

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, November 16, 2023 - 6:00 PM**

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

COMMENTS FROM THE PUBLIC

COMMITTEE CHAIR REPORT

- Item 1. PUBLIC SAFETY & EMERGENCY MANAGEMENT

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

CONSENT AGENDA

- Item 1. CONSULTANT CONTRACT AMENDMENT #5 - JOSEPH DUSENBURY
Motion is to approve the Fifth Contract Amendment with Joseph Dusenbury in an amount not to exceed \$30,000 for management consulting services.

[Consultant Contract Amendment #5 - Joseph Dusenbury](#)
- Item 2. CONSULTANT CONTRACT AMENDMENT #13 - GRANT FREDRICKS
Motion is to approve Amendment #13 to the Contract with Grant Fredricks, continuing professional consulting services through December 31, 2024, with an increase of \$5,000 for 2023 (bringing the total not-to-exceed amount for 2023 services to \$55,000.00) and up to \$50,000 for 2024 services, and authorize the City Manager to sign the contract amendment substantially in the form submitted.

[Consultant Contract Amendment #13 - Grant Fredricks](#)
- Item 3. BARNES CREEK TRAIL - SOUTH 240TH STREET (16TH AVE S TO 20TH AVE S) - DESIGN AND RIGHT-OF-WAY SERVICES AGREEMENT

Motion 1 is to approve the Local Agency A&E Professional Services Consultant Agreement with KPG Psomas Inc. to provide engineering design and right-of-way acquisition services for the Barnes Creek Trail - 240th Street (16th Ave S to 20th Ave S) Improvement Project in the amount of \$659,787.58, and further authorize the City Manager to sign said Agreement substantially in the form as submitted.

Motion 2 is to accept the 2023-2025 WA State Legislative appropriation for the Barnes Creek Trail - South 240th Street (16th Ave S to 20th Ave S) Improvements Project in the amount of \$3,500,000, and authorize the City Manager to sign the Local Programs State Funding Agreement and Project Prospectus substantially in the form as submitted.

Motion 3 is to direct staff to have all of the existing overhead utilities relocated aerially as needed for construction of the Barnes Creek Trail - South 240th Street (16th Ave S to 20th Ave S) Improvements Project, waiving the requirement for undergrounding of utilities in accordance with DMMC 12.25.110.

[Barnes Creek Trail -South 24th Street \(16th Ave S to 20th Ave S\) - Design and Right-of-Way Services Agreement](#)

PUBLIC HEARING/CONTINUED PUBLIC HEARING

- Item 1. SV2023-02: STREET VACATION OF PUBLIC RIGHT-OF-WAY WITHIN CITY OF DES MOINES, KNOWN AS 10TH AVE SOUTH
Staff Presentation by Public Works Director Andrew Merges
[SV 2023-02 Street Vacation of Public Right-of-Way within City of Des Moines, known as 10th Ave South](#)
[11-16-2023 Street Vacation SV2023-02 TO](#)

NEW BUSINESS

NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

EXECUTIVE SESSION

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

NEXT MEETING DATE

December 14, 2023 City Council Regular Meeting

ADJOURNMENT

[Public Comment 11.16.2023](#)

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Consultant Contract Amendment #5 -
Joseph Dusenbury.

ATTACHMENTS:

1. Fifth Amendment
2. Original 2019 Contract

FOR AGENDA OF: 11/16/2023

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: 11/01/2023

CLEARANCES:

- ☒ City Clerk _____
- ☐ Community Development _____
- ☐ Courts _____
- ☐ Emergency Management _____
- ☒ Finance *MM 21*
- ☐ Human Resources _____
- ☒ Legal */s/ TG*
- ☒ Marina *SM*
- ☐ Police _____
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

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

Purpose and Recommendation

The purpose of this agenda item is to seek council approval to extend the current contract between the City of Des Moines and Joseph Dusenbury. The following motion will appear on the Consent Calendar:

Suggested Motion

Motion 1 : "I move to approve the Fifth Contract Amendment with Joseph Dusenbury in an amount not to exceed \$30,000 for management consulting services. "

Background

Joe Dusenbury has been providing Management Consulting services under contract for the City and Marina since 2019 following his retirement.

Discussion

Mr. Dusenbury has currently been working 4-16 hours per week depending on project demands. His institutional knowledge and years of experience in the Marine industry along with working with State and Federal agencies continues to provide a benefit to the City. Over the past couple years Joe finalized projects such as, Redondo Docks and Guest Moorage Electrical upgrades which were heavily involved with Department of Natural Resources, and the Recreation and Conservation Office. Joe's knowledge with new mitigation and permitting requirements will continue to be valuable in helping with the new Tenant Restroom, and his possible assistance with the Dock replacement project, including Marina redevelopment. Because of the effects of Covid 19, design changes, new State and Federal requirements, Joe continues to work on the mitigation for the Dredging project that has not been finalized.

Alternatives

Council may choose not to approve the contract amendment in which case Mr. Dusenbury contract will expire in early February 2024, at which time other staff will be required to back fill to finalize current projects.

Financial Impact

The 2024 Marina budget has capacity to accommodate the Amended contract in the amount not to exceed \$30,000.

Recommendation

Staff recommends that council approve the proposed contract Amendment.

**PROFESSIONAL SERVICES CONTRACT AMENDMENT #5
BETWEEN
THE CITY OF DES MOINES AND JOSEPH DUSENBURY**

THIS AMENDMENT #5 is entered into on this 16th day of November 2023, pursuant to that certain Contract entered into on the 1st day of February 2019 and subsequent amendments between the **CITY OF DES MOINES, WASHINGTON** (hereinafter “City”) and **JOSEPH DUSENBURY** (hereinafter “Mr. Dusenbury” or “Consultant”).

The parties herein agree that the contract dated the 1st of February, 2019 and subsequent amendments shall remain in full force and effect, except for the amendments set forth as follows:

1. Section 4 of the contract dated the 1st of February 2019 and subsequent amendments are hereby amended to read as follows:

4. Compensation. In consideration for the complete and faithful performance of the Contract, Mr. Dusenbury shall be paid as follows: accepting written changes and modifications agreed upon, the Contractor shall be paid Seventy five dollars (\$75.00) per hour for consulting services. The Contractor shall be reimbursed at actual cost for expenses such as parking fees, mileage to and from meetings required for the continuation or completion of projects and other miscellaneous expenses. Reimbursements are subject to the approval of the Harbormaster and the City Manager. The consultant is expected to work on average 4 to 16 hours per week, Depending on the requirements of the projects underway. The total compensation paid under this contract for the period from January 1st, 2024 to December 31st 2024 shall not exceed \$30,000 without prior written approval.

2. Section 5 of the contract dated the 1st of February 2019 and subsequent amendments are hereby amended to read as follows:

5. Term. The term of this Contract shall be from January 1, 2019 to December 31, 2024. This Contract may be extended upon written agreement of both parties.

Except as modified hereby, all other terms and conditions of the contract dated February 1, 2019 and subsequent amendments, remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Addendum as of the
dates first above written.

JOSEPH H. DUSENBURY: By: _____ <i>(signature)</i> Print Name: <u>Joseph H. Dusenbury</u> Vendor DATE: _____	CITY OF DES MOINES: By: _____ <i>(signature)</i> Print Name: <u>Michael Matthias</u> Its <u>City Manager</u> DATE: _____ Approved as to form: _____ City Attorney DATE: _____
NOTICES TO BE SENT TO: Joseph H. Dusenbury: dba Consulting P.O. Box 98646 Des Moines, WA 98198 206-870-6554 (cellphone) mypeggysue@me.com	NOTICES TO BE SENT TO: CITY OF DES MOINES: Adrienne Johnson-Newton Assistant City Manager City of Des Moines 21630 11th AVE S, Suite A Des Moines, WA 98198

**FIRST ADMINISTRATIVE CONTRACT AMENDMENT/ADDENDUM
CONTRACT FOR SERVICES BETWEEN
THE CITY OF DES MOINES AND JOSEPH DUSENBURY**

THIS ADMINISTRATIVE AMENDMENT/ADDENDUM is entered into on this 31ST day of December 2019, pursuant to that certain Contract entered into on the 1st day of February 2019 between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City") and **JOSEPH DUSENBURY** (hereinafter "VENDOR").

The parties herein agree that the contract dated the 1st of February, 2019 shall remain in full force and effect, except for the amendments/addendums set forth as follows:

1. Section 4 of the contract dated the 1st of February 2019 is hereby amended to read as follows:

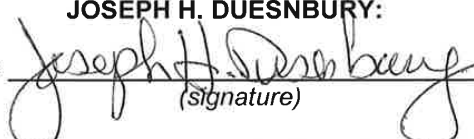
4. Compensation. In consideration for the complete and faithful performance of the Contract, Mr. Dusenbury shall be paid as follows: accepting written changes and modifications agreed upon, the Contractor shall be paid fifty dollars (\$50.00) per hour for consulting services. The Contractor shall be reimbursed at actual cost for expenses such as parking fees, mileage to and from meetings required for the continuation or completion of projects and other miscellaneous expenses. Reimbursements are subject to the approval of the Harbormaster and the Chief Operation Officer. The consultant is expected to work on average 4 to 16 hours per week, Depending on the requirements of the projects underway. The total compensation paid under this contract for the period from February 1, 2019 to December 31, 2019 shall not exceed \$25,000 without prior written approval, and the total compensation paid under this contract for the period from January 1, 2020 to December 31, 2020 shall not exceed \$25,000 without prior written approval.

2. Section 5 of the contract dated the 1st of February 2019 is hereby amended to read as follows:

5. Term. The term of this Contract shall be from January 1, 2019 to December 31, 2020. This Contract may be extended upon written agreement of both parties.

Except as modified hereby, all other terms and conditions of the contract dated February 1, 2019, remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Addendum as of the dates first above written.

JOSEPH H. DUESNBURY: By: <u></u> (signature) Print Name: <u>Joseph H. Dusenbury</u> Vendor DATE: <u>12/31/19</u>	CITY OF DES MOINES: By: <u></u> (signature) Print Name: <u>Michael Matthias</u> Its <u>City Manager</u> DATE: <u>12-31-19</u> Approved as to form: <u></u> City Attorney DATE: <u>12/31/2019</u>
NOTICES TO BE SENT TO: Joseph H. Dusenbury: dba Consulting P.O. Box 98646 Des Moines, WA 98198 206-870-6554 (cellphone) mypeggysue@me.com	NOTICES TO BE SENT TO: CITY OF DES MOINES: Daniel J. Brewer, PE, PTOE Chief Operations Officer City of Des Moines 21630 11 th AVE S, Suite A Des Moines, WA 98198 206-870-6554 (telephone) 206-870-6540 (facsimile)

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Consultant Contract Amendment #13
– Grant Fredricks.

ATTACHMENTS:

1. Proposed Amendment #13 to Professional Services Agreement with Grant Fredricks
2. Services Agreement with Grant Fredricks

FOR AGENDA OF: November 16, 2023

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 7, 2023

CLEARANCES:

- ☐ City Clerk N/A
- ☒ Community Development Quinn E. Sallap
- ☐ Courts N/A
- ☐ Director of Marina Redevelopment N/A
- ☐ Emergency Management N/A
- ☒ Finance AM 28
- ☐ Human Resources N/A
- ☒ Legal /s/ TG
- ☐ Marina N/A
- ☐ Police N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☒ Public Works Schallheim

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is for the City Council to approve a contract amendment with Grant Fredricks for additional 2023 and 2024 consulting services related to the Sound Transit's (ST) Federal Way Link Extension (FWLE). Funds for the proposed amendment/addendum are available in the 2023 adopted budget and proposed 2024 budget, provided by the Services Agreement between the City and Sound Transit for City FWLE project services through 2024. The following motion will appear on the Consent Agenda:

Suggested Motion

Motion: "I move to approve Amendment #13 to the Contract with Grant Fredricks, continuing professional consulting services through December 31, 2024, with an increase of \$5,000 for 2023 (bringing the total not-to-exceed amount for 2023 services to \$55,000.00) and up to \$50,000 for 2024 services, and authorize the City Manager to sign the contract amendment substantially in the form submitted."

Background

Mr. Fredricks has been providing management consulting services under contract since January 2013 following his retirement from the City in November 2012. As a State Personnel System (PERS) 2 retiree, he may work up to 867 hours a year for employers covered by PERS such as the City. In 2013 he worked a total of 800 hours, 482 hours in 2014, 410 hours in 2015, 494 hours in 2016, 500 hours in 2017, 682 hours in 2018, 459 hours in 2019, 500 hours in 2020, 466 hours in 2021, 366 hours in 2022, and up to 305 hours in 2023 and 277 hours in 2024 if the amendment is approved. All 2023 time was spent on FWLE and will continue to be fully reimbursed by Sound Transit through 2024 under the terms of the City's agreement (Amended Task Order #3).

The City's Services Agreement with Sound Transit was approved by the Council and provided for a series of task orders to be executed for reimbursable City support on the FWLE project. The Amended Task Order #3 provides \$3.525 million to cover City costs through 2024.

Discussion

Mr. Fredricks has been working remotely from home on parts of 15 days per month on average since the City Hall COVID-19 closures and will continue to work from home. He currently represents the City with Sound Transit as a City engineering project manager/coordinator.

During 2023, Mr. Fredricks has been working under a \$50,000 (277 hours) City Council-approved contract on FWLE planning, design review and permitting, managing agreements with Sound Transit, and working with Highline College on the College Way Connection Project (CWCP) in the College East Parking Lot. Mr. Fredricks' hourly rate was increased to \$180 for 2023 and will remain unchanged through 2024.

The FWLE-related work in 2023 has become less complex and time consuming than in the past but is still more than anticipated when the 2023 contract was approved last December. It has included reviewing detailed design builder plans and designs; completing Sound Transit's rights-of-way vacations and dedications; supporting City FWLE-designated task force staff through design and construction; and administering ST agreements.

In 2024, he will be helping on FWLE project closeout, completion of CWCP Phase 2 construction on and to Highline College, construction of street ends and rehabilitation of haul routes in Pacific Ridge, closeout of construction with Kiewit and Sound Transit, and final preparation for opening for light rail service in 2026 or 2027.

Consultant Selection Process

Professions outside the fields described in RCW 39.80 may provide consulting services such as long-range planning and studies, project management, economic analyses, and real estate negotiations. These consulting services are provided through personal service agreements in accordance with RCW 39.29. For professional service contracts, like the one for Mr. Fredricks, the City can select or appoint based on the specific experience of the individual and the proposed work. There are no other specific selection requirements for professional service contracts.

Alternatives

Council may choose not to approve the 2023 contract amendment in which case Mr. Fredricks will continue to work through early December when his current contract authority is reached. Other staff would be required to fill his assignments through the end of the year and in 2024.

Financial Impact

The 2023 budget has enough capacity to accommodate up to \$5,000 of additional 2023 spending because Sound Transit fully reimburses his time as provided for in Amended Task Order #3. The proposed 2024 Budget will accommodate up to \$50,000 in services provided by this contract as proposed anticipating that these costs will continue to be reimbursed by ST in accordance with Amended Task Order #3 authorized by the City Council-approved Services Agreement with ST.

Recommendation

Staff recommends that the Council approve the proposed contract Amendment.

Council Committee Review

Not applicable.

CONTRACT AMENDMENT 13
CONTRACT FOR SERVICES BETWEEN
THE CITY OF DES MOINES AND GRANT FREDRICKS

THIS AMENDMENT is entered into on this ____ of _____, 2023, pursuant to that certain Contract entered into on the 2nd day of January, 2014 and subsequent amendments between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **GRANT FREDRICKS** (hereinafter "VENDOR").

The parties herein agree that the Contract dated January 2, 2014, shall remain in full force and effect, except for the amendments set forth as follows:

I) **SECTION II** of Contract is hereby amended to read as follows:

II. **TIME OF COMPLETION.** Upon the effective date of this Amendment, Vendor shall complete the work and provide all goods, materials, and services by December 31, 2024.

II) **SECTION III** of Contract is hereby amended to read as follows:

III. **COMPENSATION.** The City shall pay the Vendor an amount not to exceed \$55,000 for services performed in 2023 and not to exceed \$50,000 for services performed in 2024 at a rate of \$180.00 per hour for the goods materials, and services contemplated in this Agreement. Vendor shall invoice the City not later than the 5th of the following month. The invoice will include an itemized work summary.

Except as modified hereby, all other terms and conditions of contract dated January 2, 2014, remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed Amendment 12 as of the date first above written.

SERVICES AGREEMENT between the City of Des Moines and Grant Fredricks

THIS AGREEMENT is made by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Grant Fredricks dba Fredricks Management Consulting (hereinafter the "Vendor") as a personal services contract not to exceed \$50,000 in value and expiring December 31, 2014.

AGREEMENT

I. DESCRIPTION OF WORK.

Vendor shall provide the following goods and materials and/or perform the following services for the City. Working with other City staff, assist in:

1. Planning for the extension of light rail through Des Moines.
2. Developing the Des Moines Creek Business Park.
3. Updating the Zoning Code along the Pacific Highway South corridor and in other commercial zones in the City.
4. Helping promote economic development.
5. Commercially developing the Marina.
6. Advising the City Council on policy and other matters.
7. Working on other City Manager assignments as directed.

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 Agreement, Vendor shall complete the work and provide all goods, materials, and services by December, 31, 2014.

III. COMPENSATION. The City shall pay the Vendor an amount not to exceed \$50,000, at a rate of \$120.00 per hour, for the goods, materials, and services contemplated in this Agreement. Vendor shall invoice the City not later than the 5th of the following month. The invoice will include an itemized work summary.

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 Agreement, 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 Agreement price specified above. The City further reserves its right to deduct these additional costs incurred to complete this Agreement 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. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Agreement and that the Vendor has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement.

V. TERMINATION. Either party may terminate this Agreement, 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 Agreement.

VI. 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 Agreement. 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 Agreement, section XIV(D), 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 adjustment. 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 VII, 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.

VII. 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 Agreement 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 Agreement.

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 Agreement 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 Agreement.
- 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).

VIII. LIMITATION OF ACTIONS. VENDOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS AGREEMENT 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.

IX. WARRANTY. This Agreement 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 or shall pay all costs incurred by the City in order to accomplish the correction.

X. DISCRIMINATION. In the hiring of employees for the performance of work under this Agreement 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.

XI. **INDEMNIFICATION.** Vendor shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Vendor's performance of this Agreement, except for that portion of the injuries and damages caused by the City's negligence.

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

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE VENDOR'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.

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

XII. **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.

XIII. MISCELLANEOUS PROVISIONS.

A. Recyclable Materials. The city recommends that its contractors and consultants use recycled and recyclable products whenever practicable.

B. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement 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.

C. Resolution of Disputes and Governing Law. This Agreement 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 Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court,

King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. 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, including all appeals, 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 XI of this Agreement.

D. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, 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 Agreement or such other address as may be hereafter specified in writing.

E. Assignment. Any assignment of this Agreement 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 Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

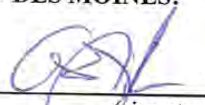
F. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Vendor.

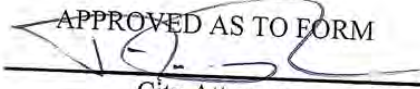
G. Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a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

H. 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 Agreement or accruing out of the performance of those operations.

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

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

VENDOR: By: <u></u> (signature) Print Name: Grant L. Fredricks DATE: <u>1/2/14</u>	CITY OF DES MOINES: By: <u></u> (signature) Print Name: Anthony A. Piasecki Its: City Manager DATE: <u>12/24/13</u>
NOTICES TO BE SENT TO: VENDOR: Grant L. Fredricks 9020 Valley Green Dr. SE Olympia, WA 98513 (360) 584-3164 (cell phone) grantita@ix.netcom.com	NOTICES TO BE SENT TO: CITY OF DES MOINES: Tony Piasecki, City Manager City of Des Moines 21630 11th Ave. So., Suite A (206) 870-6541 (telephone) (206) 870-6540 (facsimile)


 APPROVED AS TO FORM
 City Attorney

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Barnes Creek Trail – South 240th
Street (16th Ave S to 20th Ave S) –
Design and Right-of-Way Services
Agreement

FOR AGENDA OF: November 16, 2023

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 7, 2023

ATTACHMENTS:

1. KPG Psomas Inc. Local Agency A&E
Professional Services Consultant
Agreement – BCT S 240th 16th to 20th
2. WA State Appropriation Letter
3. Local Programs State Funding Agreement
and Project Prospectus
4. 2024 – 2029 CIP Budget Worksheet

CLEARANCES:

- ☐ City Clerk _____
- ☐ Community Development _____
- ☐ Courts _____
- ☐ Director of Marina Redevelopment _____
- ☐ Emergency Management _____
- ☒ Finance *11/21*
- ☐ Human Resources _____
- ☒ Legal */S/ TG*
- ☐ Marina _____
- ☐ Police _____
- ☐ Parks, Recreation & Senior Services _____
- ☒ Public Works *11/21*

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

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval for the Local Agency A&E Professional Services Consultant Agreement (Attachment 1) with KPG Psomas Inc. to provide engineering design and right-of-way acquisition services for the Barnes Creek Trail – 240th Street (16th Ave S to 20th Ave S) Improvements Project, seek approval to accept the 2023-2025 WA State Legislative appropriation in the amount of \$3,500,000, and to direct staff to have all existing overhead utilities relocated aerially as needed for construction of the Barnes Creek Trail – South 240th Street (16th Ave S to 20th Ave S) Improvements Project. The following motion(s) will appear on the Consent Agenda. The following motions will appear on the Consent Agenda:

Suggested Motion(s)

Motion 1: “I move to approve the Local Agency A&E Professional Services Consultant Agreement with KPG Psomas Inc. to provide engineering design and right-of-way acquisition services for the Barnes Creek Trail – 240th Street (16th Ave S to 20th Ave S) Improvement Project in the amount of \$659,787.58, and further authorize the City Manager to sign said Agreement substantially in the form as submitted.”

Motion 2: “I move to accept the 2023-2025 WA State Legislative appropriation for the Barnes Creek Trail – South 240th Street (16th Ave S to 20th Ave S) Improvements Project in the amount of \$3,500,000, and authorize the City Manager to sign the Local Programs State Funding Agreement and Project Prospectus substantially in the form as submitted.”

Motion 3: “I move to direct staff to have all of the existing overhead utilities relocated aerially as needed for construction of the Barnes Creek Trail – South 240th Street (16th Ave S to 20th Ave S) Improvements Project, waiving the requirement for undergrounding of utilities in accordance with DMMC 12.25.110.”

Background

Motion #1 – Professional Services Consultant Agreement

The Barnes Creek Trail – South 240th Street (16th Ave S to 20th Ave S) Improvements Project is a combined project of two existing elements of the adopted City of Des Moines Comprehensive Transportation Plan (CTP), Transportation Improvement Plan (TIP), and Capital Improvement Plan (CIP). This project contains the unfinished section of the South Segment of the Barnes Creek Trail between 16th Ave South and Highline College and Segment 2 of the South 240th Street Corridor Improvements between 16th Ave South and 20th Ave South.

The Barnes Creek Trail is a planned 1.9-mile long, multi-use trail through the center of the City of Des Moines, creating a north-south connection between the Des Moines Creek Trail and Highline College. The Barnes Creek Trail Project is divided into (3) three segments: North Segment (S 216th St to S 220th St), Central Segment (S 220th St to S Kent-Des Moines Rd), and South Segment (S Kent-Des Moines Rd to 20th Ave S).

In 2019, the Sound Transit Board of Directors awarded the City a Sound Transit System Access Fund grant in the amount of \$1.9 Million to help ensure non-motorized access to the new station adjacent to Highline College. This grant targets supporting the future construction of the Barnes Creek Trail – South Segment. As part of the Sound Transit program application and review process, King County was a key stakeholder demonstrating financial support thru their Safe Routes to Transit Program. King County Metro partnered with the City and provided \$120,000 towards the design of the Barnes Creek Trail/South 240th Street Improvements to ensure successful delivery of the future Sound Transit investment.

Currently, the City has completed 85% design for the 1.9-mile long Barnes Creek Trail in partnership with the Federal Highway Administration (FHWA) thru regional grants. This work has consisted of obtaining a trail easement thru the historic SR509 Right of Way (ROW), obtaining National Environmental Policy Act (NEPA) approval, and preparing the project for future ROW acquisition. This work focuses on multiuse trail improvements as stipulated by the FHWA grants. While not designed, review of adjacent ROW improvements via long-range plans occurred as part of project development, which include elements such as roadways, utilities, sidewalks, bike lanes, etc.

With the help of the King County Safe Routes to Transit Program grant, the City was able to expand the corridor improvements and provide for 30% design and permit identification to tie-in the current multiuse trail design with the roadway, utilities, sidewalks, bike lanes, illumination etc. for 240th Street between 16th Ave S and 20th Ave S. This allowed the City to not only ensure the multiuse trail is forward compatible with long-term multimodal corridor improvements per the Capital Improvement Plan (CIP) and Transportation Improvement Plan (TIP), but will more importantly position the entire project as a corridor improvement which will be eligible for a wider range of funding partnerships. The City attempted to seek a grant from the Transportation Improvement Board (TIB), but unfortunately was not successful in the 2021 application round.

Motion #2 – WA State Legislative Appropriation

In late 2022, the City prepared a capital appropriation request for the Barnes Creek Trail South Segment Project which included improvements for the South 240th Street corridor between 16th Ave So and 20th Ave S. Staff was notified on May 19, 2023 that the appropriation request, in the amount of \$3,500,000, was awarded and included in the legislative Capital Budget for the 2023-2025 biennium (Attachment 2).

Motion #3 – Utility Undergrounding Requirement

It is the policy of the City to require the underground installation of all new or relocated electrical and communication franchise facilities on streets undergoing roadway improvements. Generally, under the various franchise agreements, utility undergrounding is a shared cost with the City. This franchise utility undergrounding policy has expectations that apply to City Public Work's projects.

The Des Moines Municipal Code contains the following section regarding utility undergrounding:

12.25.110 Improvement of Streets – Utility Undergrounding.

The City Council, when ordering the improvement of a street, shall determine whether the relocation of electrical and communication systems underground is required, and if so, the manner of payment. [Ord. 1578 & 83,2013.]

The City Council has previously waived undergrounding requirements on Public Work's projects located at the following locations:

- 16th Ave South between South 260th Street and South 272nd Street
- South 268th Street between 16th Ave South and Pacific Highway South
- 24th Ave South between South 223rd Street and Kent-Des Moines Road South
- North Hill Elementary Walkway Improvements Project

These projects provided improved connectivity and safety for both pedestrian and vehicular users. Aerial facilities on all of the projects listed above were relocated behind newly constructed sidewalks in order to limit their impact to pedestrians and roadway users.

Discussion

Motion #1 – Professional Services Consultant Agreement

In the 2022 Washington State Legislative Session, the City of Des Moines was awarded \$3.5 Million (Attachment 3) towards the design, right-of-way, and construction of the expanded Barnes Creek Trail/South 240th Street Improvements – South Segment between 16th Ave S and 20th Ave S. This capital appropriation has now provided the necessary resources to fully fund the full corridor improvements which incorporate the South 240th Street needed improvements between 16th Ave S and 20th Ave S.

Since the capital appropriation is going to be administered through WSDOT (Washington State Department of Transportation), the City was required to go through a competitive process for consultant services. In late April 2023, the City advertised a request for qualifications (RFQ) from capable consultant firms. The review and selection process took place through the month of June and the selection team selected KPG Psomas as the most qualified firm to complete the corridor design and provide right-of-way acquisition services. The consultant engineering design and right-of-way services agreement (Attachment 1) will update the design to a full corridor improvement and will provide updated right-of-way plans and the necessary construction plans ready for public advertisement.

Specific elements of work included within the Consultant Services Agreement include:

- Preliminary Engineering (Survey, Geotechnical, Utility Coordination, Cultural and Historical Resources Survey)
- Environmental Permitting (SEPA)
- Final Design (TESC, Demolition, Roadway Plans, Storm Drain Plans, Channelization, ADA Pedestrian Facilities, Driveway Plans, Signal and Illumination Plans, Enhanced Crossing Details, Retaining Wall Plans, Traffic Control Plans)
- Right-of-Way Acquisition Services

The Professional Services Agreement with KPG Psomas Inc. will position the project to be ready for construction bid advertisement in late 2024/early 2025 in order to take advantage of the construction season in 2025.

Motion #2 – WA State Legislative Appropriation

The Local Programs State Funding Agreement and Project Prospectus (Attachment 3) between WSDOT and the City allows for reimbursement of grant funding.

Motion #3 – Utility Undergrounding Requirement

DMMC 12.25.110 allows for the City Council, when ordering the improvement of a street, to determine whether the undergrounding of relocated electrical and communication systems is required. By proceeding with no undergrounding of utilities, the project would be able to progress within the constraints of the current CIP budget. Approximately \$650,000 has been estimated for undergrounding utilities, however this estimate may not be enough to cover the full costs of undergrounding. Staff will evaluate the cost of undergrounding and implement if funding is available. At this early stage of the project it is unclear if the current project estimate will be adequate and the physical pedestrian and roadway improvements take priority in being constructed. If the costs of undergrounding remain within this initial budget, staff will work to underground the utilities, however, additional funding beyond this estimate is not supported at this time. The WA State Appropriation award does not cover the costs associated with undergrounding of utilities.

Alternatives

Motion #1 – Professional Services Consultant Agreement

The City Council could elect not to approve the Professional Services Agreement with KPG Psomas Inc. for engineering design and right-of-way acquisition services for the Project. The City does not have adequate resources to perform engineering design and right-of-way acquisition services and the Project would be placed on hold. This will delay the project as well as jeopardize the current and any future WSDOT project funding opportunities as well as the Sound Transit System Access funds awarded.

Motion #2 – WA State Legislative Appropriation

The City Council could elect not to accept the WA State Legislative Appropriation and therefore not move forward with the project. This would result in forfeiting the appropriation funding.

Motion #3 – Utility Undergrounding Requirement

The City Council could elect not to waive the requirement for the undergrounding of utilities in accordance with Chapter 12.25.110 of the DMMC and direct staff to review all available funding resources for the potential full completion of the undergrounding of utilities. This could potentially delay the completion of the design of the project and potentially place the WA State Appropriation funds at risk.

Financial Impact

Motion #1 – Professional Services Consultant Agreement

The City's adopted CIP Budget Worksheets include revenue to achieve full funding for this Consultant Services Contract (Attachment 4).

Motion #2 – WA State Legislative Appropriation

Funding sources for this project will be realized through CIP funds as shown on the approved CIP Budget Worksheet (Attachment 4).

Motion #3 – Utility Undergrounding Requirement

The Project will not incur additional costs beyond what is currently estimated that is associated with Franchise Utility Undergrounding.

Recommendation

Staff recommends adoption of the motion(s).

Council Committee Review

This project has been discussed during the Transportation Improvement Plan (TIP) and Capital Improvement Plan (CIP) public hearings and during Transportation Committee CIP updates.

Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement

Agreement Number:

Firm/Organization Legal Name (do not use dba's): KPG Psomas Inc.	
Address 2502 Jefferson Avenue, Tacoma, WA 98402	Federal Aid Number
UBI Number 604-635-123	Federal TIN or SSN Number 95-2863554
Execution Date	Completion Date June 30, 2024
1099 Form Required ☐ Yes ☒ No	Federal Participation ☐ Yes ☒ No
Project Title BCT S 240th 16th to 20th	
Description of Work The following scope of work outlines the effort required to complete final design for Barnes Creek Trail and Roadway design on S 240th St from 16th Ave S to 20th Ave S. This scope of work includes final design for improvements to S 240th and Barnes Creek Trail (BCT) on the north side of S 240th St, roadway widening on the south side of S 240th St east of 19th Ave S and replacement of curb gutter and sidewalk on the south side of S 240th St.	
☐ Yes ☐ Yes ☐ Yes ☐ Yes	☒ No DBE Participation ☒ No MBE Participation ☒ No WBE Participation ☒ No SBE Participation
Total Amount Authorized: \$ 649,787.58 Management Reserve Fund: \$ 10,000.00 Maximum Amount Payable: \$ 659,787.58	

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

Agreement Number:

THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on page one (1) of this AGREEMENT, between the City of Des Moines hereinafter called the "AGENCY," and the "Firm / Organization Name" referenced on page one (1) of this AGREEMENT, hereinafter called the "CONSULTANT."

WHEREAS, the AGENCY desires to accomplish the work referenced in "Description of Work" on page one (1) of this AGREEMENT and hereafter called the "SERVICES;" and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days' notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

Agreement Number: _____

Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26, shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY's "DBE Program Participation Plan" and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absents of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C – Preparation and Delivery of Electronic Engineering and other Data."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:

Name: R. Brandon Carver
Agency: City of Des Moines
Address: 21650 11th Ave South
City: Des Moines State: WA Zip: 98198
Email: Bcarver@desmoineswa.gov
Phone: 206-293-1116
Facsimile: N/A

If to CONSULTANT:

Name: Terry Wright
Agency: KPG Psomas Inc.
Address: 2502 Jefferson Avenue
City: Tacoma State: WA Zip: 98402
Email: Terry.wright@psomas.com
Phone: 253-627-0720
Facsimile: N/A

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled "Completion Date."

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

Agreement Number:

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES, specified in Section II, "Scope of Work". The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov). The estimate in support of the Cost Plus Fixed Fee amount is attached hereto as Exhibits "D" and "E" and by this reference made part of this AGREEMENT.

A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, indirect cost rate, and direct non-salary costs.

1. Direct (RAW) Labor Costs: The Direct (RAW) Labor Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.
2. Indirect Cost Rate (ICR) Costs: ICR Costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the ICR rates shown in attached Exhibits "D" and "E" of this AGREEMENT. Total ICR payment shall be based on Actual Costs. The AGENCY agrees to reimburse the CONSULTANT the actual ICR costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.

A summary of the CONSULTANT'S cost estimate and the ICR percentage is shown in Exhibits "D" and "E", attached hereto and by this reference made part of this AGREEMENT. The CONSULTANT (prime and all A&E sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm's fiscal year, an ICR schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the ICR rate for billings received and paid during the fiscal year represented by the ICR schedule. It shall also be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's ICR cost to reflect the actual rate. The ICR schedule will be sent to Email: ConsultantRates@wsdot.wa.gov.

Failure to supply this information by either the prime CONSULTANT or any of their A&E sub-consultants shall cause the AGENCY to withhold payment of the billed ICR costs until such time as the required information is received and an overhead rate for billing purposes is approved.

The AGENCY's Project Manager and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual ICR rate, if they so desire.

3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. (excluding Meals, which are reimbursed at the per diem rates identified in this section) These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

Agreement Number:

4. Fixed Fee: The Fixed Fee, which represents the CONSULTANT'S profit, is shown in attached Exhibits "D" and "E" of this AGREEMENT. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
 5. Management Reserve Fund (MRF): The AGENCY may desire to establish MRF to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the MRF is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, "Extra Work."
 6. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the MRF. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the ICR and calculated fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, "General Requirements" of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct (RAW) Labor, Direct Non-Salary, and allowable ICR Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed Direct (RAW) Labor costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, Direct (RAW) Labor rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit; all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) working days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

Agreement Number: _____

D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and/or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub-consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fixed fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgement between the parties.

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's

Agreement Number: _____

Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964
(42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973
(23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973
(29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975
(42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987
(Public Law 100-259)
- American with Disabilities Act of 1990
(42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged and any appropriate fixed fee percentage at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to

Agreement Number:

date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs and appropriate fixed fee percentage in accordance with the termination for other than default clauses listed previously.

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

Agreement Number: _____

XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold The State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and /or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated between the Parties.

Agreement Number:

Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: R. Brandon Carver
Agency: City of Des Moines
Address: 21650 11th Ave. South
City: Des Moines State: WA Zip: 98198
Email: BCarver@desmoineswa.gov
Phone: 206-293-1116
Facsimile: N/A

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT amount or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

Agreement Number: _____

The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V "Payment Provisions" until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment," hereafter referred to as "CLAIM," under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI "Disputes" clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the Agency

Attached hereto as Exhibit "G-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "G-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "G-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "G-4" Certificate of Current Cost or Pricing Data. Exhibit "G-3" is required only in AGREEMENT's over one hundred thousand dollars (\$100,000.00) and Exhibit "G-4" is required only in AGREEMENT's over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III "General Requirements" prior to its performance of any SERVICES under this AGREEMENT.

Agreement Number: _____

XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, State security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Agreement Number: _____

Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties.

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT; or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and/or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENT 's, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbings, recordings, visual displays, photographs, minutes of meetings,

Agreement Number:

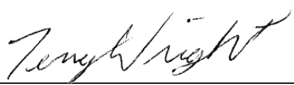
tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.



Signature Terry Wright, Vice President

6/26/2023
Date

Signature

Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

Agreement Number: _____

Exhibit A
Scope of Work

Project No.

See Exhibit A, next page.

Agreement Number:

EXHIBIT A



**City of Des Moines
Barnes Creek Trail
South 240th Street – 16th Ave S to 20th Ave S
Final Design**

**KPG
Scope of Work
June 19, 2023**

INTRODUCTION

The following scope of work outlines the effort required to complete final design for Barnes Creek Trail and Roadway design on S 240th St from 16th Ave S to 20th Ave S. This scope of work includes final design for improvements to S 240th and Barnes Creek Trail (BCT) on the north side of S 240th St, roadway widening on the south side of S 240th St east of 19th Ave S and replacement of curb gutter and sidewalk on the south side of S 240th St. This includes the following major design components:

1. North side of S 240th St – Finalize curb profile, evaluate locations for planter elimination, provide BCT back of walk elevations and grading limits.
2. Design of structural earth and soldier pile walls to support the BCT widening.
3. South side of S 240th St – Finalize curb profile, back of walk elevations and grading limits.
4. Finalize driveway profiles and property restoration limits and types.
5. Intersection of 16th Ave S – Modify NE corner to match BCT improvements, modify SE corner to match proposed curb, gutter, and sidewalk, update pedestrian signals to the latest ADA guidelines and reinstall loop detection.
6. Intersection of 20th Ave S – will be a three-lane signalized intersection with an eastbound to northbound left turn lane, a bike lane in the eastbound direction.
7. Storm drainage modification and replacements along the corridor. The system shall comply with the most recent City requirements for treatment and detention.
8. Final design of a new illumination system along the corridor.
9. Landscaping design along the corridor.
10. Irrigation will be provided for landscape within right-of-way.
11. Identify corridor ROW needs and prepare ROW plans and draft PFE.

The following assumptions were made when preparing the scope and budget:

- Final Design will be completed by the end of 2022.
- Assume funding will be local and WA State Capital Appropriation.
- Assumes existing NEPA can be adopted for the project, will need an updated Cultural Resources report.
- ROW acquisition services are not included in this scope of work.

The following scope of work includes the effort to complete the above-described improvements:

*City of Des Moines
S 240th St – 16th Ave S to 20th Ave S
Final Design*

*KPG Project No. 9DES010100
6/20/2023*

EXHIBIT A



SCOPE OF WORK

Task 1 – Management/Coordination/Administration

This task covers the effort required to manage the contract and to ensure that the project meets the client's expectations for schedule, budget, and quality of product:

- 1.1 Provide project administrative services including:
 - Project set-up and agreement execution
 - Execution of subconsultant agreements
 - Preparation of monthly progress reports and invoices
 - Maintaining project files
 - Record keeping and project closeout
- 1.2 Provide project management services including:
 - Project staff management and coordination
 - Subconsultant management and coordination
 - Prepare and update project schedule
 - Schedule and budget monitoring
- 1.3 Design Coordination meetings with City staff:
 - Attend submittal review & coordination meetings with City staff. Assumes 5 meetings – project kickoff, 60% Submittal review meeting, 90% Submittal review meeting and 2 intermediate coordination meetings in between submittals. Budget assumes that Consultant project manager and lead project engineer will attend all meetings.
 - Bi-monthly PM coordination meetings. Check in meeting every other week between City and Consultant project managers. Team meeting or phone calls. (assumes 15 – 30 min meetings)
- 1.4 Provide QA/QC for all formal submittals

Products:

- Monthly progress report and invoice
- Meeting minutes for Consultant/City meeting
- QA/QC

Task 2 – Survey and Base Mapping

This task is to provide supplemental survey as necessary to complete the final design. Supplemental survey may encompass additional survey for driveway connections, wall limits, changed existing conditions, additional limits for side street connections, new title reports and updated ROW/easement information. Additional survey needs and limits will be discussed and approved by client PM prior to work being completed.

- 2.1 Additional survey for final design, including driveway profiles, walls, property restoration, locating potholes, work around the creek and connection to existing features at 20th Ave S which will require extending the base map east on 240th by approximately 100’.
- 2.2 Updated ROW plans for the project limits.
- 2.3 Preparation of up to 14 draft legal graphic exhibits showing required ROW and easement needs for each affected parcel.
- 2.4 Formal Legal descriptions and exhibits will be prepared upon approval of legal exhibits.

Products:

- Updated of Electronic basemap and ROW drawings.
- Preparation of Draft & Final legal ROW/easement exhibits.

Assumptions:

- Basemap will be prepared in AutoCAD Civil 3D using KPG Psomas drafting standards
- No Final stamped legal descriptions or exhibits will be prepared in this task

Task 3 – Agency Coordination and Environmental Permitting

Effort under this task includes that required to assist the City in coordinating with outside agencies. The following coordination is anticipated:

- 3.1 Franchise Utilities: Coordinate with franchise utilities for potholing, conflict identification (and relocations if necessary) and request information on any planned system upgrades. Incorporate franchise utility designs of proposed improvements (if necessary). The Consultant shall prepare pothole plans for each utility and coordinate with pothole company to complete field work. Franchise utility providers will be responsible for the cost of performing potholes and will be invoiced directly by the Pothole company.
- 3.2 WA State Local Programs: City will take lead on coordination with WA State Local Programs to review proposed improvements. KPG Psomas will provide necessary documentation and drawings.
- 3.3 Environmental Permitting:

EXHIBIT A



- The Consultant will prepare a SEPA checklist for coordination and processing by the City. If the City adopts the existing NEPA CE documentation for SEPA, this work element will not be necessary.
- Section 106 Cultural Resources evaluation has been completed previously with NEPA; however, the Consultant will prepare an Inadvertent Discovery Plan for project construction, and the City's requirement for contractor adherence to the IDP will be discussed in the SEPA Checklist.
- The Consultant will delineate the OHWM of the single stream crossing the trail alignment.
- The project may have minor temporary and permanent impacts to critical areas as defined by DMC 16.10, specifically stream buffers. The Consultant will prepare a Critical Areas Memorandum documenting existing stream conditions, assessing impacts to this critical area, and proposing appropriate compensatory mitigation.
- The Consultant will produce up to three plan sheets for stream buffer mitigation, including delineated streams and its associated buffers and will show areas of temporary and permanent stream buffer impacts, as well as figures of the proposed compensatory mitigation to offset project impacts to stream buffers. The mitigation plan sheets will include planting areas, the planting palette and densities, and any appropriate planting details. The sheets will also be used for the critical area memorandum.

Products:

- Utility conflicts map – KPG Psomas
- SEPA checklist – KPG Psomas
- Critical Areas Memorandum – KPG Psomas
- Inadvertent Discover Plan – KPG Psomas
- Stream Buffer Mitigation Plan sheets – KPG Psomas
- Pothole Plan – KPG Psomas
- Pothole Data – Franchise utility provider
- SEPA coordination - City
- WDFW meeting notes - City
- WA State Local Programs meeting notes – City
- Cultural Resources coordination – KPG Psomas

Assumptions:

- It is assumed that the previous FHWA/WSDOT NEPA approvals for the entire trail alignment will satisfy NEPA requirements for the 240th Street project segment and that no new or additional NEPA analyses and documentation, including Section 7 of the Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act of 1966 (NHPA), will be necessary.
- The City's analysis of the SEPA Checklist will result in a "Determination of Non-significance" (DNS) and the project will not require the preparation of an Environmental Impact Statement (EIS).
- The project will not directly impact Waters of the United States nor Waters of the State, so neither a Corps 401/404 permit nor a WDFW Hydraulic Project Approval will be required.
- Neither the construction time frame, nor the contractor is currently known, so a construction GSWP will not be prepared.
- The Critical Areas Memo will only address impacts to stream buffers, as it is assumed no other critical areas (e.g., wetlands) are located within the project area.

EXHIBIT A



- Mitigation will occur within the stream buffer of the impacted stream and on City owned property.
- Impact and mitigation figures are limited to three figures.

Task 4 –Technical Reports

The Draft TIR and 30% stormwater design were developed using the requirements of the 2016 King County Surface Water Design Manual (KCSWDM). The City has since adopted the 2021 KCSWDM. The following tasks are anticipated to be needed:

- 4.1 Stormwater Technical Information Report (TIR) - The Draft TIR and 30% stormwater design were developed using the requirements of the 2016 King County Surface Water Design Manual (KCSWDM). The City has since adopted the 2021 KCSWDM. The draft TIR will determine storm water requirements as well as defining the approximate size and locations of treatment facilities. This work will include a re-evaluation the project requirements for flow control or water quality treatment and an assessment of the feasibility of Onsite Flow Control BMPs (Best Management Practices) for all new and replaced impervious surfaces as required per KCSWDM. Potential facilities include permeable pavement, bioretention, infiltration trenches, and dispersion.

Infiltration Testing: it is assumed that the existing soils will not be adequate for infiltration of the storm water, to verify this one infiltration test will be conducted. An allowance of \$10,000 is included with in the budget to perform infiltration testing. If the City is able to provide all equipment and traffic control additional test pits can be performed within the budget allowance.

- 4.2 Illumination Design Report: The Consultant shall complete the AGI32 illumination analysis and submit draft and final reports. Provide options for decorative street lighting on north side of roadway.
- 4.3 Geotechnical Report: The Consultant shall review existing borings performed in previous project phase to develop lateral bearing capacity for signal design and lateral earth pressures for design of retaining walls. Geotechnical report will be updated to include this information.

- Review subsurface conditions from borings previously performed along S 240th Street, between 16th Avenue S and 20th Avenue S.
- Develop lateral bearing capacity values for new signal pole at S 240th Street and 16th Avenue S.
- Develop lateral earth pressures for soldier pile walls and prepare figure.

Prepare memo presenting lateral bearing pressure values for signal pole and soldier pile lateral earth pressures

- 4.4 Project Technical Memo: The Consultant shall prepare a final technical memo documenting design criteria and decisions.

Products:

- Draft and Final Surface Water TIR
- Draft and Final Signal and Illumination Report
- Final Geotechnical Report

City of Des Moines
S 240th St – 16th Ave S to 20th Ave S
Final Design

KPG Project No. 9DES010100
6/20/2023

EXHIBIT A



- Final Project Technical Memo

Assumptions:

- The City has determined that pervious pavement is not a preferred storm water BMP within the traveled roadway, infiltration feasibility will be reviewed for surfaces outside of the roadway.

Task 5– Final Design

The Consultant shall complete 60%, 90%, 100% and Bid design and prepare associated submittal documents.

- 5.1 60% Submittal: The Consultant shall address 30% comments from the City and key stakeholders. The current cross section will be evaluated for property and sensitive area impacts, evaluate the tie in points on the north side of 20th Ave and address other minor design changes. The signal and illumination design will be updated to current standards. After the surface water evaluation has been completed, the stormwater design will be updated. Project specifications will be prepared based on current WSDOT standard specifications, City boilerplate for special provisions, applicable WSDOT and APWA GSPs and project specific special provisions. The cost estimate will be update with new bid items and the unit costs will be updated using current bid prices.
- 5.2 90% Submittal: The Consultant shall address the City and stakeholder 60% comments and update the design and project plans accordingly. The project specifications and cost estimates will be updated using current standards.
- 5.3 100% Submittal: The Consultant shall address the City and stakeholder 90% comments and update the design and project plans accordingly. The project specifications and cost estimates will be updated using current standards.
- 5.4 Bid Submittal: The Consultant shall address the City and stakeholder 100% comments and update the design and project plans accordingly. The project specifications and cost estimates will be updated using current standards.
- 5.5 Structural Wall Design: The Consultant shall coordinate structural design with the sub-consultant Malsam Tsang for soldier pile, concrete wall caps, and manufactured design precast detention vaults necessary for the roadway widening on the north side of S 240th St. Malsam Tsang will:
 - 5.5.1 Complete 60%, 90%, Final PSE for soldier pile wall necessary for the roadway widening on the north side of S 240th St.
 - 5.5.2 Concrete wall caps & railing attachments where indicated.
 - 5.5.3 Provide structural design requirements for manufactured design precast detention vaults.
 - 5.5.4 Provide up to two different specialty light pole foundation designs to avoid possible utility conflicts.

Products:

- 60% Plans (11x17 PDFs), Cost Estimate (PDF & Excel Format)

City of Des Moines

S 240th St – 16th Ave S to 20th Ave S

Final Design

KPG Project No. 9DES010100

6/20/2023

EXHIBIT A



- 90% Plans (11x17 PDFs), Specifications (PDF & Word Format) and Cost Estimate (PDF & Excel Format)
- 100% Plans (11x17 PDFs), Specifications (PDF & Word Format) and Cost Estimate (PDF & Excel Format)
- Bid Plans (11x17 PDFs & CADD files), Specifications (PDF & Word Format) and Cost Estimate (PDF & Excel Format)

Assumptions:

- No changes to curb alignments from the 30% design
- Minimal changes to cross section and layout (as described above)
- There is probability Task 5.4 Bid Plans may need to be revised depending final ROW acquisition process and any revisions between Final Design and Bid Advertisement duration. Those revisions are not included in this scope.

Task 6 – Aerial Utility Coordination

The Consultant shall provide design and coordination services for aerial utility undergrounding of the existing distribution system for the portion of the project that is not currently underground. It is assumed that the existing transmission lines will remain aerial.

6.1 Coordinate with Puget Sound Energy, and other franchise utilities within the corridor to develop and finalize their design of utility undergrounding and relocation of transmission lines. Prepare and assemble standard plans provided by each utility for inclusion in the specification appendices. The Consultant will compile plans for undergrounding of overhead utilities (including PSE distribution) lines and include these plans in the final plans.

- The Consultant will be responsible for showing the trench locations on the plans and incorporating specifications and opinions of cost to include the payment of the utility trench excavation and backfill, conduit and vault installation.
- The Consultant shall prepare joint utility trench details showing number of conduits, conduit locations within the trench, and bedding and backfill requirements. The number of conduits required will be determined by the utility owners.
- The Consultant will coordinate with each utility company to confirm vault, handhole, and any other structure location within the project limits and that their design is consistent and compatible with the proposed roadway improvements design.
- The Consultant will coordinate with each utility company to confirm that their design is consistent and compatible with the roadway design. Transmission pole conflicts will be identified for relocation design by PSE.

EXHIBIT A



- The Consultant will not be responsible for coordinating service connection details with individual property owners; however, the Consultant will summarize the type and number of conversions required within the project limits and included this work via Force Account.
- Distribution Aerial utility undergrounding plans will be included in the 60%, 90%, 100%, and Bid Document submittals for review, comment and approval by franchise utility owners.

6.2 Property Owner Exhibits: The Consultant shall prepare exhibits to support discussions with the property owners. These exhibits will include existing and new features, utility location information and distances between existing and proposed features.

Products:

- 60% Plans (11x17 PDFs), and Cost Estimate (PDF & Excel Format)
- 90% Plans (11x17 PDFs), Specifications (PDF & Word Format) and Cost Estimate (PDF & Excel Format)
- 100% Plans (11x17 PDFs), Specifications (PDF & Word Format) and Cost Estimate (PDF & Excel Format)
- Bid Plans (11x17 PDFs & CADD files), Specifications (PDF & Word Format) and Cost Estimate (PDF & Excel Format)
- Property Owner Exhibits for up to 18 parcels

Assumptions:

- City will coordinate franchise utility agreements for work to be completed by the franchise utilities and for memorandums of understanding (if required).
- There is probability Aerial Utility Undergrounding Plans may need to be revised depending final ROW acquisition process and any revisions between Final Design and Bid Advertisement duration. Those revisions are not included in this scope.

Task 7 – Public Outreach

- 7.1 The Consultant shall attend one (1) public open house, either in person or virtually to present the project elements.
- 7.2 The Consultant shall prepare graphics in support of the open house and provide electronic materials for posting on City websites.

Task 8 – Right-of-way Services

Refer to attached Scope and Budget for Subconsultant (ProgramX) scope and fee.

EXHIBIT A



Additional Services

The City may require additional services of the Consultant in order to advance all or portions of the project corridor through right of way and construction. The scope of these services will be determined based on the unanticipated project needs or other considerations at the sole discretion of the City. This work may include items identified in the current task authorizations as well other items, which may include, but are not necessarily limited to the following:

- Preparation of Bid Documents
- Provide services and support during bidding process
- Right of Way Assistance with condemnation proceedings
- Providing construction support services

These services will be authorized by the City under management reserve or under a future contract supplement if necessary. At the time these services are required, the Consultant shall provide a detailed scope of work and an estimate of costs. The Consultant shall not proceed with the work until the City has authorized the work and issued a notice to proceed.

Exhibit B
DBE Participation

N/A

Agreement Number:

Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

See attached Exhibit A - Scope of Work

B. Roadway Design Files

See attached Exhibit A - Scope of Work

C. Computer Aided Drafting Files

See attached Exhibit A - Scope of Work

Agreement Number:

D. Specify the Agency's Right to Review Product with the Consultant

See attached Exhibit A - Scope of Work

E. Specify the Electronic Deliverables to Be Provided to the Agency

See attached Exhibit A - Scope of Work

F. Specify What Agency Furnished Services and Information Is to Be Provided

See attached Exhibit A - Scope of Work

Agreement Number:

II. Any Other Electronic Files to Be Provided

See attached Exhibit A - Scope of Work

III. Methods to Electronically Exchange Data

See attached Exhibit A - Scope of Work

A. Agency Software Suite

See attached Exhibit A - Scope of Work

B. Electronic Messaging System

See attached Exhibit A - Scope of Work

C. File Transfers Format

See attached Exhibit A - Scope of Work

Exhibit D
Prime Consultant Cost Computations

KPG Psomas Inc. Cost Computations
KPG Psomas Inc. Rate Table
KPG Psomas Inc. Indirect Cost Rate Acceptance Letter

Agreement Number:

**EXHIBIT B****PRIME CONSULTANT COST COMPUTATIONS**

Client: City of Des Moines

Project Name: BCT - 240th Street (16th Ave S to 20th Ave

S) KPG Psomas Inc. Project Number: 9DES010100

Date: 19-Jun-23

Task No.	Task Description	Labor Hour Estimate																			Total Hours and Labor Cost Computations by Task			
		Principal	Senior Engineer	Senior Project Engineer	Project Engineer I	Project Engineer II	Design Engineer I	Technician	Senior Project Manager	Survey	Survey Crew II (W/Equip)	Project Surveyor	Urban Design Manager	Project Landscape Architect	Landscape Technician	Environmental Manager	Senior Archaeologist	Senior Biologist II	Editor	Senior CAD Technician	Senior Admin	Office Admin		
		\$93.91	\$71.00	\$67.00	\$49.00	\$57.75	\$44.00	\$33.60	\$82.73	\$85.78	\$54.00	\$66.02	\$51.00	\$33.48	\$72.12	\$55.46	\$52.00	\$29.99	\$45.34	\$44.00	\$34.00	Hours	Totals	
Task 1 - Management/Coordination/Administration																								
1.1	Project administrative services	4		4																	16	24	56	\$ 2,631.81
1.2	Project management services	10		16																	8	8	42	\$ 2,635.10
1.3	Design Coordination Meetings	12	4	24			16																56	\$ 3,722.92
1.4	QA/QC	8	8	16																			32	\$ 2,391.28
Task Total		34	12	60	0	0	16	0	0	0	0	0	0	0	0	0	0	0	0	0	24	32	186	\$ 11,381.11
Task 2 - Survey and Base Mapping																								
2.1	Additional Basemapping								4	40	40												84	\$ 5,922.12
2.2	ROW Plan Update								2		24												26	\$ 1,461.46
2.3	Prepare Parcel Exhibits (up to 14 parcels)								8		80												88	\$ 4,981.84
2.4	Prepare Draft Project Funding Estimate			8		24			4														36	\$ 2,252.92
Task Total		0	0	8	0	24	0	0	18	40	144	0	0	0	0	0	0	0	0	0	0	0	234	\$ 14,618.34
Task 3 - Agency Coordination and Environmental Permitting																								
3.1	Utility Coordination	2	4	40			16														8		70	\$ 4,207.82
3.2	WA State Local Programs Coordination	4		24			4									2							34	\$ 2,303.88
3.3	Environmental Permitting	4		16			8							10	30	68	22	2	3			8	171	\$ 9,904.22
Task Total		10	4	80	0	0	28	0	0	0	0	0	0	10	30	70	22	2	3	0	8	8	275	\$ 16,415.92
Task 4 - Technical Reports																								
4.1	Draft and Final Surface Water TIR	4	8	4	50																2		68	\$ 3,749.64
4.2	Draft and Final Illumination Design Report	2	8	4			40														4		58	\$ 2,959.82
4.3	Final Geotechnical Report	2		4			2																8	\$ 543.82
4.4	Final Design Memo	4		24			16														16		60	\$ 3,391.64
Task Total		12	16	36	50	0	58	0	0	0	0	0	0	0	0	0	0	0	0	0	22	0	194	\$ 10,644.92
Task 5 - Final Design																								
5.1	60% Submittal	18	30	96	24		160	28					13	40	60					16			485	\$ 25,041.60
5.2	90% Submittal	22	64	98	50		200	68					20	40	40					14	2		618	\$ 32,133.25
5.3	100% Submittal	12	28	34	12		60	2					13	16	20							203	\$ 11,295.94	
5.4	Bid Submittal	4	8	16	12		10	8					4	4	4						16		86	\$ 4,618.45
5.5	Structural Design assistance	4		16			24													16	4		64	\$ 3,405.08
Task Total		60	130	260	98	0	454	106	0	0	0	50	100	124	0	0	0	0	0	46	28	0	1456	\$ 76,494.32
Task 6 - Aerial Utility Undergrounding																								
6.1	60% Undergrounding Plans and Cost Estimate	4		40	40			24												20			128	\$ 6,728.90
6.1	90% Undergrounding Plans, Specs and Cost Estimate	8		60	60			40												24			192	\$ 10,143.54
6.1	100% Undergrounding Plans, Specs and Cost Estimate	2		16	40			8												8			74	\$ 3,851.36
6.1	Bid Undergrounding Plans, Specs and Cost Estimate	2		8	8			8															26	\$ 1,384.64
6.2	Property Owner Exhibits	2		4	16			32												4			58	\$ 2,496.46
Task Total		18	0	128	164	0	0	112	0	0	0	0	0	0	0	0	0	0	0	56	0	0	478	\$ 24,604.89
Task 7 - Public Outreach																								
7.1	Attend Open Houses (assumes 1 meeting)	2		4	4		2					4	2								4		22	\$ 1,281.90
7.2	Prepare and Update Graphics for Public Outreach			8	8		8					8	16	32									80	\$ 3,695.44
																							0	\$ -
																							0	\$ -
Task Total		2	0	12	12	0	10	0	0	0	0	12	18	32	0	0	0	0	0	0	4	0	102	\$ 4,977.34



Total Labor Hours and Fee	136	162	584	324	24	566	218	18	40	144	62	128	186	70	22	2	3	102	86	40	2,925	\$ 159,136.83
ICR Overhead @ 1.7337% =																					\$ 275,895.53	
Fixed Fee @ 30% =																					\$ 47,741.05	
Total KPG Psomas (DL + OH + Fixed Fee) =																					\$ 482,773.41	
Subconsultants																						
Structural Design Retaining Walls Malsam Tsang (Task 5.5) =																					\$ 22,672.75	
Infiltration Testing (Task 4.1):																					\$ 10,000.00	
Update Geotechnical report HWA (Task 4.3) =																					\$ 8,743.00	
Right of Way Services Program X (Task 8) =																					\$ 128,130.00	
Subtotal																					\$ 169,545.75	
Administrative Charge (5%)																					\$ 8,477.29	
Total Subconsultant Expense																					\$ 178,023.04	
Reimbursable Direct Non-Salary Costs																						
Mileage at current IRS rate																					\$ 500.00	
Reproduction Allowance																					\$ 500.00	
Total Reimbursable Expense																					\$ 1,000.00	
Subtotal Estimated Sub and Expense Budget																					\$ 661,796.44	
Management Reserve																						
Management Reserve																						
Total Management Reserve																					\$ -	
Total Estimated Budget																					\$ 661,796.44	



**Washington State
Department of Transportation**

Development Division
Contract Services Office
PO Box 47408
Olympia, WA 98504-7408
7345 Linderson Way SW
Tumwater, WA 98501-6504

TTY: 1-800-833-6388
www.wsdot.wa.gov

May 5, 2022

KPG, P.S.
3131 Elliott Avenue, Suite 400
Seattle, WA 98121

Subject: Acceptance FYE 2021 ICR – CPA Report

Dear Susan Rowe:

We have accepted your firms FYE 2021 Indirect Cost Rate (ICR) of 173.37% (0.27% Facilities Capital Cost of Money) based on the “Independent CPA Report,” prepared by Stambaugh Ness, Inc. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with the firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at **(360) 705-7019** or via email consultantrates@wsdot.wa.gov.

Regards;

A handwritten signature in blue ink that reads "Erik K. Jonson".

ERIK K. JONSON
Contract Services Manager

EKJ:ah

Exhibit E

Sub-consultant Cost Computations

If no sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI “Sub-Contracting” of this AGREEMENT.

E.1 - Malsam Tsang - \$ 22,672.75
E.2 - HWA GeoSciences - \$ 8,743.00
E.3 - Program X - \$ 128,130.00

Agreement Number:

EXHIBIT E.1

City of Des Moines
Barnes Creek Trail
South 240th Street – 16th Ave S to 20th Ave S
Final Design

Malsam Tsang Structural Engineering
Scope of Work
June 9, 2023

INTRODUCTION

The following scope of work outlines the effort required to complete final design for Barnes Creek Trail and Roadway design on S 240th St from 16th Ave S to 20th Ave S. This scope of work includes final design for the cantilevered shoring on the north side of S 240th St and Barnes Creek Trail (BCT), just east of 19th Ave S; providing design requirements of the new underground detention vaults, railing attachment design, and structural engineering assistance and coordination with applicable parties. This includes the following major design components:

1. North side of S 240th St, east of 19th Ave S – Design & detailing of soldier pile wall to support the BCT widening.
2. Provide final design requirements of pre-engineered underground detention vaults, one located under S 240th St and one located north of S 240th St.
3. Design & detailing of pedestrian handrail attachment to concrete caps.
4. Coordinate design of MSE walls, performed by geotechnical engineer.

The following assumptions were made when preparing the scope and budget:

- Final Design will be completed by the end of 2024.
- Assume funding will be local and WA State Capital Appropriation.
- A final geotechnical report will be prepared prior to beginning work.
- Mechanically Stabilized Earth (MSE) walls will be designed by others.
- Underground concrete detention vaults will be designed by others.

The following scope of work includes the effort to complete the above-described improvements, where in Malsam-Tsang Structural Engineering shall be noted as “The Consultant”:

EXHIBIT E.1

SCOPE OF WORK

Task 1 – Management/Coordination/Administration

This task covers the effort required to manage the contract and to ensure that the project meets the client's expectations for schedule, budget, and quality of product:

- 1.1 Provide project administrative services including:
 - Project set-up and agreement execution
 - Preparation of monthly progress reports and invoices
 - Maintaining project files
 - Record keeping and project closeout
- 1.2 Provide project management services including:
 - Project staff management and coordination
 - Coordination with Prime consultant
 - Coordinate with project schedule set by Prime consultant
 - Schedule and budget monitoring
- 1.3 Design Coordination meetings with City staff:
 - Attend submittal review & coordination meetings with City staff. Assumes 5 meetings – project kickoff, 60% Submittal review meeting, 90% Submittal review meeting and 2 intermediate coordination meetings in between submittals. Budget assumes that Consultant project manager will attend all meetings.
 - Coordination meetings. Assume 4 meetings ~ Check in meetings with City and Consultant project managers. Team meeting or phone calls. (Assumes 15 – 30 min meetings)
- 1.4 Provide QA/QC for all formal submittals

Products:

- Monthly progress report and invoice
- Meeting minutes for Consultant/City meeting
- QA/QC

EXHIBIT E.1

Task 2– Final Design

The Consultant shall complete 60%, 90%, 100% and Bid design and prepare associated submittal documents of elements listed in item 5.5.

- 2.1 60% Submittal: The Consultant shall address 30% comments from the City and key stakeholders. Project specifications will be prepared based on current WSDOT standard specifications, City boilerplate for special provisions, applicable WSDOT and APWA GSPs and project specific special provisions. The cost estimate will be update with new bid items and the unit costs will be updated using current bid prices, defined by others.
- 2.2 90% Submittal: The Consultant shall address the City and stakeholder 60% comments and update the design and project plans accordingly. The project specifications and cost estimates will be updated using current standards.
- 2.3 100% Submittal: The Consultant shall address the City and stakeholder 90% comments and update the design and project plans accordingly. The project specifications and cost estimates will be updated using current standards.
- 2.4 Bid Submittal: The Consultant shall address the City and stakeholder 100% comments and update the design and project plans accordingly. The project specifications and cost estimates will be updated using current standards.
- 2.5 Structural Design Elements: The Consultant shall provide the structural design of:
 - 2.5.1 The soldier pile wall necessary for the roadway widening on the north side of S 240th St.
 - 2.5.2 Concrete wall caps & railing attachments where indicated.
 - 2.5.3 Provide structural design requirements for manufactured design precast detention vaults.
 - 2.5.4 Specialty Foundations for Light Poles at Utility Conflicts.

Products:

- 60% Plans and Details (11x17 PDFs)
- 90% Plans and Details (11x17 PDFs), Specifications (PDF & Word Format)
- 100% Plans and Details (11x17 PDFs), Specifications (PDF & Word Format)
- Bid Plans and Details (11x17 PDFs & CADD files), Specifications (PDF & Word Format)

Assumptions:

- No significant changes to areas of retained earth from those shown on 30% documents.
- Minimal changes to cross section and layout (as described above)

EXHIBIT E.1

Additional Services

The City may require additional services of the Consultant in order to advance all or portions of the project corridor through right of way and construction. The scope of these services will be determined based on the unanticipated project needs or other considerations at the sole discretion of the City. This work may include items identified in the current task authorizations as well other items, which may include, but are not necessarily limited to the following:

- Preparation of Bid Documents
- Provide services and support during bidding process
- Right of Way Assistance with condemnation proceedings
- Appraisals and negotiations
- Providing construction support services

These services will be authorized by the City under management reserve or under a future contract supplement if necessary. At the time these services are required, the Consultant shall provide a detailed scope of work and an estimate of costs. The Consultant shall not proceed with the work until the City has authorized the work and issued a notice to proceed.

Exhibit E.1

Task 5.5

Exhibit E.1 - Task 5.5								
City of Des Moines - 240th Street Improvements								
Malsam Tsang								
Malsam-Tsang Structural Engineering Employees								
		Principal	Senior	Project	Constructability	Senior CAD	Admin 2	Totals
		Structural	Structural	Structural	Estimation	Technician		
		Engineer	Engineer	Engineer				
Task 5.5 - Structural Design Elements								
5.5.0	Project Management	2	12			1	6	21
5.5.1	Soldier Pipe Wall							
	60% Design	2	12	16		12		42
	90% Design and cost Est	1	2.5	6	2	2		14
	100% design (Plans, Specification,	1	1	4	1	2		9
								0
5.5.2	Concrete Wall caps & railing attachments	1	2.5	6	1	2		13
								0
5.5.3	Design requirements for Precast Detention Vault	1	2	6		1		10
								0
5.5.4	Specialty Foundation for Light Poles at Utility Conflicts	1	2	4	1	4		12
								0
Total Staff Hours =		9	34	42	5	24	6	120
Negotiated Hourly Rate - Fully Burdened		\$250.00	\$215.00	\$180.00	\$200.00	\$155.00	\$100.00	
Total Cost		\$2,250	\$7,310	\$7,560	\$1,000	\$3,720	\$600	\$22,440.00
						Total Labor Cost =		\$22,440.00
					Item	Quantity	Rate	Total
					Mileage	50	0.655	\$32.75
					Printing	1	200	\$200.00
					Total Expense Costs =		\$232.75	
					Total Budget =		\$22,672.75	

Exhibit E.2 Task 4.3 - Geotechnical Report Update

Project Cost Estimate
S 240th Street Improvements - Final Design
Des Moines, Washington
Prepared for KPG



HWA GEOSCIENCES INC.

HWA Ref: 2022-106
Date: 5-Jun-23

Prepared By: BKH

Scope of Work

Review subsurface conditions from borings previously performed along S 240th Street, between 16th Avenue S and 20th Avenue S.
Develop lateral bearing capacity values for new signal pole at S 240th Street and 16th Avenue S.
Develop lateral earth pressures for soldier pile walls and prepare figure showing these.
Prepare memo presenting lateral bearing pressure values for signal pole and soldier pile lateral earth pressures.

ESTIMATED HWA LABOR:

WORK TASK DESCRIPTION	PERSONNEL & 2023 BILLING RATES							TOTAL HOURS	TOTAL AMOUNT
	Geol. VIII	Engr. VIII	Engr. V	Geol. IV	Geol. III	CAD	Contracts		
	\$288.00	\$300.00	\$198.00	\$156.00	\$127.00	\$110.00	\$155.00		
Review Previous Borehole and Lab Testing Data		2	2					4	\$996
Engineering Analyses		4	16					20	\$4,368
Prepare Memo		4	8			4	1	17	\$3,379
TOTAL LABOR CHARGES:	0	10	26	0	0	4	1	41	\$8,743

GEOTECHNICAL LABORATORY TEST SUMMARY:

Test	Est. No. Tests	Unit Cost	Total Cost
Grain Size Distribution	0	\$180	\$0
Sand Equivalent	0	\$105	\$0

LABORATORY TOTAL: \$0

ESTIMATED DIRECT EXPENSES:

Mileage @ IRS rate	\$0
Nuclear Density Gauge Rate (\$60/day)	\$0
Laboratory Testing	\$0

TOTAL DIRECT EXPENSES: \$0

PROJECT TOTALS AND SUMMARY:

Labor	\$8,743
Direct Expenses	\$0
GRAND TOTAL:	\$8,743

- All hours and items are estimated, and may be shifted between tasks within the limits of the total budget at the discretion of HWA's project manager.



ProgramX

Hutch Goodman
hutch@pxrow.com
(503)747-9961

Scope and Fee Proposal

Barnes Creek Trail - S. 240th St: 16th Ave S to 20th Ave S

For Terry Wright, KPG Psomas - 9th June 2023

PROJECT UNDERSTANDING

ProgramX shall provide cost estimating, property valuations, negotiations, title and property owner payment services for up to (14) acquisitions, inclusive of fee and/or temporary rights needed for project construction. It is assumed the project does not require WSDOT Certification, that no appraisals or appraisal reviews will be required, and that the City will bear all costs associated with preliminary title reports, escrow and other closing functions. Eminent domain support is not included in this scope of work.

The following Scope of Work was provided to KPG on June 9th, 2003 and the respective Fee Schedule corresponds to each Task identified below:

SCOPE OF SERVICES

8.1 Right of Way Acquisition Management/Public Outreach:

- The Consultant will provide bi-weekly written and verbal acquisition status updates to the City and Project Team, throughout the acquisition task.
- The Consultant will oversee all elements of the property valuation and acquisition task including management of all subconsultants and acquiring all property rights according to applicable State and Federal laws, and in compliance with the City's approved Right of Way Procedures.
- The Consultant will collaborate with City and Project Team in providing parcel mitigation and/or negotiations solutions to property acquisitions throughout public outreach and acquisition phases.
- The Consultant will coordinate with City legal and other administrative staff in pre-condemnation preparations, payment processing and other administrative tasks.

8.2 Title Review and Documents Preparations:

- The Consultant will secure all necessary preliminary title reports for all affected parcels, review and make determinations regarding vested ownerships, and identify potential encumbrances of

Exhibit E.3 Tasl 8 - Right-of-way Services

title to clear. Consultant will discuss and make recommendations regarding title clearance actions to undertake.

- The Consultant will utilize all City-provided conveyance document templates to draft all offer letters, conveyance instruments and other documents necessary to acquire needed property rights.

8.3 Project Funding Estimate Preparations:

- The Consultant will perform field research on all affected properties, identifying all affected improvements and impacts resulting from temporary and/or permanent rights acquisitions.
- The Consultant will research comparable property sales data and apply data toward valuation analyses of affected properties.
- The Consultant will produce a Project Funding Estimate report, according to City formats, for City review, and reply to City and Project Team comments, as needed.

8.4 Administrative Offer Summary (AOS) Preparations:

- The Consultant will research and investigate current, available sales data and consult expert valuation expertise, as needed, in securing personal property bids and other data for land and improvements values.
- The Consultant will research and investigate regional trends, market considerations, appreciation rates and other valuation criteria, in evaluating Fair Market Value determinations.
- The Consultant will provide AOS reports, per City-approved formats, for use in property owner offer packages and negotiations.

8.5 Negotiations and Administrative Justification Support:

- The Consultant will be responsible for contacting all property owners to offer City-approved offer packages for all affected properties.
- The Consultant will provide legally-required advisory services and adequate negotiations timeframes with an aim toward mutually amenable acquisition settlements. Where needed, Administrative Justifications, above Fair Market Value, will be analyzed and drafted, as needed, to document and justify settlement payments.
- The Consultant will coordinate and strategize with City on administrative settlement solutions and approaches of each property acquisition, as needed.

8.6 Property Owner Payments, Title Clearance and Project Closeout:

- The Consultant will coordinate with the City's accounting department in providing property owner payments and clear all title encumbrances identified by City as needing clearance, based on recommendations from City administrative and legal counsel.
- The Consultant will gather all conveyance and relevant acquisition documents and deliver all completed acquisition files to the City, physical and electronic, for record keeping and compliance.

Exhibit E.3 Tasl 8 - Right-of-way Services

FEE SCHEDULE		
8.1 - Right of Way Acquisition Management/Public Outreach: Includes involvement of up to (18) Project Team Meetings, bi-weekly status updating, oversight of right of way program and coordination with Project Team.	44 Hours @ \$210/hr Project Manager Rate	\$9,240
8.2 - Title Review and Documents Preparations: Includes (14) Preliminary Title Reports (PTR's), identifying ownerships and title encumbrances, and preparing all conveyance and offer package documentation necessary for the valuation, acquisition and closing tasks.	56 Hours @ \$135/hr Acquisition Specialist	\$7,560
8.3 - Project Funding Estimate (PFE) Preparations: Includes field research, comparable property investigations and analyses of up to (14) property acquisitions. Includes preparation of PFE Report and responding to City comments.	84 Hours @ \$210/hr Project Manager Rate	\$17,640
8.4 - Administrative Offer Summary (AOS) Preparations: Includes (14) Administrative Offer Summary (AOS) reports, according to City-approved formats, for each parcel requiring a fee and/or temporary construction easement interest. Includes market research of comparable sales data, confirmation of impacted improvements values and corresponding site visits.	(14) Reports @ \$850/each	\$11,900
8.5 - Negotiations and Administrative Justification Support: Includes contacting all (14) property and/or tenant interests affected by project, delivery of City-approved offer packages and negotiating settlements. Includes preparation of City and State compliant Administrative Offer Justifications documentation, as needed.	350 Hours @ \$210/hr Project Manager Rate	\$73,500
8.6 - Property Owner Payments, Title Clearance/Closeout: Includes coordination with City accounting and administrative staff in property owner payments, clearing necessary title interests and closing out project files with delivery of said files to City.	56 Hours @ \$135/hr Acquisition Specialist	\$7,560
Other Direct Costs (ODC's): (1) Mileage to and from property owner meetings and project site @ \$65.5/mile (2) Recordation Fees for up to 10 Fee Interests	14 visits @ 36 miles round trip @ \$.65.5/mile (\$330) \$40 Recordation fee @ 10 Parcels: (\$400)	\$730
SERVICES FEES and ODC's - GRAND TOTAL		\$128,130

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *(Title of Modal Operating Administration)*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
[Include Modal Operating Administration specific program requirements.]
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Modal Operating Administration specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *(Title of Modal Operating Administration)* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *(Title of Modal Operating Administration)*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non- discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *(Title of Modal Operating Administration)* may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the *(Title of Modal Operating Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Exhibit G ***Certification Documents***

- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of City of Des Moines
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters -
Primary Covered Transactions
- Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
- Exhibit G-4 Certificate of Current Cost or Pricing Data

Agreement Number:

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of
KPG Psomas Inc.

whose address is

2502 Jefferson Avenue, Tacoma, WA 98402

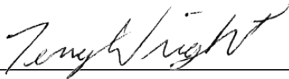
and that neither the above firm nor I have:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the City of Des Moines
and the Federal Highway Administration, U.S. Department of Transportation in connection with this
AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and
Federal laws, both criminal and civil.

KPG Psomas Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

6/26/2023

Date

Agreement Number:

Exhibit G - Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement Revised 02/01/2021

Exhibit G-1(b) Certification of City of Des Moines

I hereby certify that I am the:

☐ Certified Authority

☐ Other

of the City of Des Moines, and KPG Psomas Inc.
or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature

Date

Agreement Number: _____

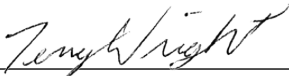
Exhibit G - Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement Revised 02/01/2021

Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

KPG Psomas Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

6/26/2023

Date

Agreement Number:

Exhibit G - Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement Revised 02/01/2021

Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00, for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

KPG Psomas Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

6/26/2023

Date

Agreement Number:

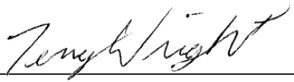
Exhibit G - Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement Revised 02/01/2021

Exhibit G-4 Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer’s representative in support of BCT S 240th 16th to 20th ^{**} are accurate, complete, and current as of June 19, 2023

This certification includes the cost or pricing data supporting any advance AGREEMENT’s and forward pricing rate AGREEMENT’s between the offer or and the Government that are part of the proposal.

Firm: KPG Psomas Inc.



Signature

6/26/2023

Title

Date of Execution***:

*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)
**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.
***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Agreement Number: _____

Exhibit H

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to \$ N/A

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$ N/A

Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance.
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$ N/A

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.

Agreement Number:

Exhibit I

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Agreement Number: _____

Step 5 Forward Documents to Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Agreement Number:

Exhibit J

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will met with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Agreement Number: _____

Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.

Agreement Number:



Transportation Building
 310 Maple Park Avenue S.E.
 P.O. Box 47300
 Olympia, WA 98504-7300
 360-705-7000
 TTY: 1-800-833-6388
www.wsdot.wa.gov

May 19, 2023

Mr. R. Brandon Carver, PE
 Public Works Director
 City of Des Moines
 21650 11th Avenue South
 Des Moines, Washington 98198-6317

**RE: Barnes Creek Trail – South Segment
 Move Ahead Washington – Tier Pedestrian & Bicycle
 2023-25 Transportation Budget
 State Funding**

Dear Mr. Carver:

WSDOT is pleased to advise you that the above-mentioned project was selected to receive funding in the 2023-25 Transportation Budget through the Move Ahead Washington (MAWA) – Tier Pedestrian & Bicycle program. The state funding is limited as shown below:

Barnes Creek Trail – South Segment	\$3,500,000
<i>2023-25 Available Funding:</i>	<i>\$3,500,000</i>

Scope: For design, right-of-way acquisition and construction of the Barnes Creek Trail – South Segment between S. 240th Street - 16th Ave S to 20th Ave S. installing a multi-use trail including roadway widening, curb, gutter, sidewalk, bike lane and a new traffic signal at 20th/240th.

Based on the funding provided by the legislature, WSDOT can only reimburse your agency for the approved work completed in the 2023-25 biennium, as reflected above. Therefore, it is critical that the city plan its work and schedule so that the funds match the work.

In order to meet state requirements, the following are required:

- Project expenditures incurred before receiving notice from Local Programs of state fund authorization are not eligible for reimbursement.
- Please refer to the Local Programs webpage for detailed authorization information, including: (<http://www.wsdot.wa.gov/localprograms/>)
 - ✓ Local Agency Guidelines (LAG) manual for detailed requirements;
 - ✓ Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP) amendments, as applicable;

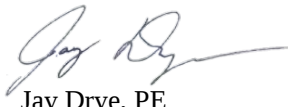
Mr. R. Brandon Carver, PE
City of Des Moines
May 19, 2023

- ✓ Funding and billing forms;
- ✓ Local Project Report is required to be completed by the end of June and December each year. To access the database you will need an account name and password. Your account name is **Des Moines** and your password is **DesMo938**. The password is case sensitive.

Local Programs encourages all agencies to submit monthly progress billings to ensure timely reimbursement of eligible expenditures.

For assistance, please contact your Region Local Programs Engineer, Mehrdad Moini, at (206) 440-4734 or Mehrdad.Moini@wsdot.wa.gov.

Sincerely,



Jay Drye, PE
Director
Local Programs

JD:st

cc: Kelly McGourty, Transportation Director, PSRC
Mehrdad Moini, Northwest Region Local Programs Engineer



Local Programs State Funding Agreement Work by Public Agencies		Agency and Address
		City of Des Moines 21650 11th Ave S Des Moines WA, 98198
Agreement Number	Maximum Amount Authorized 3,500,000	Location and Description of Work (See also Exhibit "A") Project title: South 240th St (16th -20th Ave/Barnes Creek Trail Improvements) Location: South 240th Street between 16th Ave S and 20th Ave South. Description: See Exhibit "A"
Participating Percentage 100	Project Number	

This AGREEMENT is made and entered into between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Secretary of Transportation, hereinafter called the "STATE," and the above named organization, hereinafter call the "AGENCY."

WHEREAS, the AGENCY is planning the work shown above, and in connection therewith, the AGENCY has requested financial assistance for the project or program, and

WHEREAS, the AGENCY has requested funds for the above shown project or program, which has been selected by the STATE for funding assistance.

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREE AS FOLLOWS:

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated State Funds
PE	a. Agency	\$ 50,620.00	\$ 50,620.00	
	b. Other Consultant	\$ 557,380.00	\$ 307,380.00	\$ 250,000.00
	c. Other			
	d. State Services	\$ 5,000.00	\$ 5,000.00	
	e. Total PE Cost Estimate (a+b+c+d)	\$ 613,000.00	\$ 363,000.00	\$ 250,000.00
Right of Way	f. Agency	\$ 18,000.00	\$ 18,000.00	
	g. Other Consultant	\$ 128,130.00	\$ 0.00	\$ 128,130.00
	h. Other Land Acquisitons	\$ 121,870.00	\$ 0.00	\$ 121,870.00
	i. State Services	\$ 5,000.00	\$ 5,000.00	
	J. Total R/W Cost Estimate (f+g+h+i)	\$ 273,000.00	\$ 23,000.00	\$ 250,000.00
Construction	k. Contract	\$ 4,565,000.00	\$ 1,865,000.00	\$ 2,700,000.00
	l. Other Consultant	\$ 510,000.00	\$ 210,000.00	\$ 300,000.00
	m. Other			
	n. Other			
	o. Agency	\$ 45,000.00	\$ 45,000.00	
	p. State Services	\$ 5,000.00	\$ 5,000.00	
	q. Total CN Cost Estimate (k+l+m+n+o+p)	\$ 5,125,000.00	\$ 2,125,000.00	\$ 3,000,000.00
	r. Total Project Cost Estimate (e+j+q)	\$ 6,011,000.00	\$ 2,511,000.00	\$ 3,500,000.00

**I
General**

The AGENCY agrees to perform the above described work in accordance with the Project Application attached hereto as "Exhibit A" and made a part of this AGREEMENT.

Plans, specifications, and cost estimates shall be prepared by the AGENCY in accordance with the current State of Washington Standard Specifications for Road, Bridge, and Municipal Construction and adopted design standards, unless otherwise noted. The AGENCY will incorporate the plans and specifications into the AGENCY's project and thereafter advertise the resulting project for bid and, assuming bids are received and a contract is awarded, administer the contract, or if the project is of a size which the AGENCY is authorized to perform with its own forces under the laws of the State of Washington, the AGENCY may proceed with its own forces.

All work performed under this AGREEMENT shall comply with the applicable provisions of state law.

**II
Payment**

The STATE, in consideration of the faithful performance of the work to be performed by the AGENCY, agrees to reimburse the AGENCY for the percentage of the actual direct and related indirect cost of the work shown above, up to the "MAXIMUM AMOUNT AUTHORIZED". The agency will comply with Governmental Accounting Auditing and Financial Reporting Standards and applicable state law and local regulations, policies and procedures. No payment will be made for work done prior to execution of this AGREEMENT.

Partial payments shall be made by the STATE, upon request of the AGENCY, to cover costs incurred. These payments are not to be more frequent than one (1) per month. It is agreed that any such partial payment will not constitute agreement as to the appropriateness of any item and that, at the time of the final audit, all required adjustments will be made and reflected in a final payment. The AGENCY agrees to submit a final bill to the STATE within forty-five (45) days after the AGENCY has completed work.

The AGENCY agrees that all costs in excess of the amount authorized and the AGENCY's matching funds shall be the responsibility of the AGENCY.

**III
Audit**

The AGENCY agrees that an audit may be conducted by the STATE. During the progress of the work and for a period not less than three (3) years from the date of final payment to the AGENCY, the records and accounts pertaining to the work and accounting thereof are to be kept available for inspection and audit by the STATE and copies of all records, accounts, documents, or other data pertaining to the project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the three-year retention period.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year last written below.

AGENCY

By: _____

Title:

Agency Date: _____

**IV
Legal Relations**

No liability shall attach to the AGENCY or the STATE by reason of entering into this AGREEMENT except as expressly provided herein.

**V
Nondiscrimination**

The AGENCY agrees to comply with all applicable state and federal laws, rules, and regulations pertaining to nondiscrimination and agrees to require the same of all subcontractors providing services or performing any work using funds provided under this AGREEMENT.

**VI
Venue**

For the convenience of the parties to this AGREEMENT, it is agreed that any claims and/or causes of action which the AGENCY has against the STATE, growing out of this AGREEMENT or the project or program with which it is concerned, shall be brought only in the Superior Court for Thurston County.

**VII
Termination**

The Secretary of the Department of Transportation may terminate this AGREEMENT if the funding becomes unavailable or if the Secretary determines that it is in the best interest of the STATE.

**VIII
Final Report and Final Inspection**

Within ninety (90) days following the completion of the project and submission of the final billing for the project, a final report and/or final inspection shall be submitted to the Director, Highways & Local Programs containing the following information:

Non-Capital Projects

1. A description of the project or program.
2. A summary of actual costs of the project or program.
3. An evaluation of the project or program. This should address aspects such as transportation and/or other benefits to the public.

Capital Projects

1. A final inspection is required.

**IX
Supplement**

This agreement may be modified or supplemented only in writing by parties.

STATE

By: _____

Director, Local Programs

Date: _____


**Washington State
Department of Transportation**
**Local Agency Federal Aid
Project Prospectus**

	Prefix	Route	()	Date	10/2/2023
Federal Aid Project Number				DUNS Number	07-927-0443
Local Agency Project Number		(WSDOT Use Only)		Federal Employer Tax ID Number	91-6016496

Agency City of Des Moines		CA Agency ☒ Yes ☐ No	Federal Program Title ☐ 20.205 ☒ Other State		
Project Title Barnes Creek Trail - South Segment		Start Latitude N 47.3867 End Latitude N 47.3867		Start Longitude W -122.3131 End Longitude W -122.3079	
Project Termini From-To 16th Avenue South 20th Avenue South		Nearest City Name Des Moines			Project Zip Code (+4) 98198-6317
Begin Mile Post N/A	End Mile Post N/A	Length of Project 1,300 FT		Award Type ☐ Local ☐ Local Forces ☒ State ☐ Railroad	
Route ID 1200	Begin Mile Point N/A	End Mile Point N/A	City Number 0325	County Number 17	County Name King
WSDOT Region Northwest Region		Legislative District(s) 33rd		Congressional District(s) 9th	
				Urban Area Number 80389	

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date Month Year
P.E.	\$613,000	\$363,000	\$250,000	October 2023
R/W	\$273,000	\$23,000	\$250,000	April 2024
Const.	\$5,125,000	\$2,125,000	\$3,000,000	May 2025
Total	\$6,011,000	\$2,511,000	\$3,500,000	

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width 33 FT	Number of Lanes 2
See attached Exhibit A	

Description of Proposed Work

Description of Proposed Work (Attach additional sheet(s) if necessary)
See attached Exhibit A

Local Agency Contact Person Andrew Merges		Title Public Works Director		Phone 206-870-6568	
Mailing Address 21650 11th Ave South		City Des Moines		State WA	Zip Code 98198
Project Prospectus	By _____ Approving Authority				
	Title				Date

Agency City of Des Moines	Project Title Barnes Creek Trail - South Segment	Date 10/2/2023
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Type of Proposed Work

Project Type (Check all that Apply)	Roadway Width 30 FT - 41 FT	Number of Lanes 2-3
☒ New Construction ☒ Path / Trail ☐ 3-R ☒ Reconstruction ☒ Pedestrian / Facilities ☐ 2-R ☐ Railroad ☐ Parking ☐ Other ☐ Bridge		

Geometric Design Data

Description	Through Route	Crossroad
Federal Functional Classification	☐ Principal Arterial	☐ Principal Arterial
	☒ Urban	☒ Minor Arterial
	☐ Rural	☐ Collector
	☐ NHS	☐ Major Collector
	☐ Local Access	☐ Minor Collector
Terrain	☐ Flat ☒ Roll ☐ Mountain	☐ Flat ☒ Roll ☐ Mountain
Posted Speed	35	
Design Speed	40	
Existing ADT	6,000	
Design Year ADT	8,400	
Design Year	2040	
Design Hourly Volume (DHV)	850	

Performance of Work

Preliminary Engineering Will Be Performed By Consultant	Others 100 %	Agency %
Construction Will Be Performed By Contractor	Contract 100 %	Agency %

Environmental Classification

☐ Class I - Environmental Impact Statement (EIS)	☒ Class II - Categorical Excluded (CE)
☐ Project Involves NEPA/SEPA Section 404 Interagency Agreement	☐ Projects Requiring Documentation (Documented CE)
☐ Class III - Environmental Assessment (EA)	
☐ Project Involves NEPA/SEPA Section 404 Interagency Agreements	

Environmental Considerations

State Funded, Section 106 EO 21-02 to be submitted.

Agency City of Des Moines	Project Title Barnes Creek Trail - South Segment	Date 10/2/2023
------------------------------	---	-------------------

Right of Way

☐ No Right of Way Needed * All construction required by the contract can be accomplished within the existing right of way.	☒ Right of Way Needed ☒ No Relocation	☐ Relocation Required
--	--	--

Utilities

☐ No utility work required ☒ All utility work will be completed prior to the start of the construction contract ☒ All utility work will be completed in coordination with the construction contract
--

Railroad

☒ No railroad work required ☐ All railroad work will be completed prior to the start of the construction contract ☐ All the railroad work will be completed in coordination with the construction contract
--

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

Puget Sound Energy will be relocating overhead utility power poles and underground gas lines due to potential conflicts with project improvements. Franchise communication utilities will also required to relocate existing overhead and underground facilities in conflict with the project improvements. PSE and all franchise utilities are required to relocate prior to the start of the project construction. The project will also construct underground enclosed storm sewer conveyance system(s) as necessary.

FAA Involvement

Is any airport located within 3.2 kilometers (2 miles) of the proposed project? ☐ Yes ☒ No

Remarks

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Date _____ Agency _____
 By _____ Mayor/Chairperson

CITY OF DES MOINES
2024-2029 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)

Barnes Creek Trail	Project #	TRCIP0008	Summary Project Description:
- Previous Project #		319.345	Widen S. 240th Street roadway to three lanes at the intersections of 16th Ave and 20th Ave S. and provide a multi-use trail on the north side (Barnes Creek Trail), bike lane on the south side, transit stops, curb, gutter, and planter strips where feasible. Trail will provide connectivity between the Barnes Creek Trail on 16th Ave S. and Highline College.
CIP Category: Transportation - Capital Projects			
Managing Department: Plan, Build & PW Admin			

Justification/Benefits: The need for pedestrian and bicycle facilities along S. 240th St. and continuation of the Barnes Creek Trail is identified in the City's Comprehensive Transportation Plan and the Six Year Transportation Improvement Plan. S. 240th St. has residential properties and Highline College that generate pedestrian and bicycle traffic along the shoulder of the road. Pedestrians use this route to access bus stops, Highline College, and the Pacific Highway corridor. The Barnes Creek Trail multi-use path will ultimately connect Highline College to South 216th St. via S. 240th St, 16th Ave S., and adjacent historic SR509 right-of-way between Kent Des Moines Rd., and S. 216th St.

PROJECT SCOPE				ANNUAL ALLOCATION							
Expenditures	Current Budget	Requested Change	Total Budget	Project to Date 12/31/22	Scheduled Year 2023	Plan Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028	Plan Year 2029
Design	1,709	2	1,711	1,126	135	400	-	50	-	-	-
Land & Right of Way	243	-	243	-	-	243	-	-	-	-	-
Construction	5,450	-	5,450	540	-	1,910	3,000	-	-	-	-
Contingency	270	(2)	268	-	28	90	150	-	-	-	-
Total Expenditures	7,672	-	7,672	1,666	163	2,643	3,150	50	-	-	-

Funding Sources	Current Budget	Requested Change	Total Budget	Project to Date 12/31/22	Scheduled Year 2023	Plan Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028	Plan Year 2029
King County Parks Levy	288	-	288	288	-	-	-	-	-	-	-
Transportation CIP Fund	69	-	69	69	-	-	-	-	-	-	-
Traffic Impact Fees - City Wide	190	-	190	-	-	190	-	-	-	-	-
REET 1	848	-	848	468	82	223	25	50	-	-	-
Private Contributions	35	-	35	35	-	-	-	-	-	-	-
Federal Grants CMAQ-FHWA (Secured)	379	-	379	379	-	-	-	-	-	-	-
King County Conservation Grant (Secured)	45	-	45	45	-	-	-	-	-	-	-
Sound Transit System Access Grant (Secured)	1,900	-	1,900	-	-	1,500	400	-	-	-	-
King County Metro (Secured)	118	-	118	118	-	-	-	-	-	-	-
TIB Grant (Secured)	300	-	300	300	-	-	-	-	-	-	-
WA State Appropriation (Secured)	3,500	-	3,500	-	50	730	2,720	-	-	-	-
Total Funding	7,672	-	7,672	1,702	132	2,643	3,145	50	-	-	-
Funding Shortfall/Excess	-	-	-	-	-	-	-	-	-	-	-

OPERATING IMPACT				ANNUAL OPERATING IMPACT							
Operating Impact	6 Year Total			12/31/22	2023	2024	2025	2026	2027	2028	2029
Revenue	-	-	-	-	-	-	-	-	-	-	-
Expenses	-	-	-	-	-	-	-	-	-	-	-
Net Impact	-	-	-	-	-	-	-	-	-	-	-

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing for SV2023-02: Street
Vacation of Public Right-of-Way within City of
Des Moines, known as 10th Ave South

FOR AGENDA OF: November 16, 2023

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 8, 2023

ATTACHMENTS:

1. Draft Ordinance No. 23-074
2. Resolution No. 1464

CLEARANCES:

- ☐ City Clerk N/A
- ☒ Community Development Daniel E. Lathrop
- ☐ Courts N/A
- ☐ Emergency Management N/A
- ☐ Finance N/A
- ☐ Human Resources N/A
- ☒ Legal /s/ TG
- ☐ Marina N/A
- ☐ Police N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☒ Public Works Richard Myers

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider Draft Ordinance No. 23-074 (refer to Attachment 1), for the vacation of a public right-of-way in accordance with the provisions of DMMC 12.10.040 and RCW 35.79.010.

Suggested Motion

Motion: “I move to enact Draft Ordinance No. 23-074 approving the vacation of a public right-of-way known as 10th Ave South, located within the City of Des Moines and more specifically identified and legally described in Draft Ordinance No. 23-074.”

Background

Behauden Omer and Ekram Hassen filed application materials with the City in June 2022, requesting a vacation of public right-of-way within an area known as 10th Ave South, between South 247th Street and South 248th Street. The area to be vacated is identified in Exhibits A and B of Attachment 1.

The area requested to be vacated is currently unimproved public right-of-way.

Street Vacation Process:

The street vacation process is listed in Chapter 12.10 of the DMMC and in RCW 35.79. The process is as follows: The street vacation petition and non-refundable fee are filed with the Public Works Director. The petition must be signed by at least two-thirds of the adjacent property owners. The Public Works Division sends the application to all public utilities in the area including the police and fire department. The utilities state whether they have utilities within the right-of-way and request an easement if necessary. The police and fire departments provide comments and state whether they approve or disapprove of the street vacation.

The Public Works Director then either approves or disapproves the petition. If the petition is disapproved, the Public Works Director sends a written response to the petitioner citing the rationale for the denial and indicates that the denial may be appealed to the hearings examiner.

If the petition is approved, a date is set for a public hearing which is within 60 days of the resolution that sets the hearing date. A Notice of Public Hearing is mailed to all adjacent property owners, placed in three of the most conspicuous places in the City, printed in the Seattle Times, and a copy of the notice is placed in a conspicuous place on the right-of-way that is proposed for vacation.

The public hearing is held and any objections to the street vacation are noted. If the Council approves the street vacation, the City Clerk records the ordinance with King County as a deed. The ordinance does not go into effect until the City receives compensation, if due, from the adjacent property owner(s).

The ordinance may exercise the right to grant easements for the construction, repair, and maintenance of public utilities and services.

Discussion

The application meets the statutory requirements of RCW 35.79. Since the eastern portion of the originally platted right-of-way was previously vacated, the applicant's parcel is the only property that abuts the section, thus there are no other property owner's approval required. Additionally, the vacated area is not needed for future City infrastructure improvements.

Staff provided notice of this proposed street vacation to all utility purveyors and other City departments on August 15, 2023, requesting their comments and input on the issue. Staff has received comments or input from most utility purveyors and City departments with no objections to the proposed vacation. One utility purveyor, Midway Sewer District, has requested a ten foot utility easement within the vacated area.

A thorough review showed that the area requested to be vacated has never been improved for public transportation purposes. The right-of-way is classified as a "Type C" right-of-way pursuant to DMMC 12.10.050, therefore compensation is not required.

Procedural Requirements

As authorized by RCW 35.79.010 this request for vacation was initiated by the legislative action of the City Council under Resolution No. 1464 (refer to Attachment 2). Vacation of public rights-of-way require a public hearing before the City Council set by resolution no more than 60 days but not less than 20 days prior to the public hearing per RCW 35.79.010 and DMMC 12.10.060. On October 19, 2023, the City Council approved Resolution No. 1464 setting a public hearing on November 16, 2023. Notice of the public hearing was provided as required by RCW 35.79.020.

State Environmental Policy Act (SEPA)

The vacation of public rights-of-way are categorically exempt from the State Environmental Policy Act pursuant to WAC 197-11-800(2)(h) adopted by reference per DMMC 16.05.350.

Alternatives

The City Council has the following alternatives:

- (1) Enact the draft ordinance as written. (Recommended)
- (2) Enact the draft ordinance with amendments by the City Council.
- (3) Not enact the draft ordinance.

Financial Impact

No financial impact.

Recommendation

Administration recommends that the City Council enact Draft Ordinance No. 23-074, vacating a segment of undeveloped and unutilized right-of-way.

Council Committee Review

Not applicable.

CITY ATTORNEY'S FIRST DRAFT 11/16/2023

DRAFT ORDINANCE NO. 23-074

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, vacating a public right-of-way road known as 10th Ave South, between South 247th Street and South 248th Street, located in the City of Des Moines, subject to the applicant's compliance with requirements set forth herein.

WHEREAS, DMMC 12.10.060 adopts the street vacation procedures of chapter 35.79 RCW, and

WHEREAS, RCW 35.79.010 authorizes the City Council to initiate such street vacation procedures by resolution, and

WHEREAS, The City has received a petition from Behauden Omer and Ekram Hassen to vacate a portion of the public right-of-way commonly known as 10th Ave South, between South 247th Street and South 248th Street, located in the City of Des Moines as described in Exhibit "A" and shown on Exhibit "B", attached hereto and incorporated by reference, and

WHEREAS, RCW 35.79.010 requires that the City Council set the public hearing and date by resolution which was, in this case, established by Resolution No. 1464 fixing the public hearing for November 16, 2023, to be followed by City Council action, and

WHEREAS, notice of the public hearing was given in accordance with RCW 35.79.020 and the public hearing was held before the Des Moines City Council on November 16, 2023, and all persons wishing to be heard were heard, and

WHEREAS, no objections to the vacation were filed by any abutting property owners prior to the hearing, and the City Council finds that no person has demonstrated special injury due to substantial impairment of access to such person's property, and,

WHEREAS, the Council finds that vacation of the aforesaid right-of-way, as legally described and depicted on Exhibits "A" and "B" to this Ordinance, is in the public interest; now therefore

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

Sec. 1. Findings adopted. Based on the evidence presented, the City Council adopts the following findings of fact:

(1) The public right-of-way subject to this Ordinance consists of a portion of public right-of-way known as 10th Avenue South, between South 247th Street and South 248th Street further legally described in Section 2 of this Ordinance; and

(2) The public right-of-way described in section 2 of this Ordinance were not improved for City transportation purposes; and

(3) The public right-of-way which are described in section 2 of this Ordinance are not necessary for present and future use by public utilities or for native growth protection; and

(4) The public right-of-way has never been opened for transportation purposes, and

(5) It is in the public interest to vacate this right-of-way; and

(6) The right-of-way is classified as a Class "C" right-of-way since no public funds have ever been expended in its acquisition; and

(7) Vacation of a Class "C" right-of-way requires no compensation.

Sec. 2. Right-of-way vacation. Subject to the requirements set forth in section 3 this Ordinance, the public right-of-way as legally described here and in Exhibit "A" and depicted in the attached map entitled Exhibit "B" (incorporated herein by this reference) is vacated and the property within the right-of-way so vacated shall belong to the respective abutting property owners, one-half to each as required by RCW 35.79.040:

A PORTION OF THE SOUTHEAST QUARTER OF THE
NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 22
NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN IN KING
COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 1, BLOCK 36, PLAT OF THE FIRST RAILROAD ADDITION TO DES MOINES IN VOLUME 4 OF PLATS, AT PAGE 90, RECORDS OF KING COUNTY, WASHINGTON;
THENCE EAST 30 FEET TO THE CENTER LINE OF PLATTED VANCOUVER STREET, COMMONLY KNOWN AS 10TH AVENUE SOUTH;
THENCE SOUTH ALONG SAID CENTER LINE TO A POINT WHICH IS 30 FEET EAST OF THE SOUTHEAST CORNER OF LOT 4 OF BLOCK 36, OF SAID PLAT OF FIRST RAILROAD ADDITION TO DES MOINES;
THENCE WEST TO THE SOUTHEAST CORNER OF LOT 4 OF SAID BLOCK 36;
THENCE NORTH ALONG THE EAST LINE OF SAID BLOCK 36 TO THE POINT OF BEGINNING.

Sec. 3. Conditions of right-of-way vacation. The right-of-way subject to vacation under this Ordinance shall be subject to the following conditions:

(1) The abutting property owner shall not be required to pay the City of Des Moines compensation for vacation of this Class C right-of-way, pursuant to DMMC 12.10.070(2)(c).

(2) The abutting property owner recognizes that the City of Des Moines retains an easement or the right to exercise and grant easements for utility purveyors in respect to the land vacated by this Ordinance for the construction, repair, and maintenance of public utilities and services, and that the City of Des Moines will grant utility easements through the right-of-way subject to vacation under this Ordinance:

(a) Midway Sewer District reserves a ten (10) foot easement within the vacated area for the purpose of maintaining and operating an existing sewer pipeline.

3) Petitioner, Behauden Omer and Ekram Hassen, shall be responsible for obtaining and recording the easement referenced herein, and provide recorded copies to such easement to the City of Des Moines.

Sec. 4. Easements and reservation of easements.
Pursuant to RCW 35.79.030, the City of Des Moines retains

easements as set forth in section 3 of this Ordinance and retains the right to exercise and grant easements in respect to the land vacated by this Ordinance and abutting property for the construction, repair, and maintenance of public utilities and services, and for vehicular access.

Sec. 5. Severability - Construction.

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

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

Sec. 6. Recordation. The City Clerk shall cause a certified copy of this ordinance to be recorded in the records of the King County Recorder.

Sec. 7. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 16th day of November, 2023 and signed in authentication thereof this 16th day of November, 2023.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

Draft Ordinance No. 23-064
Page 5 of 5

City Clerk

EXHIBIT 'A'

ROAD VACATION DESCRIPTION-10th Ave S. :

A portion of the Southeast quarter of the Northeast Quarter of Section 20, Township 22 North, Range 4 East, Willamee Meridian in King County, Washington described as follows:

BEGINNING AT the Northeast corner of Lot 1, Block 36, Plat of the First Railroad Addition to Des Moines in Volume 4 of Plats, at Page 90, Records of King County, Washington;

Thence East 30 feet to the Center line of platted Vancouver Street, commonly known as 10th Avenue South;

Thence South along said center line to a point which is 30 feet East of the southeast corner of Lot 4 of Block 36, of said Plat of First Railroad Addition to Des Moines;

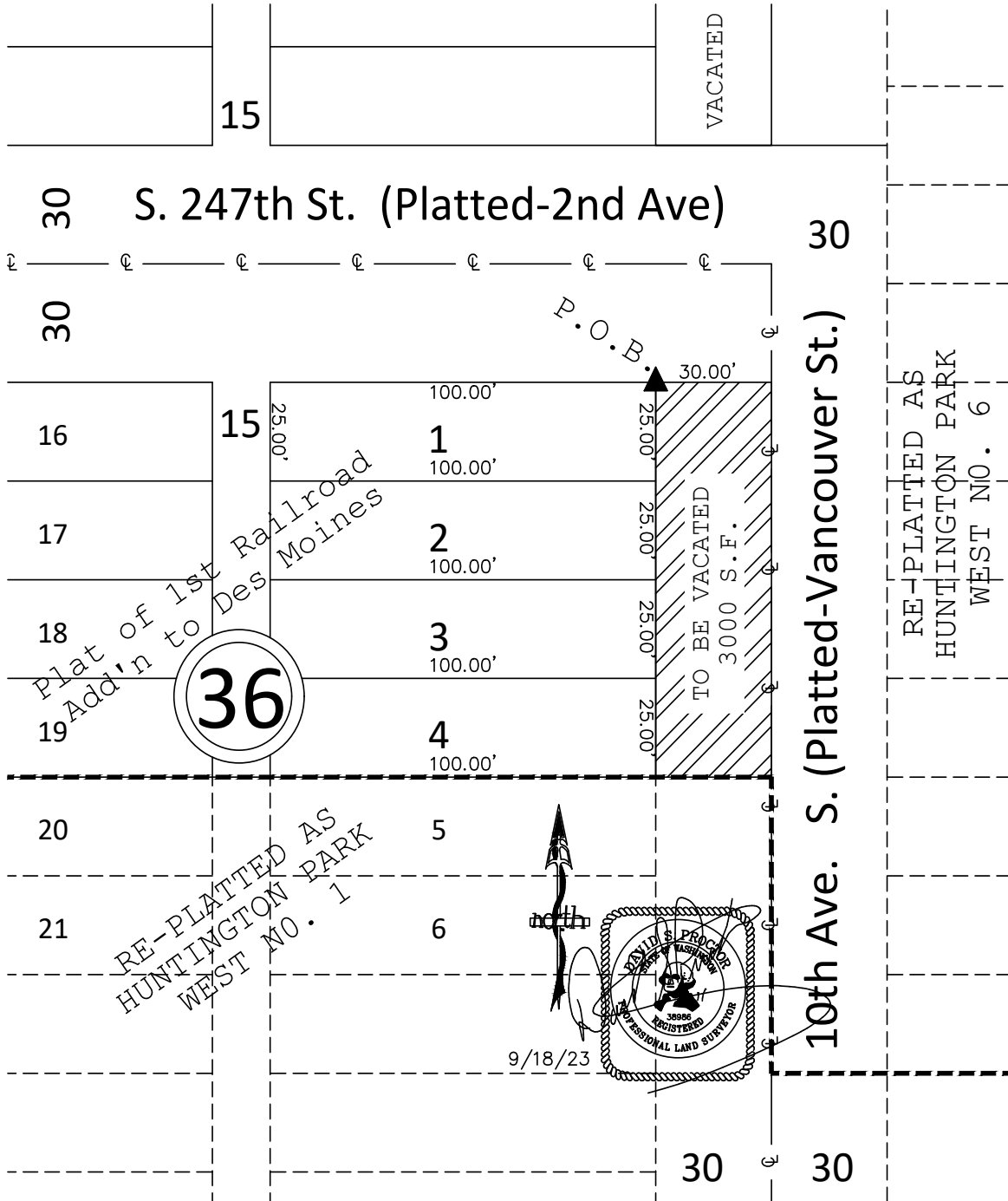
Thence West to the Southeast corner of Lot 4 of said Block 36;

Thence North along the east line of said Block 36 to the POINT OF BEGINNING.



9/18/23

EXHIBIT 'B'



RESOLUTION NO. 1464

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider vacation of a segment of public rights-of-way within the City of Des Moines.

WHEREAS, the City Council is considering vacation of a portion of public rights-of-way known as 10th Ave South, between South 247th Street and South 248th Street, located in the City of Des Moines as described and shown on Exhibit "A" attached hereto and incorporated by reference, by the petition method, and

WHEREAS, the provisions of RCW 35.79.010 authorize the City Council to fix a time for a public hearing in order to receive public comment regarding this proposal; now therefore,

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

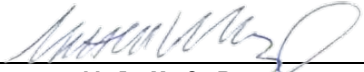
The matter of the vacation of the following described portions of public rights-of-way in the City of Des Moines is set for a public hearing before the City Council on Thursday, November 16th, 2023 at 6:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue So., Suite B, Des Moines, Washington:

10th Ave South, between South 247th Street and South 248th Street, located in the City of Des Moines as described and shown on Exhibit "A", attached hereto.

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Resolution No. 1464
Page 2 of 2

ADOPTED BY the City Council of the City of Des Moines,
Washington this 19th day of October, 2023 and signed in
authentication thereof this 19th day of October, 2023.



M A Y O R

APPROVED AS TO FORM:

/s/ Tim George
City Attorney

ATTEST:


City Clerk

EXHIBIT 'A'

ROAD VACATION DESCRIPTION-10th Ave S. :

A portion of the Southeast quarter of the Northeast Quarter of Section 20, Township 22 North, Range 4 East, Willamee Meridian in King County, Washington described as follows:

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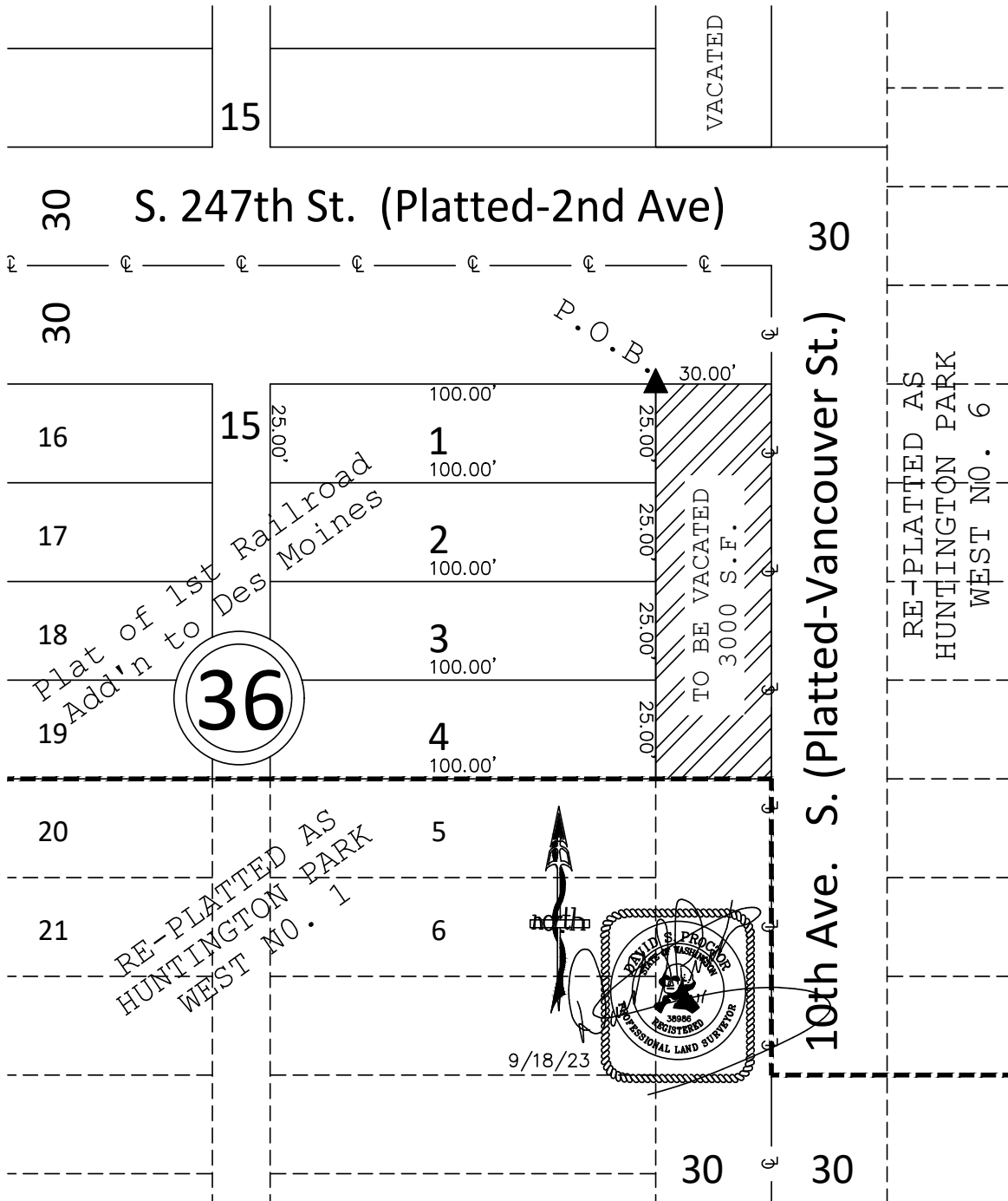
Thence South along said center line to a point which is 30 feet East of the southeast corner of Lot 4 of Block 36, of said Plat of First Railroad Addition to Des Moines;

Thence West to the Southeast corner of Lot 4 of said Block 36;

Thence North along the east line of said Block 36 to the POINT OF BEGINNING.



9/18/23



Public Hearing

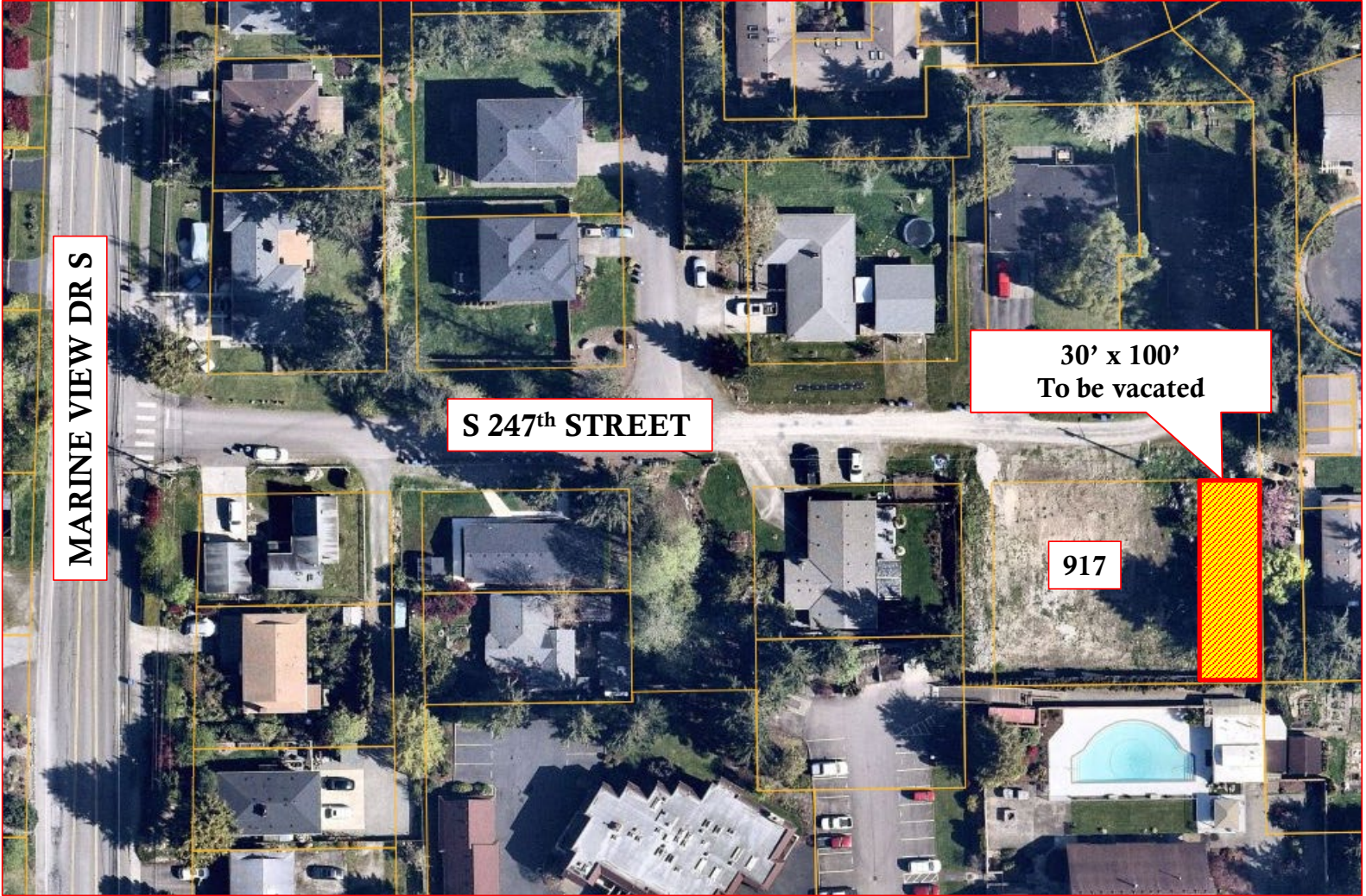
For the vacation of Public Right-of-Way known as 10th Avenue South
SV2023-02



November 16, 2023
CITY OF DES MOINES

Draft Ordinance No. 23-074

Mike Kwispond
Civil Engineer I



Quick Facts



- Behauden Omer and Ekram Hassen filed a street vacation application in June 2022
- The area requested to be vacated is currently unimproved public right-of-way
- The eastern portion of the originally platted right-of-way was previously vacated

Right-of-Way Vacation Process



- Chapter 12.10 of DMMC and RCW 35.79
- File the street vacation petition and nonrefundable fee
- Petition must be signed by the owners of two-thirds of the property abutting upon the street to be vacated
- Notice all utilities, including Police and Fire
- Utilities request easements, Police and Fire provide comments
- Public Works Director either approves or denies vacation petition
- If approved, public hearing date is set within 60 days of resolution

Classification

Class C

- No public funds were ever expended in acquisition of the right-of-way
- Never improved for transportation purposes, therefore classified as Class C.
- DMMC 12.12.050 FEES AND COMPENSATION states that a Class C street vacation “requires no compensation.”

Utility Responses



Midway Sewer District requested a 10-foot easement for existing and future utilities. The following utilities yielded no objections to vacating the right-of-way:

- Comcast
- Century Link/Qwest
- AT&T
- Highline Water District
- Southwest Suburban Sewer District
- King County Water District #54
- Lakehaven Utility
- Zayo
- Des Moines Surface Water Management
- Police Department
- South King Fire & Rescue

Discussion and Conclusion



- Application meets statutory requirements of RCW 35.79
- Since right-of-way to the east was previously vacated, the applicant's parcel is the only property that abuts the proposed vacation. Therefore, no additional signatures required.
- The right-of-way is not used for pedestrian or vehicle traffic
- The right-of-way does not access other parcels
- The right-of-way is not necessary for present or future use by public utilities (excluding Midway Sewer District)
- Does not contain a Native Growth Protection Easement

Staff Recommendation



Motion:

“I move to enact Draft Ordinance No. 23-074 approving the vacation of a public right-of-way known as 10th Ave South, located within the City of Des Moines and more specifically identified and legally described in Draft Ordinance No. 23-074.”



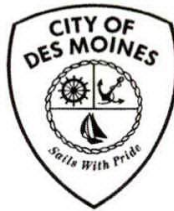
Road classification for Fee Purposes

From DMMC 12.10.050



- **Class A** – Streets or alleys that have been part of a dedicated public right-of-way for 25 years or more, all rights-of-way conveyed to or held by the city for transportation purposes for which public funds have been expended in the acquisition, improvement or maintenance of such rights-of-way interests, and rights-of-way that abut a body of fresh or salt water
- **Class B** – All city rights-of-way conveyed to or held by the city for transportation purposes for which no public funds have been expended in the acquisition of the same, excluding any Class A rights-of-way
- **Class C** – All city rights-of-way originally conveyed to the city by a party who subsequently petitions for the vacation of said rights-of-way for which no public expenditures have been made in the acquisition of the same and any rights-of-way or portions thereof subject to being vacated by the provisions of section 32, chapter 19, Laws of 1889-90; or any other rights-of-way not included with in Classes A and B





CITY COUNCIL REGULAR MEETING

Speaker Sign-Up Sheet

November 16, 2023

NAME (PLEASE PRINT)	CITY YOU LIVE IN	TOPIC	PHONE/E-MAIL ADDRESS
✓ CHUCK COLEMAN	DES MOINES	Finance Committee	702-303-6700
✓ SCOTT WILKINS	DES MOINES	INUTE	206 383-0662
✓ JIM LAMPARIELLO	DES MOINES	TRANSPARENCY	ROCKET FAN 456@gmail.com
✓ Luisa Bangs	Des Moines	General	—
✓ Victoria Andrews	" "	Coffee w. Mayor	VAndrewsLI@dmn.com
✓ Bill Linscott	DES MOINES	SOUND PROOF GYM MAY 15 COMMUNITY NEW ENTERPRISE	
✓ Lloyd Lytle	Des Moines	community events masonic Home	lloydelytle@gmail.com
✓ George Pettibone	Des Moines	masonic Home	gepettibone@gmail.com not