement shall accordingly be interpreted to advance this purpose. This Agreement further seeks to allocate and define the Parties' respective rights, obligations, costs and liabilities concerning the establishment, operation and maintenance of this undertaking.

Section 2. Term. This Agreement shall be effective upon execution by the Parties. Unless terminated in accordance with Section 3, this Agreement shall remain in effect until one of the following events occurs, whichever is later: (a) the District's written acceptance of and payment for the District Work provided pursuant hereto, or (b) 12/31/2021. Thereafter, this Agreement shall expire automatically. The Parties may at their option renew this Agreement for a mutually agreed upon term by a writing signed by both Parties.

Section 3. Termination. Subject to the provisions of Section 4 herein, either Party may terminate this Agreement with cause by providing the other Party with at least thirty (30) days written notice of its intent to terminate. Termination or expiration of this Agreement shall not alter the District's payment obligations under Section 6 for services already rendered, as well as for the normal and reasonable costs incurred by the contractor in terminating and closing out the District's portion of the work, and shall not alter the Parties' respective obligations under Section 11 of this Agreement.

Section 4. Obligations of the District.

A. The District shall provide monthly payments to the City to reimburse the City for its costs of incorporating the design of the District Work into the construction documents, and for constructing the District Work pursuant to Section 6 of this Agreement, and as follows:

a. Engineering/Design. The District shall participate in the design process as follows:

i. The District will coordinate with the City and its engineering consultants on the preparation of the engineering plans and specifications necessary to accommodate the District Work utilizing specifications and bid quantities for common work that is acceptable to the City. The City may use the District's survey for preparation of its plans but shall hold the District harmless from any errors, omissions or corrections necessary to design and construct said improvements. The District shall review the final Plans and Specifications, and provide the City a written notice of acceptance of the plans and specifications associated with the District Work within fifteen (15) days of receipt.

ii. The District shall reimburse the City for the City's costs for consultant design of District plans and the support to incorporate the District plans, specifications, and estimate into the City's Contract Documents totaling a single, lump sum payment of (**$32,815.74).**

iii. The District shall utilize 100% import Crushed Surfacing Top Course (CSTC) as defined by the WSDOT Standard Specifications for all trench backfill as part of its bid schedule unless approval for a different material is provided by the City. No native materials excavated, as part of this project shall be utilized for trench backfill unless the City provides approval to use such native materials.

iv. The District's Work shall include installation of water-related appurtenances, trench backfill and a 1-inch temporary HMA trench patch for the pavement restoration. Permanent pavement restoration shall be designed and constructed by the City and compensated by the District as described in Section 4.A.d.

b. <u>Bid Process</u>. The District shall participate in the bid process as follows:

i. Accept or reject bids on bid items associated with the District Work. Those bid items include the items identified on a separate Bid Schedule for the District Work.

ii. Within ten (10) days of receiving the bid tabulation from the City, the District shall notify the City in writing that the District either agrees to proceed with the District Work as part of the Project, or the District chooses to complete the District Work on its own as part of a separate Project, or not to complete the District Work.

iii. To determine the lowest responsive, responsible bidder, the City will include all Bid Schedules unless the District rejects the bid for the District Work.

c. Construction. If the District elects to proceed with the District Work as part of the Project, the District shall reimburse the City for the City's actual costs for construction of the District Work based upon:

i. Contractor's bid prices for the City Work, the actual quantities of work installed, and the final actual costs of construction. For the benefit of economies of scale and contract inspection and administration, the City Work and the District road restoration work will be combined into one bid Schedule, Schedule B, and the parties agree the bid schedule shall be 50% the cost of the District and 50% the cost of the City for the following Bid Schedule B Items/Work*:
- Mobilization (10% Maximum) Lump Sum (LS)
- Temporary Traffic Control Lump Sum (LS)
- Planing Bituminous Pavement Square Yard (SY)
- HMA Cl ½" PG 64-22 for Pavement Overlay Ton (TN)
- HMA Thickened Edge Linear Foot (LF)
- Edge Restoration Linear Foot (LF)

Applicable Sales Tax for the City Work and associated Bid Schedule B shall be governed by WAC 485-20-171 and its related rules.

d. Construction Management: The District shall reimburse the City for the District's prorated share of the City's costs incurred for Project construction engineering, construction management, and construction inspection as provided by the City's engineering consultants.

The District's prorated share of engineering and construction management cost for the District Work has been estimated and negotiated by the Parties based on the engineer's estimate for the District Work to be a single, lump sum payment of **$10,248.83.**

e. Construction Engineering and Inspection: The District shall provide its own construction engineering and inspection during construction of the District Work. The District inspector shall coordinate directly with the City's inspector during the Project construction. The District inspector will have the responsibility for inspection and approval of the District Work and that the contractor employed by the City will be directed to comply with the District's requirements by the City's inspector or designee in accordance with plans and specifications approved by the District. The District's inspector shall immediately notify the City's inspector, verbally and in writing, of any disapproval of said work and provide said notification to the City prior to progress payment for said work to the Contractor. The District's inspector will provide copies of all daily field reports to the City's Construction Manager.

The District shall review and approve Requests for Approval of Materials ("RAM") for materials to be used proposed by the contractor for District bid item work as provided by the City. The District shall complete the review within five (5) business days of receiving any RAM from the contractor or the City.

f. Construction Claims: If claim(s) are filed on the Project by the contractor that are directly related to the District Work ("Claim"), the District shall reimburse the City for the City's reasonable expenses incurred to respond to said Claim, including the City's outside costs for construction engineering and management, if any, and City administration support including legal representation.

B. The District shall respond within five (5) business days to information requests submitted by the City or its agents regarding the District Work.

C. Upon completion of the District Work to the District's satisfaction, the District shall provide written acceptance of the District Work to the City.

D. The District may abandon the existing water main in place provided the water main is drained, filled with CDF to prevent collapse, and capped. Cost of handling and proper disposal of any AC water main disturbed by the District or the City shall be the District's responsibility.

E. If the District decides to reject the bid for the District Work, then the District acknowledges that construction of the District Work may be processed under a separate contract by the District. The District acknowledges that the construction of the District Work under a separate contract could cause delay and/or increase the cost of the Project. If the District elects to proceed with the District Work, the District shall require its contractor to coordinate all District work within the Project work area with the City contractor and with any contractors or work crews from other utilities and to not unreasonably interfere with or delay the City contractor or the work by other utilities. If the District chooses to forgo a separate contract, the District acknowledges the City will not allow construction and replacement for a period defined in the City's franchise utility agreement from the date of acceptance of the City's project physical completion.

a. The District acknowledges the City's project design is dependent on the inclusion of the District's project based on coordination and negotiations that have occurred during the Project design lifecycle. If the District decides to reject or remove its bid schedule as part of the bid process, the single payment of **$32,815.74** outlined in Section 4.A.a.ii will continue to be required to be paid by the District.

Section 5. Obligations of the City.

A. The City shall incorporate the design of the District Work into the construction plans, specifications, and contract documents for the Project provided said plans, specifications and documents are prepared in similar format to the Project's contract documents. The District Work will be under a separate bid schedule in order to provide a clear identification of the bid item cost allocations between the District Work and the Project work.

B. The City shall assume responsibility for constructing the District Work in accordance with the plans, specifications, and contract documents, including but not limited to securing all necessary consultants, contractors, and subcontractors. All construction contracts shall be procured through a formal competitive bidding process consistent with applicable State and/or Federal laws as may be applicable. The City shall have sole authority to award and manage the construction contract per the terms of this Agreement.

C. The City shall periodically submit to the District written invoices for payment in accordance with Section 6. The City shall include copies of invoices or other documentation from consultants and/or contractors, clearly indicating the District's portion of the invoices.

D. The City shall assume lead agency status and responsibility for applying for and obtaining any and all regulatory permits necessary to complete the Project including the District Work, including but not limited to right-of-way permits, NPDES permits, and SEPA approvals.

E. The City shall provide District personnel access to the Project's construction area for purposes of inspecting, monitoring, approving or disapproving the progress of work performed on the District Work. The City shall notify a District representative of all construction meetings and shall allow the District's representative to participate in all construction meetings.

F. The City shall respond promptly to information requests submitted by the District or its agents regarding the Project.

G. The City shall require the contractor constructing the Project to have the District, its elected and appointed officers, agents and employees named as an additional insured on all policies of insurance to be maintained by contractor(s) under the terms of any Commercial General Liability Insurance, Commercial Automobile Insurance, and Workers Compensation. The Contractor shall provide the City with either a certified copy of all policies with endorsements attached or a Certificate of Insurance with endorsements attached as are necessary to comply with the contract specifications. The City shall provide the District with copies of all such policies and documents upon receipt by the City.

The City shall require the contractor building the Project to indemnify, defend, and save harmless the District and its elected and appointed officers, agents, or employees from any claim, damage, action, liability of proceeding brought or filed against the District or its officers, agents or employees alleging damage or injury arising out of the contractor's participation in the Project. The Contractor shall also be required to waive the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the District solely for the purposes of the indemnification.

The City shall require the contractor to be responsible for compliance with all applicable federal, state and local statutes, regulations and ordinances regarding safety.

H. The City shall design and construct the pavement surface restoration in lieu of construction by the District as provided in this Agreement.

<u>Section 6. Payment Schedule. The Parties agree to the following billing and payment schedule:</u>

A. For construction contract costs incurred by the City for the District Work on the Project, the City shall submit invoices to the District for the District's share of said expense for the District Work. Said invoices shall contain a reasonably detailed explanation of the methodology utilized by the City in determining the District's share of each expense. To the extent reasonably possible, the City shall document and tabulate separately the actual quantities of work installed to clearly identify the District's portion of the Project construction cost for the District Work. Final adjustment of prorated costs shall be delivered to the District within thirty (30) days of project close out.

B. Within thirty (30) days of receiving any invoice pursuant to subsection 6.A, the District shall tender payment to the City in the form of a warrant payable to the City for the invoiced amount, except as to any disputed amounts.

C. The cost incurred by the City for construction engineering and management, and construction costs incurred by the City for the District Work on the Project has been pre-determined and illustrated in Section 4 of this Agreement. The District shall tender payment to the City in the form of a warrant payable to the

City in an amount of $10,248.83 within thirty (30) days of execution of the Construction Contract with the Contractor. The District shall also tender payment to the City in the form of a check, money order, or other certified funds in an amount of $32,815.74 within fifteen (15) days of execution of this Agreement.

D. If the Parties disagree regarding the District's share of any expense incurred by the City regarding the Project, the Parties may agree to submit the question for resolution in accordance with the mediation/arbitration clause contained herein.

Section 7. (reserved)

Section 8. Change Orders and Authorization of Cost Overruns:

A. Change Orders. The District shall have the right to approve or reject change orders relating to the District Work. The City shall have the right to approve or reject change orders relating to the City's work. The Parties shall mutually accept or reject change orders relating to joint work. Any dispute between the Parties as to proportional payment for joint element change orders shall be resolved pursuant to the mediation/arbitration clause contained herein.

B. Cost Overruns. The District authorizes the expenditure by the City of a contingency of up to ten percent (10%) of the contractor's total price for the District's bid items for over-runs in bid quantities and change orders associated with the installation of the District Work. For any quantity overruns that cause the cost of the District's water line installation to exceed the authorized ten percent (10%) contingency amount, the City will notify the District in writing requesting a letter of concurrency allowing the City to exceed the ten percent (10%) contingency before proceeding with the work. The City's notice shall include an explanation of the changed conditions necessitating exceeding the previously approved contingency. A letter of concurrence shall be provided to the City within a reasonable time frame so as to not cause a Project delay. If there is a potential delay due to extra work or a change order, the City will indicate in this notification to the District along with a time for response mutually agreed upon by the City and the District. The City will include a progress schedule and any change orders for the District Work with the District's monthly invoice. In any event and even without a letter of concurrence from the District, the City is authorized to take any reasonable action and to expend any reasonable amount of money to assure that the District Work will not interfere or delay the timely completion of the Project. Any disputes as to the reasonableness of the City's actions or expenditures for the water line installation and related work will be resolved as set forth in Section 12 below.

Section 9. Ownership and Disposition of Property. The District Work pursuant to this Agreement shall become and remain the exclusive property of the District upon completion. All other work constructed under the Project shall become and remain the exclusive property of the City upon completion. The City will forward and assign to the District any guarantee or warranty furnished as a normal trade practice in connection with the purchase of any equipment, materials, or items used in the construction of the Project. The City shall submit redline drawings to the District upon completion of the Project for District review and approval. The City's contractor shall warrant the workmanship and materials utilized in the District Work to be free from defects for a period of one (1) year from the date of final completion of the City's Project, provided the District shall retain any rights, claims or demands the District may have against the City's contractor relating to the District Work under applicable statutes of limitation.

Section 10. Administration; No Separate Entity Created. The City of Des Moines Public Works Director, or his/her designee, shall serve as the City's administrator of this Agreement. The District General Manager, or his/her designee, shall serve as the District's administrator of this Agreement. No separate legal entity is formed by this Agreement.

Section 11. Release, Indemnification and Hold Harmless Agreement. Each Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives, contractors or subcontractors, to the fullest extent required by laws of the State of Washington. Each Party agrees to protect, indemnify and save the other Party harmless from and against any and all such liability for injury or damage to the other party or the other Party's property, and also from and against all claims, demands, and causes of action of every kind and character to the extent arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives, contractors or subcontractors.

The City specifically promises to indemnify the District against claims or suits brought under Title 51 RCW by its own employees, contractors, or subcontractors, and waives any immunity that the City may have under that title with respect to, but only to, the limited extent necessary to indemnify the District. The City shall also indemnify and hold the District harmless from any wage, overtime or benefit claim of any City employee, agent, representative, contractor, or subcontractor performing services under this Agreement. The City further agrees to fully indemnify the District from and against any and all costs of defending any such claim or demand to the end that the District is held harmless therefrom.

The District specifically promises to indemnify the City against claims or suits brought under Title 51 RCW by its own employees, contractors, or subcontractors, and waives any immunity that the District may have under that title with respect to, but only to, the limited extent necessary to indemnify the City. The District shall also indemnify and hold the City harmless from any wage, overtime or benefit claim of any District employee, agent, representative, contractor, or subcontractor performing services under this Agreement. The District further agrees to fully indemnify the City from and against any and all costs of defending any such claim or demand to the end that the City is held harmless therefrom.

Section 12. Mediation/Arbitration Clause: If a dispute arises from or relates to this Agreement or the alleged breach thereof and if the dispute cannot be resolved through direct discussions between the Parties, the Parties agree to endeavor first to settle the dispute in an amicable manner by mediation before a mutually agreed alternative dispute resolution entity or by mediation administered under the American Arbitration Association's Commercial or Construction Rules before resorting to arbitration. The mediator may be selected by agreement of the Parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through binding arbitration which shall be conducted under mutually agreed rules, or under the American Arbitration Association's Commercial or Construction Arbitration Rules. The arbitrator may be selected by agreement of the Parties or through appointment pursuant to the rules of the American Arbitration Association.

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.

Section 13. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in King County Superior Court - Kent.

Section 14. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the District and any employee, agent, representative or contractor of the City, or between the City and any employee, agent, representative or contractor of the District.

Section 15. No Third Party Rights. This Agreement is intended for the sole and exclusive benefit of the parties hereto and no third party rights are created by this Agreement.

Section 16. Notices. Notices to the City shall be sent to the following address:

City of Des Moines
Transportation & Engineering Services Manager
216560 11th Avenue South
Des Moines, WA 98198

Notices to the District shall be sent to the following address:

Lakehaven Water and Sewer District
General Manager
31627 1st Avenue South
Federal Way, WA 98063

Section 17. Interlocal Cooperation. Pursuant to RCW 39.34.040, this Agreement shall be filed with the King County Auditor upon full execution or listed by subject on the City's and District's respective web sites.

Section 18. Integration/Entire Agreement. This document constitutes the entire embodiment of the Agreement between the Parties, and, unless modified in writing by an amendment to this Agreement signed by the Parties, shall be implemented as described above. This Agreement supersedes any oral representations that are inconsistent with or modify its terms and conditions.

Section 19. Non-Waiver. Waiver by any Party or any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provisions.

Section 20. Amendment. This Agreement may be amended only upon consent of the Parties. Any amendment hereto shall be in writing and shall be ratified and executed by the Parties in the same manner in which it was originally adopted.

Section 21. Severability. If any provisions of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby.

Section 22. Counterparts. This Agreement shall be effective whether signed by all Parties on the same document or whether signed in counterparts.

Reviewed and approved as authorized by motion of the City of Des Moines City Council on the 12 day of Nov, 2020.

CITY OF DES MOINES

By: ______________________

Michael Matthias, City Manager

Date: 11-13-2020

ATTEST:

____

City Clerk

APPROVED AS TO FORM:

/s/ Timothy George

Des Moines City Attorney

~~Reviewed and approved as authorized by Resolution No. ________ of the Lakehaven Water and Sewer District Board of Commissioners on the _____ day of __________, _______.~~

Reviewed and approved as authorized by motion of the Lakehaven Water and Sewer District Board of Commissioners on the 19th day of November, 2020.

By: ______________________

John Bowman, General Manager

Date: 11/24/2020

Attachment #6

Proposed Budget Amendment

8th Ave (264th to 265th) — Project # 451.834

GL Account Code	Expenditure Categories	TOTAL PROJECT SCOPE: Adopted Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Annual Allocations: Project to Date 12/31/19	Project Year to Date 12/31/2020	Project Life to Date 12/31/2020	Estimated Year End 2020	Plan Year 2020	Project Year to Date 3/19/2021	Plan Year 2021	Plan Year 2022
	Design											
451.834.579.594.31.65.10	External Engineering				27,605.81	12,681.27	40,287.08			5,535		
451.834.579.594.31.65.12	Internal Engineering/Project Mgmt				617.05	2,566.66	3,183.71			1,414		
451.834.579.594.31.41.80	Interfund Financial Services				282.23	134.42	416.65			-		
	Total Design	**108,000**		**107,505**	**28,505.09**	**15,382.35**	**43,887.44**	**-**	**79,000**	**6,949**	**-**	**-**
	Prop/ROW/Easements											
	Total Prop/ROW/Easements	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
	Construction											
451.834.579.594.31.65.30	External Engineering - Schedule C				-	-	-			-	58,964	
451.834.579.594.31.65.31	External Engineering - Schedule D				-	-	-			-	52,925	
451.834.579.594.31.65.32	Internal Engr-Proj Mgmt/Inspect				-	-	-			-	10,000	
451.834.579.594.31.65.33	Construction Contract - Schedule C				-	-	-			-	231,380	
451.834.579.594.31.65.34	Construction Contract - Schedule D				-	-	-			-	601,197	
451.834.579.594.31.65.35	Internal Construction - Labor				-	-	-			-		
	Total Construction	**388,000**	**566,467**	**954,467**	**-**	**-**	**-**	**-**	**-**	**-**	**954,467**	**-**
451.834.579.594.31.65.90	**Project Contingency - Schedule C**	**95,000**	**87,656**	**182,656**	**-**	**-**	-		**24,000**		**158,656**	**-**
	Project Contingency - Schedule D		**65,412**	**65,412**	**-**	**-**	-				**65,412**	
	Total Project Expenditures	591,000	654,123	1,244,628	28,505.09	15,382.35	43,887.44	-	103,000	6,949	1,178,535	-

CIP Assigned Funding GL Code	Funding Sources	Adopted Current CIP Budget	CIP Supplemental Request	Revised CIP Budget Estimate	Project to Date 12/31/2019	Project Year to Date 12/31/2020	Project to Date 12/31/2020	Estimated Year End 2020	Scheduled Year 2020	Project Year to Date 3/19/2021	Scheduled Year 2021	Scheduled Year 2022
451.834.450.397.00.00.00	Surface Water Utility	547,000		546,505	28,505.09	4,570.81	33,075.90		59,000	-	459,000	-
451.834.000.337.00.00.00	Lakehaven Sewer & Water District	44,000	-	44,000	-	38,631.25	38,631.25		44,000	-	-	-
-	Lakehaven Sewer & Water District	-	719,535	719,535	-	-	-		-	-	719,535	-
	Total Project Funding	591,000	719,535	1,310,040	28,505.09	43,202.06	71,707.15	-	103,000	-	1,178,535	-

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Attachment #7

Parametrix, Inc.
1019 39th Ave SE, Ste. 100
Puyallup, WA 98374

Project Name: Surface Water Capital Projects

BID SUMMARY	ENGINEERS ESTIMATE	RW Scott Construction
TOTAL SCHEDULE A:	**$ 296,978.00**	**$ 256,930.00**
TOTAL SCHEDULE B:	**$ 223,418.50**	**$ 192,741.00**
TOTAL SCHEDULE C:	**$ 293,161.00**	**$ 231,380.00**
TOTAL SCHEDULE D:	**$ 662,774.48**	**$ 601,197.20**
SCHEDULE A + B + C + D TOTAL:	**$ 1,476,331.98**	**$ 1,282,248.20**

BID SUMMARY	Road Construction Northwest, Inc.	Rodarte Construction, Inc.	Westwater Construction Company	HCON Incorporated	Northwest Cascade, Inc.
TOTAL SCHEDULE A:	**$ 277,486.00**	**$ 252,323.00**	**$ 322,425.00**	**$ 438,857.00**	**$ 477,871.00**
TOTAL SCHEDULE B:	**$ 252,009.75**	**$ 252,300.00**	**$ 339,055.00**	**$ 296,987.00**	**$ 265,291.00**
TOTAL SCHEDULE C:	**$ 306,197.50**	**$ 306,242.50**	**$ 352,125.00**	**$ 260,128.00**	**$ 277,893.00**
TOTAL SCHEDULE D:	**$ 589,815.61**	**$ 703,583.04**	**$ 530,656.68**	**$ 606,645.50**	**$ 718,248.36**
SCHEDULE A + B + C + D TOTAL:	**$ 1,425,508.86**	**$ 1,514,448.54**	**$ 1,544,261.68**	**$ 1,602,617.50**	**$ 1,739,303.36**

*Note that these bid tabulations may include minor corrections to the bid proposal values based on verification of price extensions using MS Excel, any minor corrections made did not alter the order of the tabulation.

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Consent Calendar Item #7

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Port of Seattle Economic Development Partnership Agreement

ATTACHMENTS:
1. Agreement

FOR AGENDA OF: April 22, 2021

DEPT. OF ORIGIN: City Manager

DATE SUBMITTED: April 15, 2021

CLEARANCES:
[ ] Community Development ____
[ ] Marina ____
[ ] Parks, Recreation & Senior Services ____
[ ] Public Works ____

CHIEF OPERATIONS OFFICER: ____________

[X] Legal /s/ TG
[X] Finance Cathleen Wear
[ ] Courts ____
[ ] Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: Michael Matthias

Purpose and Recommendation

The purpose of this agenda item is for City Council to ratify acceptance of the Port of Seattle Economic Development Partnership Agreement (S-00320657). This agreement will provide funding for the City in the amount of $32,260. The following motion will appear on the Consent Calendar:

Suggested Motion

Motion 1: "I move to ratify and approve the Port of Seattle Economic Development Partnership Agreement (S-00320657)."

Background
The Port of Seattle has reconfigured their economic development grants from previous years to be a more responsive program to the COVID-19 pandemic and its economic impacts to our community. The funds were made available, on a non-competitive basis, to 38 King County cities and allocated based on population. The grant requires a 50% local match by the cities that receive the grants. In the case of Des Moines that equates to approximately $16, 130.

Discussion
The City of Des Moines applied for this grant in order to fund three separate projects that utilize a multifaceted approach to address the impacts of the COVID-19 pandemic. The projects focus on actions that have immediate and targeted impacts to our communities, far-reaching assistance programs with incentives to retain their businesses, and opportunities for new visitors and interested investors to see what the City has to offer.

The first of the three projects will be the continuation of the EATS program. Providing weekly checks ($2,500) to a different food service business in our community, while also providing 125 vouchers to seniors in our community.

The second project will consist of the creation of a new loan program, offered specifically for our Des Moines business community, with incentives for multi-year retention. The funding of this project will result in a robust program with public & private partnerships (including the SBDC at Highline College) that will provide support for our local businesses in need. This program will be coordinated with local financial institutions.

The third project consists of both the establishment of a centralized website that provides a thorough overview of the tourism and economic development opportunities that exist in the City. This website will host the media created to provide a virtual tour of the city.

Alternatives
The alternative is not to accept this grant funding and for the three programs to not proceed.

Financial Impact
The grant requires a 50% match of $16,130.The City is proposing to meet this match and add additional funds of approximately $100,000 which will provide resources to formulate and implement these programs and $8,000 of in-kind matching funds. The total funding amount would be $140,000 to assist small business in the wake of COVID.

Recommendation
Staff recommends City Council ratify this contract for the Economic Development Partnership Agreement (S-00320657)

Attachment #1

ECONOMIC DEVELOPMENT PARTNERSHIP AGREEMENT

BETWEEN

THE PORT OF SEATTLE AND CITY OF DES MOINES

S-00320657

This Economic Development Partnership Agreement (the " Agreement") is made by and between the Port of Seattle (the "Port") and the City of Des Moines ("Agency"), both municipal corporations of the State of Washington (each, a "Party" or, collectively, the "Parties").

RECITALS

WHEREAS, engaging in the promotion of economic development is a recognized Port purpose authorized under RCW 53.08.245; and

WHEREAS, RCW 35.21.703 similarly authorizes cities to engage in economic development programs; and

WHEREAS, RCW 53.08.240(2) permits the Port to contract with another municipality to perform such undertakings each is authorized to perform; and

WHEREAS, the Port Commission of the Port of Seattle established the Economic Development Partnership Program (the "Program"), to advance the Port' s Century Agenda, promote a dramatic growth agenda, support the creation of middle class jobs and help address the lack of economic development funding for local projects; and

WHEREAS, grant funding across the region is very limited for cities that want to pursue economic development projects or initiatives, and Washington State has not had an economic development grant program for over 20 years; and

WHEREAS, the Program will provide 38 King County cities per capita funding to advance local economic development throughout the region, and requires a 50% local match by the cities that receive the grants; and

WHEREAS, the Program will help the Port advance regional economic vitality through focused partnerships with King County cities; and

WHEREAS, the Program will make grants to cities that pursue programs and projects that stimulate business development, job creation and community revitalization, such as small business development, industry retention and expansion, and other economic development projects that support new investment and job creation;

NOW, THEREFORE the parties agree as follows:

1. Purpose. The purpose of this Agreement is to establish a contractual arrangement under which the Port will pay the Agency Program funds in the amount set forth on Section 2 solely for the purpose of carrying out the local initiative described in Exhibit A, attached and incorporated hereto by this reference

(the "Project"). This Agreement shall be interpreted in furtherance of this purpose.

2. Responsibilities of the Port. The Port shall contribute Thirty Two Thousand Two Hundred Sixty and 00/100 Dollars ($32,260.00) (the "Grant Funds") to assist the Agency in funding the Project. The Port shall disburse the Grant Funds to the Agency no later than thirty (30) days after receipt of a complete and correct invoice(s) detailing those Project deliverables completed in accordance with Exhibit A.

3. Responsibilities of the Agency.

3.1 The Agency shall contribute local funds equivalent to at least fifty percent (50%) of the Grant Funds towards the Project.
3.2 The Agency may contract with local non-profits to complete the Project or elements of the Project; *provided,* that the Port shall not, under any circumstance, disburse the Grant Funds to any of the Agency's contractors or subcontractors.
3.3 The Agency shall complete the Project by December 31, 2021.

4. Term. This Agreement shall be become effective as of the date the Port executes this Agreement and shall terminate on December 31, 2021, unless earlier terminated under another provision of this Agreement.

5. Termination for Convenience. The Port may terminate this Agreement at any time for any reason, by giving the Agency thirty (30) days' written notice. In the event the Agency has completed any portion of the Project by the time it receives the Port's notice of termination, the Port shall pay the Agency the percentage of the Grant Funds attributable to the Agency's completed portion of the Project.

6. Termination for Default. Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Agency, the Port shall be entitled, by written or oral notice to the Agency, to terminate Agreement for breach of any of the terms and to have all other rights against the Agency by reason of the Agency's breach as provided by law.

7. Waiver. Failure at any time of the Port to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of the Port to enforce such provision at any subsequent time. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written amendment signed by the Parties

8. Partial Invalidity. If any provision of this Agreement is or becomes void or unenforceable by force or operation of law, all other provisions hereof shall remain valid and enforceable.

9. Indemnification and Hold Harmless Agreement. The Agency shall defend, indemnify, and hold harmless the Port, its Commissioners, officers, employees, and agents (hereafter, collectively, the "Port") from all liability, claims, damages, losses, and expenses (including, but not limited to attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of or related to the fulfillment of this Agreement; *provided,* however, if and to the extent that this Agreement is construed to be relative to the construction, alternation, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving or demolition in connection therewith, and therefore subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (i) the Port, and (ii) the Agency, its agents, or its employees, it is expressly agreed that the Agency's obligations of indemnity under this paragraph shall be effective only to the extent of the Agency's negligence. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this paragraph. This paragraph shall not be construed so as to require the Agency to defend, indemnify, or hold harmless the Port from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the Port.

In any and all claims against the Port, by any employee of the Agency, its agent, anyone directly or indirectly employed by either of them, or anyone for whose acts any of them may be liable, the indemnification obligation of this paragraph shall not be limited in any way by any limitation on the amount or type of damages compensation benefits payable by or for the Agency, or other person under applicable industrial insurance laws (including, but not limited to Title 51 of the Revised Code of Washington), it being clearly agreed and understood by the Parties hereto that the Agency expressly waives any immunity the Agency might have had under such laws. By executing this Agreement, the Agency acknowledges that the foregoing waiver has been mutually negotiated by the parties.

The Agency shall pay all attorneys' fees and expenses incurred by the Port in establishing and enforcing the Port's right under this paragraph, whether or not suit was instituted.

10. Comply with All Laws. The Agency shall at all times comply with all federal, state and local laws, ordinances and regulations, including but not limited to all environmental laws, which in any manner apply to the performance of this Agreement.

11. Integration. This Agreement, together with the attached Exhibit A, constitutes the entire agreement between the Parties and unless modified in writing by an amendment executed by the Parties, shall be implemented only as described herein.

12. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in King County.

13. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the Agency and the Port.

14. No Entity Created. The Parties agree that nothing in this Agreement shall be construed to create a joint entity between the Agency and the Port.

15. Notices. Notices to the Port shall be sent to the following address:

Port of Seattle
Economic Development Division
P. O. Box 1209
Seattle, WA 98111

Notices to the Agency shall be sent to the following address:

City of Des Moines
21630 11th Avenue S., Suite A
Des Moines, WA 98198

16. Audits and Retention of Records. The Agency in and make all books, records and documents (the "Records") relating to the performance of this Agreement open to inspection or audit by representatives of the Port or Washington State during the term of this Agreement and for a period of not less than six (6) years after termination of the Agreement; *provided,* that if any litigation, claim or audit arising out of, in connection with or related to this Agreement is initiated, the Agency shall retain such Records until the later of

(a) resolution or completion of litigation claim or audit; or (b) six (6) years after the termination of this Agreement.

17. Amendment. This Agreement may only be amended by written agreement of the Parties.

18. Dispute Resolution. The Parties shall use their best, good faith efforts to cooperatively resolve disputes that arise in connection with this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement as of the date first set forth above.

PORT OF SEATTLE	**CITY OF DES MOINES**
By: Suzanne Brown Purchasing Manager	By:
Signature	*Signature*
Date	*Date*

Attachment A – Scope of Work

Background:

The Port of Seattle Economic Development Partnership Program is an annual, cooperative economic development program to help fund local economic development initiatives across King County. Based on a per capita calculation, King County cities (except Seattle) may each receive between $5,000 and $65,000 based on the city's population. The maximum grant allocation for each city, with populations between 5,000 and 65,000 people, is based on one dollar per resident. Population estimates are determined by the Washington State Office of Financial Management. The Port uses the most recent population estimates at the start of the grant cycle. Cities with populations numbering less than 5,000 people are eligible to receive grant funds up to $5,000 and cities with populations numbering more than 65,000 people are eligible to receive grant funding up to $65,000. Grant funds require a 50 percent match of dollars or in-kind resources. In-kind resources can only be used for up to 25 percent of the grant award amount.

Project Description:

1. **Project Description:** Summarize the project(s) you plan to implement and explain how project(s) address COVID-19 economic issues in your city. Include a brief description of the project goal(s) and summary of COVID-19 economic impacts being addressed.

The City of Des Moines is seeking to fund three separate projects that utilizes a multifaceted approach to address the impacts of the COVID-19 pandemic. The projects focus having immediate and targeted impacts to our communities, far-reaching assistance programs with incentives to retain their businesses, and opportunities for new visitors and interested investors to see what the City has to offer.

The first of the three projects will be the continuation of the EATS program. Providing weekly checks ($2,500) to a different food service business in our community, while also providing 125 vouchers to seniors in our community. The second project will consist of the creation of a new loan program, offered specifically for our DM business community, with incentives for multi-year retention. The funding of this project will result in a robust program with public & private partnership (including the SBDC at Highline College) that provides an incredible amount of support for the business in need. The third project consists of both the establishment of a centralized website that provides a thorough overview of the tourism and economic development opportunities that exist in the City. This website will host the media created to provide a virtual tour of the city, with accompanied vignettes covering various themes. A service that has been greatly beneficial to the marketing of Des Moines.

2. **Brief Description Bullets:** Summarize the complete scope of work and goals briefly using 2 - 4 bullets. Please keep each bullet to 1 or 2 sentences. These bullets are meant to be a very brief synopsis the project(s) the Port of Seattle is funding in each city and may be used to describe each city's project(s) to the Port of Seattle Commission, to the public, and with local media.

   - The City will fund the EATS program for the remainder of 2021 to assist the Des Moines food service industry. EATS (Emergency Assistance to Seniors) provides $2,500 each week to a different restaurant/food service provider, who then provides meals to 125 seniors and veterans in our community. With this grant, the City will be using $10,000 of the award to fund the program, with the remaining $80,000 provided by the City.
   - The City will formulate a new small business loan program; that incentivizes retention over a multi-year period. The grant funding will allow the city to begin the process of coordinating with various partners to establish a facilitator and the policies and procedures that will govern the program. The City will also invest in the Small Business Development Center (SBDC) at Highline College, to serve as a support system for the businesses seeking assistance.
   - Tours provided by the City Manager are extremely valuable and have major impacts to the expansion of our economic development. Due to the social distancing requirements and advisements against travel, the City is considering alternative approaches to provide an authentic representation of what the City has to offer. Funding from the grant program will offer the city to create a website to serve as host to people's interest in the economic development and tourism that Des Moines has to offer. In addition, this funding will help create a virtual tour of the same one offered by our City Manager with comment provided by our city staff and community members.

3. **Project Scope of Work:** Outline project title or components, economic impacts of COVID-19 the project is addressing, project goals, project deliverables, and metrics (measurable outcomes) using the table below. View Appendix B for sample metrics, measures of success, and data sources. The table is used in the agreement between the Port of Seattle and each city.

Project title or component:	COVID-19 Economic Impacts:	Project goal(s):	Project deliverable(s) and estimated completion:	Metrics (measurable outcomes):
EATS	• The pandemic devastated the food service industry. This program directly addresses this need.	• Payments to businesses • Expansion to include businesses that have not been utilized in past offerings	• Funding through 2021 secured by May 2021 • Confirm efforts to include new business participants by May 2021 • Increase outreach to senior community by May 2021	• Number of new businesses • Detail number of partners/organizations sharing information
Creation of Loan Program	• Businesses are struggling to find impactful relief options that are still available	• Establishment of new program • Partner with nationally-recognized financial institution • Offer grant incentive	• Program launched by Summer 2021 • Agreement with financial intuition by June 2021 • Agreement with SBDC at Highline College by June 2021	• Number of businesses that will participate in the program.
Website/Video	• The City is unable to provide its very successful tours for investment and development by our City Manager	• Creation of new centralized website for tourism and economic development interests. • Production of a new drone-based tour video	• New website up and running by June 2021 • New drone-based Tour Video by June 2021	• Number of visits on new website • Number of views/shares on new tour video

4. **Connection to Port of Seattle interests**: Explain how your project benefits the Port of Seattle and ties to the Port's business interests?

   **Port business interests tie closely to the health of aviation, maritime/ logistics, manufacturing, and construction/ trades clusters. Tourism is another important industry to the Port of Seattle.*

In the past, the City of Des Moines, has aligned its efforts, through the Port grants, with the Century Agenda. This has included focus on redeveloping the Des Moines Marina to expand tourism/destination making/regional benefits for recreation/environmental enhancements and economic development. Now, given the impacts of COVID pandemic, our emphasis has shifted slightly to address ways to assist businesses survive and (going forward to thrive) even under the constraints of access during the pandemic. The City understands Port business interests tie to regional economic health and expanded tourism.

5. **Project Budget:** Identify each project budget category, total funds (including the monetary value of in-kind resources), Port of Seattle funds and City monetary and in-kind matching funds. Include the total funds from each column in the second to last row. Include the percentage contributions to the Port of Seattle's contribution in the last row. This table is used in the agreement between the Port of Seattle and each city.

Project:	Project Category (Please select one of the categories provided)	Port of Seattle Funds Awarded:	City Monetary Matching Funds:	City In-kind Matching Funds:	Total Funds (Including In-Kind):
EATS	Small Business Assistance	$10,000	$80,000	$0	$90,000
Creation of Loan Program	Small Business Assistance	$15,000	$7,000	$8,000	$30,000
Website/Video	Tourism	$7,260	$12,740	$0	$20,000
Total Funds:		**$32,260**	**$99,740**	**$8,000**	**$140,000**
Percentage contribution to Port Funds*:		**100%**	**309%**	**25%**	

*City monetary and in-kind matching funds must add up to at least 50% of the Port of Seattle funds awarded. In-kind resources can only be used for up to 25 percent of the grant award amount. See program guidelines for more details.

Note: Please submit all 2021 invoices with the Budget and Expenditure Excel report. As part of the application, please fill out the budget "Project Budget" (sheet 1) in the Excel worksheet. An image of the Excel worksheet is included below.

6. **Collaboration with partners**: Please identify any community organizations (chamber of commerce, neighborhood associations, Small Business Development Centers, SCORE, Greater Seattle Partners, etc.) you plan to work with to complete all or part of your project(s)?

   - Small Business Development Center (SBDC) located at Highline College

7. **Use of consultants or contractors**: If you plan to use consultants or contractors to complete all or part of the project, please identify the firm or type of firm you plan to hire for this project.

   - Matty Photo & Motion (drone provider)

Contact Information

City:	**City of Des Moines**
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