

AMENDED AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, November 21, 2024 - 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

CEREMONIAL SWEARING IN OF CITY MANAGER KATHERINE CAFFREY

COMMENTS FROM THE PUBLIC

COMMITTEE CHAIR REPORT

- ~~FINANCE COMMITTEE: Chair Matt Mahoney~~
- ~~PUBLIC SAFETY/EMERGENCY MANAGEMENT: Chair Traci Buxton~~
- TRANSPORTATION: Chair Matt Mahoney
- ENVIRONMENT COMMITTEE: Chair JC Harris

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

CONSENT AGENDA

Item 1. APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through November 07, 2024 and payroll transfers through November 05, 2024 in the attached list and further described as follows:

EFT Vendor Payments	#10847-11005	\$1,486,749.47
Wires	#2744-2783	\$2,882,787.40
Accounts Payable Checks	#166151-166211	\$2,259,847.28
Payroll Checks	#19905-19908	\$15,002.39
Payroll Advice	#11434-11606	\$522,913.46

Total Checks and Wires for A/P & Payroll: \$7,167,300.00

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES

Motion is to approve the September 11, 2024 Special City Council Meeting, the September 12, September 26, and the October 10, 2024 City Council Meeting, and the October 03, 2024 City Council Study Session Meeting Minutes.

[Approval of Minutes](#)

Item 3. SMALL BUSINESS SATURDAY PROCLAMATION

Motion is to approve the Proclamation recognizing the Saturday after Thanksgiving as Small Business Saturday.

[Small Business Saturday Proclamation](#)

Item 4. SB 5290 LOCAL PROJECT REVIEW REQUIREMENTS

Motion is to approve Draft Resolution 24-095 documenting compliance with SB 5290 Local Project Review Requirements for the City of Des Moines.

[SB 5290 Local Project Review Requirements](#)

Item 5. STORMFEST – INTERLOCAL AGREEMENT

Motion is to approve the Interlocal Agreement between City of Des Moines and the Cities of Burien, Normandy Park, Seatac and King County for Highline StormFest, and authorize the City Manager to sign said Agreement substantially in the form as submitted.

[StormFest – Interlocal Agreement](#)

Item 6. BIRD DETERRENT BALL PURCHASE

Motion is to approve the purchase of Bird-X Bird Deterrent Balls, for a total estimated amount of \$124,191.00, and to authorize the City Manager or the City Manager's designee to sign the purchase order at the time they are created.

[Bird Deterrent Ball Purchase](#)

Item 7. MARINE VIEW DRIVE POND RETROFIT

Motion 1 is to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-03 with Parametrix to provide design and permitting services for the Marine View Drive Pond Retrofit Project in the amount of \$295,106.83, and authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

Motion 2 is to direct Administration to submit a CIP budget amendment for the Marine View Drive Pond Retrofit Project to incorporate the funding sources of the King County Flood Control Grant funding and Surface Water Utility funds.

[Marine View Drive Pond Retrofit](#)

- Item 8. **~~GRANT ACCEPTANCE: DEPARTMENT OF COMMERCE
PASSENGER FERRY BENEFITS STUDY~~**
~~**Motion** is to approve federal interagency agreement #f24-51701-006, accepting grant funds of \$160,000 to support community engagement and environmental analysis for the electric taxi initiative and to authorize the city manager to sign the agreement substantially as presented.~~
- Item 9. **MARINA VEHICLE CHARGING STATION AGREEMENT**
Motion is to approve the Site Host Agreement with EV Charging Solutions for the design, construction and installation of 9 electric vehicle charging stations at the Marina, and authorize the City Manager to sign the agreement substantially in the form as attached.
[Marina Vehicle Charging Station Agreement](#)

PUBLIC HEARING/CONTINUED PUBLIC HEARING

- Item 1. 2025 PROPERTY TAX LEVIES
Staff Presentation by Finance Director Jeff Friend
[2025 Property Tax Levies](#)
[2025 Property Tax PowerPoint Presentation](#)
- Item 2. 2024 ANNUAL BUDGET AMENDMENTS
Staff Presentation by Finance Director Jeff Friend
[2024 Annual Budget Amendments](#)
[2024 Annual Budget Amendments PowerPoint Presentation](#)

UNFINISHED BUSINESS

- Item 1. WATER DISTRICT 54 FRANCHISE AMENDMENT
[Water District 54 Franchise Amendment](#)
[WD 54 Franchise Amendment PowerPoint Presentation](#)

NEW BUSINESS

- Item 1. SQUARE FOOTAGE TAX
[Square Footage Tax](#)
[Square Footage Tax PowerPoint Presentation](#)
- Item 2. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

- Item 1. RCW 42.30.110(1)(i) POTENTIAL LITIGATION - 20 MINUTES

NEXT MEETING DATE

December 05, 2024 City Council Regular Meeting

ADJOURNMENT

CITY OF DES MOINES
Voucher Certification Approval
November 21, 2024
Auditing Officer Certification

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

As of **November 21, 2024** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through November 7, 2024 and payroll transfers through November 5, 2024 included in the attached list and further described as follows:

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


 Jeff Friend, Finance Director

			# From	# To	Amounts	
Claims Vouchers:						
EFT's			10847		11005	1,486,749.47
Wires			2744		2783	2,882,787.40
AP Checks			166151		166211	2,259,847.28
Total Vouchers paid						6,629,384.15
Payroll Vouchers						
Payroll Checks		11/5/2024	19905		19908	15,002.39
Payroll Advice			11434		11606	522,913.46
Total Paychecks & Direct Deposits						537,915.85
Total checks and wires for A/P & Payroll						7,167,300.00

MINUTES

**DES MOINES CITY COUNCIL
SPECIAL MEETING
North Conference Room
21630 11th Avenue S, Des Moines, Washington
Tuesday, September 11, 2024 - 6:00 PM**

CALL TO ORDER

Mayor Traci Buxton called the Special Meeting to Order at 6:30 p.m. in the Council Chambers.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember JC Harris; and Councilmember Jeremy Nutting

Staff Present:

Assistant City Manager Adrienne Johnson-Newton and Interim City Attorney Matt Hutchins

PURPOSE

The purpose of the Special Meeting was to hold an Executive Session to discuss qualified applications per RCW 42.30.110(1)(g). The Executive Session was expected to last 40 minutes.

At 7:07 p.m. Mayor Traci Buxton extended the Executive Session until 7:45 p.m.

At 7:38 p.m. Councilmember JC Harris left the Executive Session.

At 7:44 p.m. Mayor Traci Buxton extended the Executive Session until 8:00 p.m.

No formal action was taken, The Executive Session lasted 90 minutes.

The meeting adjourned at 8:00 p.m.

Respectfully Submitted
Taria Keane
City Clerk

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, September 12, 2024 - 6:00 PM**

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Gene Achziger.

ROLL CALL

Council Present:

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

Staff Present:

Interim City Manager Tim George; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Police Chief Ted Boe; Director of Community/Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Finance Director Jeff Friend; Public Works Director Michael Slevin; City Engineer Tommy Owen; Civil Engineer II Tyler Beekley; Planning & Development Services Manager Laura Techico; and City Clerk Taria Keane

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

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

COMMENTS FROM THE PUBLIC

- Bill Linscott, Marina Steps
- Ashley Aller, Landmarks
- Lloyd Lytle Jr, Masonic Home
- George Pettibone, Masonic Home
- David Jones, Safety/Driving

COMMITTEE CHAIR REPORT

- Transportation Committee Meeting: Chair Matt Mahoney
 - Councilmember Matt Mahoney gave Council an update on the Transportation Committee Meeting.
- Environment Committee Meeting: Chair JC Harris
 - Councilmember JC Harris gave Council an update on the Environment Committee Meeting.
- Public Safety/Emergency Management Committee Meeting: Chair Traci Buxton
 - Mayor Traci Buxton gave Council an update on the Public Safety/Emergency Management Committee Meeting.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

RECOLOGY

- Government and Community Relations Manager Alissa Campbell gave Council a Recology Mid-Year PowerPoint Update.

REALLOCATING AMERICAN RESCUE PLAN ACT FUNDS

- Finance Director Jeff Friend gave Council a PowerPoint Presentation on Reallocating American Rescue Plan Act Funds.

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to approve the reallocation of ARPA funds as proposed; seconded by Councilmember Jeremy Nutting.

Motion passed 7-0.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through September 05, 2024 and payroll transfers through September 05, 2024 in the attached list and further described as follows:

EFT Vendor Payments	#10504-16085	\$1,723,100.37
Wires	#2663-2698	\$1,216,301.77
Accounts Payable Checks	#166016-166099	\$ 587,150.63
EFT Void	#10624-106204	\$ (50.00)
Payroll Check	#19864-19864	\$ 300.00
Payroll Checks	#19865-19874	\$ 15,346.77
Payroll Advice	#10390-10571	\$ 516,409.37

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Payroll Checks	#19875-19880	\$ 12,688.16
Payroll Advice	#10572-10746	\$ 494,615.99
Payroll Check Void	#19877-19877	\$ (2,132.61)
Payroll Check	#19881-19881	\$ 2,132.61
Payroll Checks Voided	#19882-19888	\$ 0.00
Payroll Check	#19889-19895	\$ 10,973.83
Payroll Advice	#10747-10931	\$ 514,479.79

Total Checks and Wires for A/P & Payroll: \$5,091,316.68

Item 2: APPROVAL OF MINUTES

Motion is to approve the July 30, 2024 Special Meeting minutes, the August 1, 2024 City Council Study Session minutes, and the August 08, 2024 City Council Regular Meeting minutes.

Item 3: ARTS COMMISSION APPOINTMENTS

Motion 1 is to confirm the Mayoral appointment of Nicholas Fannin to an open position on the Des Moines Arts Commission, effective immediately and expiring on December 31, 2027.

Motion 2 to confirm the Mayoral appointment of Theresa Jewell to an open position on the Des Moines Arts Commission, effective immediately and expiring on December 31, 2027.

Item 4: CHILDHOOD CANCER AWARENESS MONTH PROCLAMATION

Motion is to approve the Proclamation recognizing September as Childhood Cancer Awareness Month.

Item 5: NATIONAL PREPAREDNESS MONTH PROCLAMATION

Motion is to approve the Proclamation recognizing September as National Preparedness Month.

Item 6: NATIONAL RECOVERY MONTH PROCLAMATION

Motion is to approve the Proclamation recognizing September as National Recovery Month.

Item 7: UPDATING THE CITY'S SURPLUS UTILITY PROPERTY POLICY

Motion is to adopt Draft Ordinance 24-066 amending DMMC 3.108.060 to update the City's utility property surplus policy.

Item 8: DES MOINES STORMWATER IMPROVEMENT PROJECT AGREEMENTS

Motion 1 is to approve the Public Works Contract with Reed Trucking & Excavating Inc. (Contractor) for the Des Moines Stormwater Improvements Projects in the amount of \$1,384,000.00, authorize a project construction contingency in the amount of \$250,000.00, and

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further authorize the City Manager to sign said Contract substantially in the form as submitted.

Motion 2 is to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-04 with KBA, Inc. to provide Construction Administration and Inspection services for the Des Moines Stormwater Improvements Projects in the amount of \$222,451.00 and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

Motion 3 is to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-01 with Perteet, Inc. to provide Engineer of Record services for the Des Moines Stormwater Improvements Projects in the amount of \$77,892.00, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

Item 9: COLIBRI NORTHWEST LLC CONSULTING CONTRACT
AMENDMENT 1

Motion is to approve Amendment 1 to the contract with Colibri Northwest LLC, extending the consultant services contract through June 30, 2025.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the consent agenda; seconded by Councilmember Matt Mahoney.

Councilmember Gene Achziger pulled Consent Item #9.

The remainder of the consent agenda passed 7-0.

President of the Des Moines Auxiliary of Seattle Children's Hospital Teria Perdue read the Childhood Cancer Awareness Month Proclamation into the record.

Mayor Traci Buxton read the National Recovery Month Proclamation into the record.

Mayor Traci Buxton read the National Preparedness Month Proclamation into the record.

Council discussed consent item #9.

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Direction/Action

Motion made by Councilmember Gene Achziger to delay the Colibri Northwest LLC Consulting Contract until the passenger ferry economic impact study was finalized; seconded by Councilmember JC Harris.
Motion failed 3-4.

For: Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui, and Councilmember JC Harris.

Against: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve consent item #9 as read; seconded by Councilmember Matt Mahoney.
Motion passed 4-3.

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

Against: Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui, and Councilmember JC Harris.

At 7:50 p.m. the council took a 10 minute break and resumed the meeting at 8:00 p.m.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

PUBLIC HEARING FOR DES MOINES CREEK BUSINESS PARK
WEST: DECLARING TRACT C SURPLUS, APPROVING PURCHASE
AND SALE AGREEMENT AND APPROVING TRAIL EASEMENT
Staff Presentation by Interim City Attorney Matthew Hutchins

At 8:01 p.m. Mayor Traci Buxton opened the Public Hearing.

Interim City Attorney Matthew Hutchins gave Council a PowerPoint Presentation on Draft Ordinance No. 24-030 regarding the Surplus and Sale of Tract C in the Des Moines Business Park as well as to accept a Trail Easement.

Mayor Traci Buxton called those who signed up to speak.

- Barbara McMichael, opponent
- Lloyd Lytle, opponent

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

Seeing none Traci Buxton asked Council if they had any questions.

At 8:12 p.m. Mayor Traci Buxton closed the Public Hearing.

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to continue the Public Hearing at the September 26, 2024 City Council Meeting; seconded by Councilmember Jeremy Nutting.
Motion passed 7-0.

NEW BUSINESS

Item 1: **CITY MANAGER EMPLOYMENT AGREEMENT**

Assistant City Manager Adrienne Johnson-Newton gave the Council a PowerPoint on the City Manager Employment Agreement.

Direction/Action

Motion made by Councilmember Jeremy Nutting to formalize the appointment of Katherine Caffrey as the Des Moines City Manager under the terms of the attached Employment Agreement, and to authorize the Mayor to sign such Agreement on behalf of the City, substantially in the form as submitted; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

Item 2: **2025 BUSINESS LICENSES FEE SCHEDULE**
Staff Presentation by Finance Director Jeff Friend

Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2025 Business Licenses Fee Schedule.

Direction/Action

Motion made by Councilmember Jeremy Nutting to adopt Draft Resolution No. 24-067 updating the business license fee schedule; seconded by Councilmember Matt Mahoney.
Motion passed 7-0.

Item 3: **NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes**

Councilmember Matt Mahoney asked Council to support having staff to bring a Resolution to the September 26, 2024 City Council meeting in support of the Levy Lid Lift. Council supported.

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Councilmember JC Harris asked Council to support having staff bring a Resolution to the September 26, 2024 City Council meeting opposing the Initiative 2117 concerning Carbon Tax Credit Trading. Council supported.

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

COUNCILMEMBER GENE ACHZIGER

- Senior Services Advisory Committee

COUNCILMEMBER JC HARRIS

- Key to Change Studio
- Duwamish River Hub Meeting
- Airport Master Plan Expansion

COUNCILMEMBER MATT MAHONEY

- Public Safety Levy Lid Lift

COUNCILMEMBER YOSHIKO GRACE MATSUI

- Representatives of Des Moines Conversations

Direction/Motion

At 8:59 p.m. Deputy Mayor Steinmetz made a motion to extend the meeting to 9:10 p.m.; seconded by Councilmember Matt Mahoney. Motion passed 7-0.

COUNCILMEMBER JEREMY NUTTING

- School Safety
- Apple Cup

DEPUTY MAYOR HARRY STEINMETZ

- Sound City Association Deputy Mayor Lunch
- Lunch with Judge Leon
- Meeting with Constituents
- Zenith Neighborhood Picnic

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PRESIDING OFFICER'S REPORT

- Pregnancy Aid
- Inkfish Gallery – George C. Scott Studios
- South County City Leaders Domestic Violence Task Force Breakfast
- Domestic Violence Awareness Month
- South King County Mayors Meeting
- Pete Von Reichbauer Breakfast
- FIFA Ready Roundtable
- Welcome Police Chief Ted Boe, Community Development Director Rebecca Deming, and incoming City Manager Katherine Caffrey

EXECUTIVE SESSION

NEXT MEETING DATE

September 26, 2024 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Gene Achziger to adjourn; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

The meeting adjourned at 9:09 p.m.

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, September 26, 2024 - 6:00 PM**

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The flag salute was led by Deputy Mayor Harry Steinmetz.

ROLL CALL

Council Present:

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

Staff Present:

Interim City Manager Tim George; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Finance Director Jeff Friend; Judge Lisa Leone; Director of Court Administration Melissa Patrick; City Prosecutor Tara Vaughn; Public Works Director Michael Slevin; Building Official Dan Hopp; Planning & Development Services Manager Laura Techico; Senior Planner Jason Woycke; Assistant Harbormaster Katy Bevegne; Police Chief Ted Boe; Assistant Police Chief Kevin Penney; Detective Brian Flynn; Sergeant Isaac Helgren; Sergeant Justin Cripe; Sergeant Eddie Ochart; Patrol Sergeant Doug Weable; Police Officer Ashley Trevorrow; Police Officer Ben Brown; Police Officer Frank Rios; Police Officer David Hamilton; Patrol Officer Robert Bonjukian; Patrol Officer Ryan Melby; Patrol Officer Shay Lamarsh; Patrol Officer Tuan Huynh; Code Enforcement Officer Kory Batterman; Records Specialist Sarah Maurer; Crisis Response Specialist Monica Lara; Crime Analyst Patricia Gosch; Director of Emergency Management and Workplace Safety Shannon Kirchberg; Communication Director Nicole Nordholm; Executive Administrative Analyst Rochelle Caton; City Clerk Taria Keane; Administrative Coordinator Laura Hopp; Human Resource Analyst Alexandra Reyes; and City Hall Project Assistant Courtney Steen

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

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

COMMENTS FROM THE PUBLIC

- Dave Kaplan, SAMP Near Term Project Draft Environmental Policy Act Environment Assessment
- Brian Davis, Initiative 2117
- Barbara McMichael, Des Moines Creek Business Park
- Steve Quinn, Budget
- Lloyd Lytle, Zenith Hillside
- George Pettibone, Zenith Hillside
- Jim Lampariello, Levy Lid Lift
- Alex Reyes, Proposition 1
- Isaac Helgren, Proposition 1
- Vic Pennington, Proposition 1

COMMITTEE CHAIR REPORT - MOVED TO OCTOBER 10, 2024

- ~~MUNICIPAL FACILITIES COMMITTEE: CHAIR JEREMY NUTTING~~
- ~~ECONOMIC DEVELOPMENT COMMITTEE: CHAIR JEREMY NUTTING~~

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

LIGHTHOUSE NORTHWEST

- Lighthouse Northwest Development Director Bobbie Jo Shockley gave Council a PowerPoint Presentation on Lighthouse Northwest.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through September 12, 2024 and payroll transfers through September 20, 2024 in the attached list and further described as follows:

EFT Vendor Payments	#10686-10728	\$ 328,632.34
Wires	#2699-2716	\$2,517,032.94
Accounts Payable	#164388-164388	\$ (130.00)
Checks Void		
Payroll Check Voided	#19891-19891	\$ (2038.13)

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Payroll Check	#19896-19896	\$	2038.13
Payroll Checks	#19897-19897	\$	779.64
Payroll Advice	#109.32	\$	506,377.24

Total Checks and Wires for A/P & Payroll: \$3,352,692.16

Item 2: APPROVAL OF MINUTES

Motion is to approve the August 28, 2024 and the September 03, 2024 Special Meeting Minutes.

Item 3: DOMESTIC VIOLENCE AWARENESS MONTH PROCLAMATION

Motion is to approve the Proclamation recognizing October as Domestic Violence Awareness Month.

Item 4: ACCEPTANCE OF FOUNDATION OF WASHINGTON STATE COURTS GRANT

Motion is to accept the grant from the Foundation of Washington State Courts in the amount of \$8,000 for the purpose of constructing a court consultation space for Des Moines Municipal Court.

Item 5: MUNICIPAL COURT INTERLOCAL AGREEMENT FOR PEER SUPPORT SERVICES

Motion is to approve the Interlocal Agreement between Des Moines Municipal Court and Federal Way Municipal Court for the purpose of sharing peer support services and authorize the Judge to sign the Interlocal Agreement in the form as submitted.

Item 6: CREATING A PUBLIC SAFETY LEVY FUND

Motion is to adopt Draft Ordinance No. 24-077 establishing a Special Revenue Fund in chapter 3.51 DMMC entitled "Public Safety Revenue Fund.

Item 7: CONTRACT WITH EHM WASHINGTON, LLC TO PROVIDE ELECTRONIC MONITORING SERVICES TO INDIGENT DEFENDANTS

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

Item 8: LODGING TAX ADVISORY COMMITTEE APPOINTMENT

Motion is to confirm the Mayoral appointment of Mackenzie Meyers to the Lodging Tax Advisory Committee effective immediately.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

RESOLUTION OPPOSING INITIATIVE MEASURE NO. 2117

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CONCERNING CARBON TAX CREDIT TRADING

Motion is to adopt Draft Resolution No. 24-080 in opposition to ballot initiative measure 2117 concerning carbon tax credit trading on the November 5, 2024 general election ballot.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda; seconded by Deputy Mayor Harry Steinmetz.

Deputy Mayor Harry Steinmetz pulled Consent Agenda Item #6.

Councilmember Gene Achziger pulled Consent Agenda Item #8.

Mayor Traci Buxton pulled Consent Agenda Item #9.

The remainder of the Consent Agenda passed 7-0.

Lighthouse Northwest Development Director Bobbie Jo Shockley read the Domestic Violence Proclamation into the record.

Council discussed Consent Agenda Item #6.

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to approve Consent Agenda Item #6 as read; seconded by Councilmember Matt Mahoney. Motion passed 4-3.

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

Against: Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui, and Councilmember JC Harris.

Council discussed Consent Agenda Item #8.

Direction/Action

Motion made by Councilmember Gene Achziger to approve Consent Agenda Item #8 as read; seconded by Councilmember Jeremy Nutting. Motion passed 7-0.

Council discussed Consent Agenda Item #9.

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Direction/Action

Motion made by Councilmember Jeremy Nutting to approve Consent Agenda Item #9 as read; seconded by Councilmember Matt Mahoney. Motion passed 6-1.

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

Abstained: Mayor Traci Buxton

2ND READING PUBLIC HEARING FOR DES MOINES CREEK
BUSINESS PARK WEST - DECLARING TRACT C SURPLUS,
APPROVING PURCHASE AND SALE AGREEMENT AND
APPROVING TRAIL EASEMENT

Staff Presentation by Interim City Attorney Matthew Hutchins

At 7:18 p.m. Mayor Traci Buxton opened the Public Hearing.

Interim City Attorney Matthew Hutchins gave Council a PowerPoint Presentation on Draft Ordinance No. 24-030 regarding the Surplus and Sale of Tract C in the Des Moines Business Park as well as to accept a Trail Easement.

Mayor Traci Buxton called those who signed up to speak.

- Olivia Bronson, opponent
- Sherry Miller, opponent
- Doug Miller, opponent
- Eileen Lambert, opponent
- Anne Kroeker, opponent
- Lloyd Lytle, opponent
- Mary Fleck, opponent
- Jenny Russo, opponent
- Claire Parfitt, opponent
- John Kaur, opponent

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

Seeing none Traci Buxton asked Council if they had any questions.

At 8:01 p.m. Mayor Traci Buxton closed the Public Hearing.

Direction/Action

Motion 1 made by Councilmember Jeremy Nutting to enact Draft

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Ordinance 24-030 declaring surplus to City needs Tract C located within the Des Moines Creek Business Park West, and authorize the City Manager to execute the documents necessary for the sale of the property to the Port of Seattle for fair market value; seconded by Councilmember Matt Mahoney.

Amended Motion made by Councilmember JC Harris to set aside 10 percent of the \$690,000 purchase price allocated to the SAMP mitigation issues; seconded by Mayor Traci Buxton.
Motion passed 5-2.

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

Against: Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

The motion as amended passed 7-0.

Motion 2 made by Councilmember Jeremy Nutting to approve the Trail Easement from the Port of Seattle over the Des Moines Creek Business Park West property, and authorize the City Manager to sign the Easement substantially in the form as attached, seconded by Councilmember Matt Mahoney.
The motion passed 7-0.

NEW BUSINESS

Item 1: RESOLUTION IN SUPPORT OF PROPOSITION 1, PUBLIC SAFETY
LEVY LID LIFT
Staff Presentation by Finance Director Jeff Friend

Finance Director Jeff Friend gave Council a PowerPoint Presentation on the Resolution in support of Proposition 1, Public Safety Levy Lid Lift.

Direction/Motion

Motion made by Councilmember Jeremy Nutting to adopt Draft Resolution No. 24-060 in support of the City of Des Moines' Proposition 1, Public Safety Levy Lid Lift, on the November 5, 2024 election ballot; seconded by Councilmember Matt Mahoney.
Motion passed 4-3.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz;

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Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

Against: Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui, and Councilmember JC Harris.

Direction/Motion

Motion made by Councilmember Jeremy Nutting to extend the meeting to 9:10 p.m.; seconded by Deputy Mayor Harry Steinmetz.

Motion passed 6-1.

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

Against: Councilmember JC Harris.

Item 2: ADOPTION OF 2025 – 2030 CAPITAL IMPROVEMENTS PLAN
Staff Presentation by Finance Director Jeff Friend

Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2025-2030 Capital Improvements Plan.

Direction/Action

Motion made by Councilmember Jeremy Nutting to adopt Draft Resolution No. 24-081 approving the City of Des Moines 2025-2030 Capital Improvements Plan; seconded by Councilmember Matt Mahoney.

Motion passed 7-0.

EXECUTIVE SESSION

NEXT MEETING DATE

October 03, 2024 City Council Study Session

ADJOURNMENT

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to adjourn; seconded by Councilmember Matt Mahoney.

Motion passed 7-0.

The meeting adjourned at 9:07 p.m.

MINUTES

**DES MOINES CITY COUNCIL
STUDY SESSION
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, October 3, 2024 - 6:00 PM**

CALL TO ORDER

Mayor Traci Buxton called the meeting to order at 6:01 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember JC Harris.

ROLL CALL

Council Present:

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

Council via Phone:

Councilmember Yoshiko Grace Matsui

Staff Present:

Interim City Manager Tim George; Interim City Attorney Matt Hutchins; Finance Director Jeff Friend; Director of Community/Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Police Chief Ted Boe; City Prosecutor Tara Vaughn; Director of Court Administration Melissa Patrick; Public Works Director Michael Slevin; City Engineer Tommy Owen; Director of Emergency Management and Workplace Safety Shannon Kirchberg; Events and Facilities Manager Cortney Wilt; and Deputy City Clerk Sara Lee

CORRESPONDENCE

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

COMMENTS FROM THE PUBLIC

Comments from the public must be limited to the items of business on the Study Session Agenda. Please sign in prior to the meeting and limit your comments to three (3) minutes.

- Bill Linscott, Budget

Study Session Minutes
October 3, 2024

DISCUSSION ITEMS

BUDGET UPDATE

Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2025/2026 Proposed Preliminary Budget.

EXECUTIVE SESSION

NEXT MEETING DATE

October 10, 2024 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember JC Harris to adjourn; seconded by Councilmember Jeremy Nutting.
Motion passed 7-0.

The meeting adjourned at 8:15 p.m.

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, October 10, 2024 - 6:00 PM**

CALL TO ORDER

Mayor Traci Buxton called the meeting to order at 6:02 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Matt Mahoney.

ROLL CALL

Council Present:

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

Staff Present:

Assistant City Manager Adrienne Johnson-Newton; Interim City Attorney Matt Hutchins; Director of Community/Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Community Development Director Rebecca Deming; Civil Engineer II Tyler Beekley; City Prosecutor Tara Vaughn; Director of Court Administration Melissa Patrick; Director of Emergency Management and Workplace Safety Shannon Kirchberg; Events and Facilities Manager Cortney Wilt; Executive Administrative Analyst Rochelle Caton; and Deputy City Clerk Sara Lee

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

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

COMMENTS FROM THE PUBLIC

- Bonnie Wilkins, Trunk or Treat

COMMITTEE CHAIR REPORT

- MUNICIPAL FACILITIES COMMITTEE
 - Councilmember Jeremy Nutting provided an update on the

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recent Municipal Facilities Committee meeting held on September 26, 2024.

- ECONOMIC DEVELOPMENT COMMITTEE:
 - Councilmember Jeremy Nutting provided an update on the recent Economic Development Committee meeting held on September 26, 2024.
- FINANCE COMMITTEE:
 - Councilmember Matt Mahoney provided an update on the recent Finance Committee meeting held on October 03, 2024.
- HIGHLINE FORUM
 - Councilmember Matt Mahoney provided an update on the recent Highline Forum meeting held on September 25, 2024.
- ENVIRONMENT COMMITTEE: Chair JC Harris
 - Councilmember JC Harris provided an update on the recent Environment Committee meeting held on October 10, 2024.
- PUBLIC SAFETY/EMERGENCY MANAGEMENT: Chair Traci Buxton
 - Mayor Traci Buxton provided an update on the recent Public Safety/Emergency Management Committee meeting held on October 03, 2024.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

SOUND TRANSIT UPDATE

Director of Government Relations for Sound Transit Katie Drewel along with Executive Project Director for the Federal Way Link Extension Project Lynette Riley Hall gave Council a PowerPoint Presentation on the Sound Transit Federal Way Link Extension Project.

COMMUNITY DEVELOPMENT DIRECTOR INTRODUCTION

- Assistant City Manager Adrienne Johnson-Newton introduced the New Community Development Director Rebecca Deming.

Assistant City Manager invited the Council and the Community to the October 22, 2024 Budget Town Hall Meeting.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through October 03, 2024 and payroll transfers through October 04, 2024 in the attached list and

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further described as follows:

EFT Vendor Payments	#10729-10797	\$ 536,654.91
Wires	#2717-2717	\$ 1,556.37
Accounts Payable Checks	#166100-166150	\$1,056,557.23
Accounts Payable Check Voids	#164698, 164753	\$ (85.99)
Payroll Voided Advice	#10998-10998	\$ (2,449.29)
Payroll Check	# 19898-19898	\$ 2,449.29
Payroll Checks	#19899-19902	\$ 10,488.82
Payroll Advice	#11097-11268	\$ 675,487.04

Total Checks and Wires for A/P & Payroll: \$2,280,658.38

Item 2: EMERGENCY MANAGEMENT PERFORMANCE GRANT
Motion is to accept the 2024 Emergency Management Performance Grant in the amount of \$15,164.00 and to authorize the Acting City Manager to sign the grant agreement substantially in the form as presented.

Item 3: STATE PARKS GRANT AGREEMENT FOR FUEL DOCK SEWAGE TANK PUMP-OUT EQUIPMENT PURCHASE
Motion is to to approve Grant Agreement No. 325-309 to provide \$20,165.00 from the State's Clean Vessel Act Program for the purchase of new replacement sewage tank pump-out equipment for the Marina's fuel dock and to authorize the City Manager to sign the grant agreement substantially in the form as attached.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda as read; seconded by Councilmember Matt Mahoney. Motion passed 7-0.

NEW BUSINESS

Item 1: CITY COUNCIL "MISSION, VISION, VALUES" RETREAT DISCUSSION

- Council discussed the City Council Mission, Vision, and Values retreat on November 14, 2024 Study Session.

Item 2: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

- Councilmember JC Harris requested that staff draft a letter to the FAA to extend the closure of the SAMP comment period to be extended to the middle of January. Council Supported.

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- Councilmember Matt Mahoney requested that an Airport Committee Item be put on the next Council Meeting Agenda. Council Supported.
- Councilmember Matt Mahoney requested that staff advise having a Consultant for Comp Plan Review and to review District 54 Utilities to make sure they are ready for the downtown development and what committee it should be referred to.

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

COUNCILMEMBER MATT MAHONEY

- Levy Lid Lift

COUNCILMEMBER YOSHIKO GRACE MATSUI

- Emergency Operations Center (EOC)
- Budget

COUNCILMEMBER JEREMY NUTTING

- No Report

COUNCILMEMBER GENE ACHZIGER

- No Report

COUNCILMEMBER JC HARRIS

- Port of Seattle
- Airport Committee

DEPUTY MAYOR HARRY STEINMETZ

- Sound City Association Public Interest Committee
- King County Rapid Ride Program
- King County Environment Services
- King County Hazardous Waste Agency
- Deputy Mayor's Meeting with Sound City Association
- Citizens Advisory Committee
- Public Safety

PRESIDING OFFICER'S REPORT

- Mayor's Reception

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- College Way Opening Ceremony
- Cecil Powell Park opening
- ECOnorthwest Needs Assessment
- What's Up Des Moines gathering
- Comp Plan review
- Mayor's Exchange

EXECUTIVE SESSION

NEXT MEETING DATE

October 24, 2024 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Matt Mahoney to adjourn, seconded by Councilmember Jeremy Nutting.
Motion passed 7-0.

The meeting adjourned at 7:32 p.m.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Small Business Saturday Proclamation

FOR AGENDA OF: November 21, 2024

ATTACHMENTS:

1. Proclamation

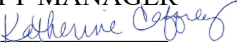
DEPT. OF ORIGIN: Administration

DATE SUBMITTED: October 29, 2024

CLEARANCES:

- ☒ [X] City Clerk 
- ☐ [] Community Development _____
- ☐ [] Courts _____
- ☐ [] Emergency Management _____
- ☐ [] Finance _____
- ☐ [] Human Resources _____
- ☐ [] Legal _____
- ☐ [] Marina _____
- ☐ [] Police _____
- ☐ [] Parks, Recreation & Senior Services _____
- ☐ [] Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

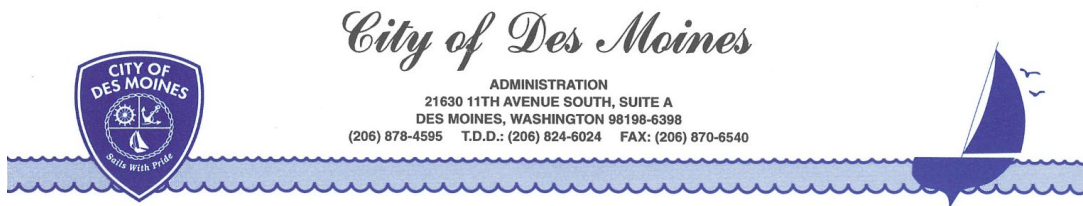
The purpose of this agenda item is to recognize November 30, 2024 as Small Business Saturday.

Suggested Motion

Motion: “I move to approve the Proclamation recognizing the Saturday after Thanksgiving as Small Business Saturday.”

Background

Small Business Saturday was created in 2010 in response to small business owners' most pressing need; more customers. Falling between Black Friday and Cyber Monday, it's a day to support the local businesses that create jobs, boost the economy and preserve the neighborhoods around the country. It has since become a well-known and celebrated event on the nation's calendar, with support from elected officials, the public and private organizations.



Proclamation

WHEREAS, according to the United States Small Business Administration, there are currently 32.5 million small businesses in the United States; and

WHEREAS, small businesses employ 46.8 percent of the employees in the private sector in the United States; and

WHEREAS, 79% of consumers in the United States value the contributions small businesses make in their community; and

WHEREAS, 96% of consumers who plan to shop on Small Business Saturday® said the day inspires them to go to small, independently-owned retailers or restaurants that they have not been to before, or would not have otherwise tried; and

WHEREAS, 92% of companies planning promotions on Small Business Saturday said the day helps their business stand out during the busy holiday shopping season; and

WHEREAS, 59% of small business owners said Small Business Saturday contributes significantly to their holiday sales each year; and

WHEREAS, Des Moines supports our local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

NOW THEREFORE, THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS the Saturday after Thanksgiving as

SMALL BUSINESS SATURDAY

AND urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.

SIGNED this 21st Day of November, 2024

Traci Buxton, Mayor

The Waterland City

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: SB 5290 Local Project Review
Requirements

ATTACHMENTS:

1. Draft Resolution 24-095

FOR AGENDA OF: November 21, 2024

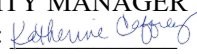
DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: November 13, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is for the Council to consider Draft Resolution 24-095 to document compliance with Second Substitute Senate Bill 5290 ("SB 5290") passed by the Washington Legislature in 2023 and codified as RCW 36.70B.160 for the City of Des Moines.

Suggested Motion

Motion 1: "I move to approve Draft Resolution 24-095 documenting compliance with SB 5290 Local Project Review Requirements for the City of Des Moines."

Background

The purpose of this item is a proposed resolution to document compliance with Second Substitute Senate Bill 5290 (“SB 5290”) passed by the Washington Legislature in 2023 and codified as RCW 36.70B.160.

SB 5290 creates potential financial penalties for the City related to compliance with SB 5290 permit review timelines. The new requirements take effect January 1, 2025 and prescribe time periods for local government action and annual performance reporting. If the time periods are not met then up to 20% of the application fee is required to be refunded to the applicant.

The amended language of RCW 36.70B.160 encourages local governments to adopt project review and code provisions to provide prompt, coordinated permit review and ensure accountability to applicants and the public. The legislation provides that adopting certain measures to promote more efficient review will protect the city from these penalties.

Discussion

Staff recommends that the Council adopt three project review and code provisions, described below, in the interest of prompt, coordinated review and accountability consistent with RCW 36.70B.160(1).

- Maintaining and budgeting for on-call permitting assistance for when permit volumes or staffing levels change rapidly as provided under RCW 36.70B.160(1)(d).
- Having development regulations which only require public hearings for permit applications that are required to have a public hearing by statute consistent with RCW 36.70B.160(1)(f).
- Having development regulations which make preapplication meetings optional, at the request of the applicant, rather than a requirement of permit application submittal consistent with RCW 36.70B.160(1)(g).

These provisions do not require code or budget amendments because the City is already in compliance with these measures or already has a provision in code to comply.

Alternatives

The Council can:

1. Adopt the draft resolution as presented
2. Adopt the draft resolution with changes
3. Decline to adopt the draft resolution.

Financial Impact

The draft resolution will prevent a reduction in future revenues due to protection from the refund of application fee requirements in SB 5290.

Recommendation

Staff recommends the Council adopt Draft Resolution 24-095 as presented.

CITY ATTORNEY'S FIRST DRAFT, 11/13/2024

DRAFT RESOLUTION NO. 24-095

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, adopting project review provisions to provide prompt, coordinated review and ensure accountability to applicants and the public.

WHEREAS, project review conducted by the City of Des Moines is governed by the provisions of RCW chapter 36.70B, and

WHEREAS, the Legislature enacted Second Substitute Senate Bill 5290 (SB 5290) in the 2023 session to amend RCW chapter 36.70B in order to promote prompt, coordinated, and accountable local review, and

WHEREAS, SB 5290 amended RCW 36.70B.080 to mandate that a City provide a partial refund of permit fees for exceeding certain review deadlines, and

WHEREAS, permit fees are intended to reimburse the City for the cost of conducting the review, and

WHEREAS, SB 5290 encourages cities to adopt certain provisions to provide prompt, coordinated review and ensure accountability to applicants and the public, and

WHEREAS, SB 5290 further provides that cities who have implemented at least three of the provisions listed in RCW 36.70B.160 would not be liable for the refund of permit fees, and

WHEREAS, the City of Des Moines, through current practice and codified policy, seeks to provide prompt, coordinated review for applicants in a manner that fulfills the intent of SB 5290, and

WHEREAS, the City Council wishes to document the City's compliance with SB 5290 through implementation of certain provisions set out in RCW 36.70B.160 in furtherance of these goals; now therefore,

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

Sec. 1. The Community Development Director is directed to maintain and budget for on-call permitting assistance for when permit volumes or staffing levels change rapidly.

Sec. 2. Consistent with Titles 16 and 18 DMMC, public hearings shall only be required for permit applications that are required to have a public hearing by statute, and

Sec. 3. Consistent with DMMC 18.20.100, informal pre-application meetings shall be optional and formal pre-application meetings for Type III, Type IV, Type V, and Type VI land use shall be waived at the applicant's request. Applicants are encouraged to attend pre-hearing meetings to discuss the nature of the proposed development, application and approval requirements, fees, review process and schedule, and applicable

policies and regulations to assist in obtaining prompt project approval.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2024 and signed in authentication thereof this ____ day of _____, 2024.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: StormFest – Interlocal Agreement

FOR AGENDA OF: November 21, 2024

ATTACHMENTS:

1. Draft Interlocal Agreement Between the Cities of Burien, Des Moines, Normandy Park, Seatac and King County for Highline StormFest

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 13, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this item is to seek Council authorization to enter into an Interlocal Agreement (ILA) (Attachment 1) between the City of Des Moines and the Cities of Burien, Normandy Park, Seatac and King County for Highline StormFest. The purpose of this ILA is to secure funding from each of the partners for the annual continuation of the Highline StormFest event through 2029.

Suggested Motion

Motion: “I move to approve the Interlocal Agreement between City of Des Moines and the Cities of Burien, Normandy Park, Seatac and King County for Highline StormFest, and authorize the City Manager to sign said Agreement substantially in the form as submitted.”

Background

StormFest is a collaborative initiative among municipalities within the Highline School District, including the cities of Burien, Des Moines, Normandy Park, SeaTac, and King County. This three-day interactive festival was designed to engage Highline 6th graders in stormwater and watershed science through hands-on, inquiry-driven learning.

To date, four StormFest events have taken place at Des Moines Beach Park. The first two events in 2018 brought together over 2,100 students. During the pandemic, StormFest adapted with a virtual format in 2020, followed by in-school events at Highline schools in 2021 and 2022. In 2023 and 2024, StormFest returned to Des Moines Beach Park, where it hosted over 1,200 students.

For the City of Des Moines, StormFest fulfills Washington State NPDES permit requirements for public education and outreach. The event received the 2019 Livable Communities Award for Local Government Excellence. The first two years of StormFest were funded through grants from the Department of Ecology (GROSS Grant) and the Port of Seattle (ACE Grant).

Discussion

To ensure the event's continuation through 2029, an Interlocal Agreement (ILA) has been proposed to secure annual funding. Additionally, a separate ILA between the Highline School District and the City of Burien will support the district's participation, including pre- and post-event surveys for students.

StormFest's annual continuation benefits the City of Des Moines by fulfilling ongoing regulatory requirements and providing local 6th-grade students with free, hands-on stormwater education. By fostering environmental stewardship and teaching best management practices, we aim to enhance the health of our streams and the Puget Sound.

Project costs are allocated based on the percentage of Highline Public Schools 6th graders in each jurisdiction, calculated using Highline Public Schools data. The City of Des Moines' annual cost share is set at 23.16%. Each year, the project team will review and sign the Project Cost Allocation Document for the upcoming StormFest event. For 2025, the estimated maximum cost share for Des Moines is \$24,923.88 (see Table 1). From 2025 to 2029, the cost share for Des Moines will vary based on the percentage of Des Moines students within Highline. The project team will also pursue future funding opportunities, including grants, to help offset total costs.

Costs may include expenses for educators, translators, consultants, interpreters, supplies, parking at Des Moines Marina and Beach Park, event materials, and other relevant items not specifically excluded in this agreement. The total project cost also accounts for City of Des Moines staff time allocated to supporting the use of Des Moines Beach Park for the event, with no additional City staff charges included in the total project cost.

Table 1. 2025 Maximum Costs/Cost Shares

Jurisdiction	Annual Cost Share	Estimated Cost Shares *
Burien	29.47%	up to \$31,721.30
Des Moines	23.16%	up to \$24,923.88
SeaTac	22.11%	up to \$23,790.98
King County	22.11%	up to \$23,790.98
Normandy Park	3.16%	up to \$3,398.71
Total	100.00%	up to \$107,625.85

*Total costs for all tasks will not exceed \$107,625.85. Each jurisdiction's maximum cost share is as shown in Table 1. King County's cost share percentage represents students in unincorporated King County.

Alternatives

The City Council could choose not to enter into a new Interlocal Agreement with the Cities of Burien, Des Moines, Normandy Park, SeaTac, and King County for StormFest. This decision would require substantial staff time to develop an alternative approach for meeting the public education and outreach requirements of the City's NPDES Water Quality Permit.

Financial Impact

With an executed Interlocal Agreement, Des Moines would have a annual contribution of \$24,923.88 to the StormFest Committee. This annual contribution may increase with changes in inflation and percentage of students through the life of the ILA. The contribution to the Committee is budgeted and funded through the Surface Water Management Utility.

Recommendation

Staff recommends the adoption of the motion.

Council Committee Review

The Environment Committee receives an annual StormFest program update. The last update occurred during the July 11, 2024 meeting.

**INTERLOCAL AGREEMENT BETWEEN
THE CITIES OF BURIEEN, DES
MOINES, NORMANDY PARK,
SEATAC AND KING COUNTY FOR
STORMWATER EDUCATION
PROGRAM (“STORMFEST”)**

Pursuant to the Interlocal Cooperation Act (RCW 39.34), the City of Burien, ("Burien"), the City of Des Moines, ("Des Moines"), the City of Normandy Park, ("Normandy Park"), the City of SeaTac, ("SeaTac"), and King County, (individually referred to as a "Party" and collectively referred to as "Parties"), each of which is a Washington Municipal Corporation, hereby enter into this Agreement ("Agreement") the Agreements set forth:

RECITALS

WHEREAS, Department of Ecology (Ecology) develops and administers Clean Water Act National Pollutant Discharge Elimination System (NPDES) municipal stormwater permits in Washington;

WHEREAS, NPDES Western Washington Phases I and Phase and II permits require local governments to manage and control stormwater runoff ensuring it does not pollute downstream waters;

WHEREAS, StormFest is an annual field-based stormwater learning event that engages 6th grade and/or middle school students in the Highline School District using and testing best practices for outdoor environmental education and equity;

WHEREAS, StormFest events engage students to learn about and experience their local watershed, sources of pollution, and engineering solutions to prevent stormwater pollution;

WHEREAS, this event involves teachers, families, community members, local government staff and educational nonprofits. This collaborative approach helps cities and counties meet National Pollutant Discharge Elimination System (NPDES) permit requirements;

WHEREAS, StormFest is aligned with many programs to meet NPDES permit requirements across the jurisdictions and is specifically used by SeaTac and Normandy Park to fulfill the Behavior Change campaign as outlined in the Western Washington Phase II permit;

WHEREAS, the Parties have previously entered a similar Interlocal Agreement (ILA) since 2019 which will expire on December 31, 2024;

WHEREAS, the Parties believe that a cooperative effort is the most effective method of meeting their common goals stated herein;

WHEREAS, the Parties intend by this Agreement to establish their respective rights, roles and responsibilities; and

NOW, THEREFORE, in consideration of the mutual promises, benefits, and covenants contained in this Agreement and other valuable consideration, the sufficiency of which is acknowledged, the Parties agree to the above Recitals and the following terms and conditions:

1) **Definitions:**

- A. "Project Cost Allocation" means the percentage of the total cost of StormFest assigned to each Party; the percentage assigned to each Party shall be equivalent to each Party's percentage-share of student enrollment provided by Highline School District for the prior year (i.e. the percentages for the 2024 StormFest event are based on the 2022-2023 school year enrollment numbers). By way of example, if 42% of all Highline School District students reside in Des Moines, then Des Moines' Project Cost Allocation shall be 42% of the total cost of StormFest.
- B. "Project Cost Allocation Document" means the document containing each Party's Project Cost Allocation for the calendar year. Once signed by the Party, the Project Cost Allocation Document represents that Party's financial obligation in support of the upcoming year's StormFest.
- C. "Project Management Team" and "Team" mean the group comprised of a representative of each city and whose function is to develop, implement, manage, and evaluate StormFest.
- D. "StormFest" means an annual education program for 6th graders in the Highline School District developed by the Parties and which assists the Parties in meeting NPDES Phase II permit requirements.

2) **Purpose.** The purpose of this Agreement is to outline the tasks to be completed by each Party and to define the responsibilities of the Project Management Team in support of StormFest. The goal is to implement a hands-on, interactive, stormwater education program ("StormFest") for Highline Public Schools in compliance with the Parties' NPDES Permit criteria.

3) **Joint Roles and Responsibilities.** Each Party shall be responsible for the following:

- A. Appoint one representative to the Team. Each Party will have only one vote regardless of the number of representatives representing each Part on the Team. Participation of additional staff from any of the Parties in support of the Team is encouraged.
- B. Each Party's representative will regularly attend Team meetings, attend the event, and otherwise support the Team as necessary to successfully execute the event.
- C. The Team will make decisions by consensus. If a consensus cannot be reached, dispute will be resolved according to the procedures outlined in Section 9 of this agreement.
- D. Each year the Team will agree to and sign the Project Cost Allocation Document for the upcoming year's StormFest event. The 2023 Project Cost Allocation Document for the 2024 StormFest event is attached to this agreement as an example.
- E. Burien will serve as the administrator of this Agreement. Burien's administrative tasks will include leading in the organization of StormFest events; providing day-to-day project management; scheduling and facilitating Team meetings, contracting with consultants; processing monthly consultant invoices and payments; invoicing other Parties to the Agreement; and providing periodic fiscal reports to the Parties in accordance with the requirements of 39.34 RCW.
- F. Des Moines will serve as the host Party for each StormFest event at Des Moines Beach Park

for the duration of this Agreement.

- G. The total project cost in the Project Cost Allocation will include, but not be limited to, the following: expenses for educators, translators, consultants, interpreters, supplies, parking fees at the Des Moines Marina and Beach Park, volunteers' stipends, event, and other cost associated with the event such as students' transportation and compensation for substitute teachers. The total project cost will also cover Des Moines (Host City) staff time and rental fees for supporting the use of the Des Moines Beach Park Facility during the event. No other Party staff charges will be included in the total project cost. The total project cost will exclude Burien's costs related with administering this agreement, and any Party's costs of participation on the Team.
- H. Burien will invoice the Parties for their share of the Project Cost Allocation approximately once each quarter. The Parties will submit their payment within 60 business days of receiving an invoice.
- 4) **Budget.** Costs may fluctuate from one year to another. If the budget must be increased to accommodate additional costs, the Team will utilize the consumer price index June to June inflation rate as the measure by which to increase the allocated budget, with a maximum year over year increase of 5%. Costs are shared based on allocation of the percentage of Highline School District's students enrolled in each jurisdiction. The Team shall, take reasonable measures to keep costs to a minimum where possible. Table 1 of the appendix shows the potential annual rate increases for all parties.
- 5) **Termination.** Any Party may withdraw from this Agreement at any time, upon thirty (30) days' written notice to the other Parties. However, once a Party signs and executes the Project Cost Allocation Document for a given year, termination will take effect only at the end of the following year. A Party's obligation to pay their share of a signed and executed Project Cost Allocation is contingent upon the occurrence of the StormFest event for that year and the fulfillment of all associated financial responsibilities.
- 6) **Duration.** This Agreement is effective upon execution by each Party and will remain in full force and effect until December 31, 2029. This Agreement may be extended upon mutual agreement of all Parties.
- 7) **Modification.** This Agreement may only be modified by further written agreement upon mutual acceptance by all Parties.
- 8) **Separate Legal Entity.** No separate legal entity or administrative entity is created by this Agreement.
- 9) **Dispute Resolution.** If a dispute arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be resolved through direct discussions, the parties agree to first attempt to settle the dispute in amicably through mediation. The mediation will be administered by a mediator in accordance with JAMS Alternative Dispute Resolution service rules and procedures. The mediator may be selected either by mutual agreement of the parties or through JAMS.
- 10) **Written Notice.** All communications regarding this Agreement should be sent to the addresses listed on the signature page, unless otherwise notified. Any written notice will be considered effective three (3) business days after the date of transmittal. Such notice will be deemed properly given if sent to the address specified in this Agreement or to any other address subsequently provided in writing.
- 11) **Hold Harmless.** Each Party hereto shall protect, defend, hold harmless and indemnify the

other Parties, their officers, elected officials, directors, volunteers, agents and employees, from and against any and all claims (including demands, suits, penalties, liabilities, damages, costs, expenses, or losses of any kind or nature whatsoever) arising out of or in any way resulting from such Party's own acts or omissions related to such Party's participation and obligations under this Agreement. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Parties only, any immunity that would otherwise be available against such claims under the industrial insurance act provisions of Title 51 RCW. In the event that either Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Section, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability. The provisions of this Section shall survive and continue to be applicable to Parties exercising the right of termination pursuant to Section 5 herein.

12) Insurance. Each Party shall provide and maintain suitable commercial general liability and auto liability insurance policies to protect it from casualty losses by reason of the activities contemplated by this Agreement. The limits of liability for each coverage shall be at least \$2,000,000 each occurrence. Each Party shall provide the other Party with a Certificate of Liability Insurance or Evidence of Coverage; provided, that if either Party is self-insured or part of a self-insurance risk pool, it will provide a letter of self-insurance as evidence of coverage.

13) Audits and Inspection. The records and documents with respect to all matters covered by this contract shall be subjected to inspection, review or audit by each Party at the requesting Party's sole expense during the term of this Agreement and three (3) years after expiration or termination. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

14) Finance and Budget. No special budget or funds are anticipated, nor shall any be created. The Parties are each responsible for their own finances in connection with this Agreement, and nothing in this Agreement shall be deemed or construed otherwise.

15) Property Acquisition and Disposition. The Agreement does not contemplate the joint acquisition of property by the parties. At termination, each Party will remain the sole owner of its own property

16) Non-Discrimination. The Parties shall not discriminate in any manner related to this Agreement on the basis of race, color, national origin, sex, religion, age, marital status, sexual orientation, gender preference, marital or family status, military or veteran status or mental, or physical disability or the use of a trained dog guide or service animal by a disabled person unless for cause.

17) Severability. If any provision of the Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the Parties.

18) Approval by Parties' Governing Bodies. The governing body of each Party must approve this Agreement before any representative of such Party may sign this Agreement.

19) Entire Agreement: This is the entire agreement between the Parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date last written below.

CITY OF SEATAC

CITY OF DES MOINES

By:

Date

APPROVED AS TO FORM:

Date

ATTEST/AUTHENTICATED:

City Clerk

Date

CITY OF BURIEN

By:

Date

APPROVED AS TO FORM:

Date

APPROVED AS TO FORM:

Office of the City Attorney

Date

ATTEST/AUTHENTICATED:

Date

CITY OF NORMANDY PARK

Date

APPROVED AS TO FORM:

Date

Date

ATTEST/AUTHENTICATED:

ATTEST/AUTHENTICATED:

Date

City Clerk

Date

KING COUNTY

Date

APPROVED AS TO FORM:

Date

ATTEST/AUTHENTICATED:

Date

Appendix:

Proposed potential cost breakdown, assuming 5% annual price increase.

Project Cost Allocation Break down based on 2021-2022 HSD 6th grade student roster		
Jurisdiction	% Students	Cost
Burien	29.47%	\$ 31,721.30
Seatac	22.11%	\$ 23,790.98
King County	22.11%	\$ 23,790.98
Des Moines	23.16%	\$ 24,923.88
Normandy Park	3.16%	\$ 3,398.71
TOTAL	100%	\$ 107,625.85

2025

Total \$ 113,007.14

Burien	29.47%	\$ 33,307.37
Seatac	22.11%	\$ 24,980.53
King County	22.11%	\$ 24,980.53
Des Moines	23.16%	\$ 26,170.08
Normandy Park	3.16%	\$ 3,568.65
TOTAL	100%	\$ 113,007.14

2026

Total \$ 118,657.50

Burien	29.47%	\$ 34,972.74
Seatac	22.11%	\$ 26,229.55
King County	22.11%	\$ 26,229.55
Des Moines	23.16%	\$ 27,478.58
Normandy Park	3.16%	\$ 3,747.08
TOTAL	100%	\$ 118,657.50

2027

Total \$ 124,590.37

Burien	29.47%	\$ 36,721.37
Seatac	22.11%	\$ 27,541.03
King County	22.11%	\$ 27,541.03
Des Moines	23.16%	\$ 28,852.51
Normandy Park	3.16%	\$ 3,934.43
TOTAL	100%	\$ 124,590.37

2028

Total \$ 130,819.89

Burien	29.47%	\$ 38,557.44
Seatac	22.11%	\$ 28,918.08
King County	22.11%	\$ 28,918.08
Des Moines	23.16%	\$ 30,295.13
Normandy Park	3.16%	\$ 4,131.15
TOTAL	100%	\$ 130,819.89

2029		
Total	\$ 137,360.89	
Burien	29.47%	\$ 40,485.31
Seatac	22.11%	\$ 30,363.99
King County	22.11%	\$ 30,363.99
Des Moines	23.16%	\$ 31,809.89
Normandy Park	3.16%	\$ 4,337.71
TOTAL	100%	\$ 137,360.89

*Interlocal Agreement between the Cities of Burien, Des Moines, Normandy Park,
and SeaTac and King County for StormFest*

**Project Cost Allocation Document - StormFest
January 1, 2024 – December 31, 2024**

The Project costs are allocated based on percent of Highline Public Schools 6th graders in each jurisdiction,
calculated from Highline Public Schools data.

Table 1. Costs/Cost Shares

Jurisdiction	Annual Cost Share	Estimated Cost Shares*
Burien	29%	\$31,721.30
Des Moines	23%	\$24,923.88
King County	22%	\$23,790.98
SeaTac	22%	\$23,790.98
Normandy Park	3%	\$3,398.71
TOTAL	100%	\$107,625.85

*Total costs for all tasks will not exceed \$107,625.85. Each jurisdiction's maximum cost share is as shown in Table 1.

Accepted by:

City of Burien

City of Des Moines

City of Normandy Park

City of SeaTac

King County

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Bird Deterrent Ball Purchase

FOR AGENDA OF: November 21, 2024

ATTACHMENTS:

1. 2024 Bird-X Bird Deterrent Balls Purchase Order

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 13, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval to direct administration to approve the purchase of Bird-X Bird Deterrent Balls (Attachment 1). The following motion will appear on the consent calendar:

Suggested Motion

Motion: "I move to approve the purchase of Bird-X Bird Deterrent Balls, for a total estimated amount of \$124,191.00, and to authorize the City Manager or the City Manager's designee to sign the purchase order at the time they are created."

Background

On March 2, 2023 the City of Des Moines received notice from The Port of Seattle that Tract A pond of the Des Moines Creek Business Park is out of compliance with Federal Aviation Administration (FAA) standards related to wildlife attractants. Tract A pond has been in ownership and maintenance of the City of Des Moines since May 17, 2017.

FAA Advisory Circular 150/5200-33C states that stormwater detention ponds that have standing water for a duration longer than 48 hours often attract large numbers of potentially hazardous wildlife. Operation of stormwater management facilities on or near public-use airports that do not meet the 48 hours requirement must turn to the use of physical barriers, such as bird balls, wire grids, or netting, to prevent access of hazardous wildlife to open water and minimize aircraft-wildlife interactions.

Discussion

Staff have reviewed the various options for the use of physical barriers from a cost and future maintenance perspective and bird deterrent balls are the recommended option to comply with this standard.

Product Selection

Staff reached out to three suppliers to solicit quotes to cover the approximate 32,000 square feet of pond water surface area with bird deterrent balls. Bird-X was selected based on cost, product review, and to be uniform in material selection with existing City applications. The estimated total is \$112,696.00, plus the applicable Washington State sales tax of \$11,495.00 to bring the total cost to **\$124,191.00**. Given that the estimated total of this purchase is over the City Manager's authorized signing authority of \$50,000.00, Council approval is necessary for this purchase.

Environmental Considerations and Wildlife Impacts

Bird-X Bird Balls are made of 100% HDPE. HDPE is generally considered environmentally safe, especially in water-related applications, which is why it's widely used in stormwater and potable water systems. Here's why it's often chosen for environmentally sensitive projects:

1. **Chemical Inertness:** HDPE is chemically inert, meaning it doesn't leach harmful substances into the water. This makes it safe for long-term water contact without contaminating the water supply or aquatic environments.
2. **Durability:** HDPE pipes are resistant to corrosion, rust, and many chemicals, which means they have a long-life span (often 50-100 years) and don't degrade quickly, minimizing environmental impact over time.
3. **Recyclability:** HDPE is recyclable and, when properly disposed of or reused, has minimal long-term impact on the environment compared to other materials.

Alternatives

The City Council could choose not to approve this purchase and direct staff to consider other physical barrier options. This decision would delay the City's compliance with the FAA's regulatory requirements and other alternatives for physical barriers would likely result in a higher cost and present maintenance challenges.

Financial Impact

The Surface Water Management Maintenance Fund (Fund 45003001) has full revenue to support the proposed expenditures.

Recommendation

Staff recommends adoption of the motion.

Council Committee Review:

Not Applicable.

CITY OF DES MOINES

Finance Division
21630 11TH Avenue South
Des Moines WA 98198-6317
Phone 206.870.6511 Fax 206.870.6540

**PURCHASE ORDER**

THE FOLLOWING NUMBER MUST APPEAR ON ALL RELATED CORRESPONDENCE, SHIPPING PAPERS, AND INVOICES:

P.O. NUMBER: PBPW 11/13/2024 #116

To: Bird-X Inc.
 845 N Larch Ave
 Elmhurst, IL 60126
 ATTN: Tom Olmsted
 PHONE: (312)226-2473
 EMAIL: tomo@bird-x.com

SHIP TO:
Engineering Department
City of Des Moines, WA
21650 11th Avenue South
Des Moines WA 98198-6317
206.870.6523

P.O. DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
11/13/2024	Brandon Pitts			Net 30 days

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
32000		B-Balls-HT-AQ-CUS	\$ 2.48	\$79,360.00
32000		B-Balls-SC	\$.30	\$ 9,600.00
		** See Attached Quote #842017		

Authority: At the direction of the Des Moines City Council, taken
 at an open public meeting on 11.21.2024.

SUBTOTAL	\$ 88,960.00
FREIGHT	\$ 23,736.00
10.2% SALES TAX	\$ 11,495.00
OTHER	
TOTAL	\$124,191.00

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to: Address above

INTERNAL INSTRUCTIONS:

CHARGE TO DM CITY CODE: 45003001.548220

Ordered by:
 Brandon Pitts
 Civil Engineer I

Date
 11.13.2024

Authorized by:
 Michael P. Slevin III, P.E.
 Public Works Director

Date
 11.13.2024

13 NOV 24



Bird-X Celebrates 50 years of Green Pest Control

845 N Larch Ave, Elmhurst, IL 60126
Tel: (312) 226-2473 | Fax: (312) 226-2480
Tax ID#: 36-2540314

Quote No.

842017

Quote Date

10/15/2024

Shipping Instructions

FOB TIJUANA MX

Shipped on pallets in super sacks

QUOTE

Bill to

Des Moines Washington Engineering
21650 11th Avenue S.
Des Moines, WA 98198
US
206-870-6523

Ship to

Des Moines Washington Engineering
2141 S 211th St
Des Moines, WA 98198
US

Account No.		Sales Rep	PO #	Payment Terms		Ship Via
78681		Tom Olmsted	Pallets and sacks	MV		FTL
Line	Item	UOM	QTY	Unit Price(USD)	Ext. Value(USD)	
1	B-BALLS-HT-AQ-CUS Hexprotect AQUA Cover custom water ballasted- 130	SF	32000	2.48	79,360.00	
2	B-BALLS-SC Surcharge - Resin Shortage	SF	32000	0.30	9,600.00	
3	FREIGHT Freight Line Item	EA	1	23,736.00	23,736.00	

For questions regarding this quote or to place the order please contact your sales representative (below).
Quotes will be valid for up to 30 days after the original quote date. After 30 days prices including freight may be subject to change.

Total (USD)	112,696.00
--------------------	-------------------

**Orders shipping to California or Illinois may have additional sales tax applied upon order placement which is not displayed in the total above.*

Sales Rep: Tom Olmsted

Email:

Phone:

Page 1



Bird-X Celebrates 50 years of Green Pest Control

845 N Larch Ave, Elmhurst, IL 60126
Tel: (312) 226-2473 | Fax: (312) 226-2480
Tax ID#: 36-2540314

Quote No.

842017

Quote Date

10/15/2024

Shipping Instructions

FOB TIJUANA MX

Shipped on pallets in super sacks

QUOTE

Bill to

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Des Moines, WA 98198
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206-870-6523

Ship to

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--------------------	-------------------

**Orders shipping to California or Illinois may have additional sales tax applied upon order placement which is not displayed in the total above.*

Sales Rep: Tom Olmsted

Email:

Phone:

Page 1

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Marine View Drive Pond Retrofit

AGENDA OF: November 21, 2024

ATTACHMENTS:

1. Parametrix 2024-2025 On-Call General Civil Engineering Services, Task Assignment 2024-03
2. SWM CIP Project Worksheet Amendment

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 13, 2024

CLEARANCES:

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

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

Purpose and Recommendation:

The purpose of this agenda item is to seek City Council approval of the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-03 with Parametrix (Attachment 1) to provide design and permitting services associated with the Marine View Drive Pond Retrofit Project. Approval is also requested for a CIP Budget Amendment which would update the project funding (Attachment 2). The following motions will appear on the Consent Agenda:

Suggested Motions

Motion 1: "I move to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-03 with Parametrix to provide design and permitting services for the Marine View Drive Pond Retrofit Project in the amount of \$295,106.83, and authorize the City Manager to sign said Task Assignment substantially in the form as submitted."

Motion 2: “I move to direct Administration to submit a CIP budget amendment for the Marine View Drive Pond Retrofit Project to incorporate the funding sources of the King County Flood Control Grant funding and Surface Water Utility funds.”

Background

The City applied for a Flood Reduction Grant opportunity in the Summer of 2021 for the Massey Creek Pocket Estuary Restoration/Fish Passage Project. The King County Flood Control District voted to award the project in the amounts of \$365,000. The City certified the funding by approving an Agreement for Award of Flood Reduction Grant funds at the October 21, 2021 City Council meeting. The original grant agreement is in effect until December 31, 2024.

The grant scope for Massey Creek Pocket Estuary Project was to improve riparian vegetation, remove armoring and fill, increase nearshore habitat, and enhance the pocket estuary and stream mouth. The awarded grant provided funding for site assessment, 60% design, and permitting phases. To date the Massey Creek Estuary project completed ~33% of the grant scope and produced the deliverable of conceptual design alternatives. Unanticipated challenges on the Massey Creek Estuary project have resulted in delayed design progress and project reprioritization. An opportunity for a public/private partnership has been tabled for the foreseeable future and a significant utility conflict presents a scope-impacting challenge.

Nearby and upstream of the Massey Creek Project is another project in the Surface Water Utilities six-year Capital Improvement Project plan, the Marine View Drive South Pond Retrofit project. This project will bring the vintage stormwater pond located at 22741 Marine View Drive South to current standards for water quality and flow control. This project is also highlighted as a priority in the Stormwater Management Action Plan developed for the Lower Massey Creek Basin.

Given the unanticipated challenges and delay of schedule of the Massey Creek Estuary project, City Staff reached out to the King County grant administrators with a request for three grant amendments.

- Completion Date adjustment from 12/31/2024 to 12/31/2025.
- Of the \$244,000 of unspent grant funding, shift \$225,000 towards the 100% design of the Marine View Drive South Pond Retrofit Project.
- With the remaining \$19,000 of unspent grant funding, develop a project package for the conceptual design deliverables of the Massey Creek Estuary project, to be set aside for future opportunities within this project area.

The above grant amendments were approved at the October 24, 2024 City Council Meeting.

Discussion

In order to fulfill the project design and permitting requirements, consultant support will be needed. City staff utilized the 2024-2025 On-Call General Engineering Services roster for consultant selection. Parametrix was selected based on their experience in environmental permitting and habitat projects, as well as past performance on the North Fork McSorley Creek Diversion Project and the Lower Massey Creek Habitat Restoration Monitoring Project.

Specific elements of work included within the Task Assignment include:

- Survey
- 100% Design Engineering
- Environmental Permitting

Financial Impact

A CIP budget Amendment (Attachment 2) will be needed in order to incorporate the secured grant funding (\$225,000) and the Surface Water Utility funding (\$70,106.83) to achieve full funding for this Task Assignment.

Alternatives

The City Council could elect not to approve the Task Assignment with Parametrix Inc for Engineering Services. The City would need to review other on-call consultant qualifications or issue a Request for Proposal (RFP). This process would add significant time to the consultant selection process and place the 2021 King County Flood Control District Grant at risk for full expenditure.

Recommendation

Staff recommends approval of the proposed motion.

Council Committee Review

The Environment Committee has been routinely updated on the status and programming of this project.



FORMAL TASK ASSIGNMENT DOCUMENT

Task Number TA 2024-04

The general provisions and clauses of Agreement 2024-25 On-Call Civil Engineering Services
Shall be in full force and effect for this Task Assignment.

Location of Project: Marine View Drive, Des Moines, WA

Project Title: Marine View Drive Stormwater Pond

Maximum Amount Payable Per Task Assignment: \$ 295,106.83

Completion Date: 12/31/2025

Description of Work: See attached Scope of Work and Budget Estimate.

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ See Attachment Dated: _____

Consultant Signature: _____ Date: _____

Agency Approving Authority: _____ Date: _____

Client: City of Des Moines
Project: Marine View Dr Pond
Project No: P5531792822

					Principal Consultant	Vice President	Engineer III	Sr. Planner	Engineer II	Sr. Engineer	Permit Specialist	Survey Crew Member	Survey Supervisor	Sr. Cultural Resources Specialist	Publications Supervisor	Tech Editor	Project Coordinator	Sr. Project Accountant	Senior GIS	
Cost Rates:					\$108.07	\$126.79	\$48.25	\$71.08	\$41.47	\$73.65	\$68.38	\$38.00	\$67.68	\$62.50	\$46.71	\$41.25	\$31.50	\$41.99	\$53.51	
Billing Rates:					\$334.11	\$391.98	\$149.17	\$219.75	\$128.21	\$227.70	\$211.40	\$117.48	\$209.24	\$193.23	\$144.41	\$127.53	\$97.39	\$129.82	\$165.43	
Task	Subtask	Description	Labor Dollars	Labor Hours																
01		Task Management	\$22,284.01	116	12	6	54	0	0	26	0	0	0	0	0	0	12	6	0	
01	0101	Task Management	\$22,284.01	116	12	6	54	0	0	26	0	0	0	0	0	0	12	6	0	
		Budget, Schedule, Correspondence	\$10,142.49	54	4	6	18			8							12	6		
		Project Planning	\$3,824.43	20	2		12			6										
		Bi-Weekly Design Team Meetings	\$4,948.04	24	4		12			8										
		Monthly Progress Reports	\$3,369.04	18	2		12			4										
02		Preliminary (10 Percent) Design	\$20,257.83	126	10	0	32	0	64	12	0	0	0	0	2	2	0	0	4	
02	0201	10% Design Stormwater Pond Retrofit	\$20,257.83	126	10	0	32	0	64	12	0	0	0	0	2	2	0	0	4	
		Prepare Design Drawings	\$8,867.27	58	4		10		40	4										
		Review meetings	\$3,356.74	16	4		4		4	4										
		Basis-of-Design Memo	\$5,102.99	32	2		10		10	2					2	2			4	
		Opinion of Probable Cost	\$2,930.84	20			8		10	2										
03		Intermediate 30 Percent Design	\$47,813.57	280	14	0	44	60	132	26	0	0	0	0	2	2	0	0	0	
03	0301	30 Percent Design Stormwater Pond Retrofit	\$34,628.52	220	14	0	44	0	132	26	0	0	0	0	2	2	0	0	0	
		Prepare Design Drawing Set	\$22,376.44	150	8		24		108	10										
		Review meetings	\$3,356.74	16	4		4		4	4										
		Update Basis-of-Design Memo	\$5,551.03	32	2		10		8	8					2	2				
		Opinion of Probable Cost	\$3,344.31	22			6		12	4										
03	0302	Landscape Schematic	\$13,185.06	60	0	0	0	60	0	0	0	0	0	0	0	0	0	0	0	
		Prepare Design Schematic	\$3,516.01	16				16												
		Plant Palette and Zones	\$2,637.01	12				12												
		Landscape Schematic Plan Sheet	\$5,274.02	24				24												
		Update and Second Draft	\$1,758.01	8				8												
04		Final Design	\$121,647.91	258	18	0	50	0	159	27	0	0	0	0	2	2	0	0	0	
04	0401	60 Percent Design Stormwater Pond Retrofit	\$40,549.30	258	18	0	50	0	159	27	0	0	0	0	2	2	0	0	0	
		Prepare Design Drawings	\$28,780.82	188	10		30		128	20										
		Review meetings	\$4,530.03	21	6		5		5	5										
		Basis-of-Design 60 percent draft	\$4,370.50	29	2		10		13						2	2				
		Cost opinion	\$2,867.95	20			5		13	2										
04	0402	90 Percent Design Stormwater Pond Retrofit	\$40,549.30	258	18	0	50	0	159	27	0	0	0	0	2	2	0	0	0	
		Prepare Design Drawings	\$28,780.82	188	10		30		128	20										
		Review meetings	\$4,530.03	21	6		5		5	5										
		Basis-of-Design 90 percent draft	\$4,370.50	29	2		10		13						2	2				
		Cost opinion	\$2,867.95	20			5		13	2										
04	0403	100 Percent Design Stormwater Pond Retrofit	\$40,549.30	258	18	0	50	0	159	27	0	0	0	0	2	2	0	0	0	
		Prepare Design Drawings	\$28,780.82	188	10		30		128	20										
		Review meetings	\$4,530.03	21	6		5		5	5										
		Basis-of-Design final draft	\$4,370.50	29	2		10		13						2	2				
		Cost opinion	\$2,867.95	20			5		13	2										
05		Survey	\$36,396.17	210	0	0	0	0	0	0	0	70	70	70	0	0	0	0	0	
05	0501	Survey	\$36,396.17	210	0	0	0	0	0	0	0	70	70	70	0	0	0	0	0	
		Field Mapping and Data Collection	\$25,997.26	150								50	50	50						
		Processing Survey Data	\$10,398.91	60								20	20	20						
06		Environmental Permitting	\$16,207.34	76	4	0	2	0	4	50	0	0	0	16	0	0	0	0	0	
06	0601	Environmental Permitting	\$16,207.34	76	4	0	2	0	4	50	0	0	0	16	0	0	0	0	0	
		Site Visit and Data Review	\$8,790.25	41	1					40										
		Inadvertant Discovery Plan	\$4,670.60	22	2				4					16						
		Permit Matrix Preparation	\$2,174.51	10	1		1			8										
		Permit Matrix Update	\$571.98	3			1			2										
07		Management Reserve	\$30,000.00																	
Labor Totals:					1,582	94	6	282	60	673	149	50	70	70	86	10	10	12	6	4
Totals:					\$294,606.83	\$31,406.27	\$2,351.90	\$42,065.86	\$13,185.06	\$86,284.42	\$33,926.75	\$10,570.18	\$8,223.66	\$14,646.76	\$16,617.35	\$1,444.09	\$1,275.29	\$1,168.62	\$778.90	\$661.73

Other Direct Expenses	
Mileage - \$0.67/mile	\$500.00
Other Direct Expenses Total:	\$500.00

Project Total \$295,106.83

SCOPE OF WORK

- **INTRODUCTION**

The Massey Creek basin has also been identified in the project's Stormwater Management Action Plan as having some of the lowest water quality in the City of Des Moines. Enhancing water quality is crucial for fish health, as the current system inadequately treats road runoff containing contaminants like 6PPD-q, which has been linked to pre-spawn mortality.

The Marine View Drive pond retrofit project will add water quality treatment to the existing vintage stormwater pond at 22741 Marine View Dr S. Water quality treatment is a priority at this location as it is adjacent to its receiving water and does not have space to increase its footprint for flow control. Therefore, the retrofit proposes to provide metals stormwater treatment using a large at grade custom sized proprietary water quality treatment system. A pre-treatment unit upstream of the vault will provide coarse sediment removal to extend the maintenance interval of the treatment media. The existing flow diversion structure would be modified to divert the water quality flow rate to the treatment system and bypass peak events directly to the existing pond. Final size, placement, and configuration of the project components may be adjusted as the design progresses. The stormwater pond retrofit will be completed through final design.

TASK 01 – TASK MANAGEMENT

- **Subtask 0101 – Task Management**

- **Objective**

The objective of this task is to provide overall task management of the consultant contract with the City.

- **Approach**

This task includes general management functions that include the following:

- Project Planning – Coordinate project team and issues throughout the project.
- Budget and Schedule Tracking – Track the project budget.
- 30 minute Bi-weekly design team meetings with client.

- Monthly Progress Reports – Prepare a monthly invoice for services performed by Parametrix.
- Correspondence – Prepare written correspondence as needed to document project management issues and/or concerns.
- **Deliverables**
 - Monthly progress reports enclosed with invoices.
- **Assumptions**
 - Project duration is 12 months.
 - Budget assumes 24 informal, online, bi-weekly meetings with the City’s project manager and key team members.

- **TASK 02 – PRELIMINARY (10%) DESIGN**

- **Measurable Task Objective**

The preliminary design will develop conceptual designs and will include 10% design level documents as described. The work will also include a landscape schematic for the pond retrofit.

- **Subtask 0201 – 10% Design of Stormwater Pond Retrofit**

- **Objective/Goal**

Prepare 10% design-level drawings for the stormwater pond retrofit.

- **Approach**
 - Prepare design drawing set to advance the concept alternative A from the Stormwater Management Action Plan. Set will include type-size-location for the water quality retrofit facility design. Three (3) sheets will be prepared—plan view, profile, and section details. A fourth sheet (landscape schematic) will be prepared in Subtask 0303 (below).
 - Conduct review meeting with City.
 - Submit plan sheets for review.
 - Prepare Basis-of-Design technical memorandum, including comment resolution of draft technical memorandum.
 - Prepare second draft of 10% plans, including comment resolution of draft plans.
- **Deliverables**
 - Basis of design technical memorandum.
 - 10% plans.

- 10% level opinion of probable cost.
- **Assumptions**
 - The City will provide consolidated plan and technical memorandum comments.
 - Landscape design is not included at this design level.
 - 10% plan comments will be resolved in the 30% design task. A second draft of 10% plans will not be prepared.
- **TASK 03 – INTERMEDIATE (30%) DESIGN**
- **Subtask 0301 – 30% Design of Stormwater Pond Retrofit**
- **Objective/Goal**

Prepare 30% design-level drawings for the stormwater pond retrofit.

- **Approach**
 - Prepare 30% design drawing set for the stormwater pond retrofit (up to 10 sheets).
 - Cover Sheet
 - General Notes and Legend
 - Existing Conditions
 - Staging and Temporary Construction Areas
 - Demolition and TESC Plan with Temporary Bypass
 - Site Layout Plan
 - Grading
 - Drainage Plan
 - Miscellaneous Details
 - Restoration Plan
 - Conduct review meeting with City.
 - Submit plan sheets for review.
 - Prepare updated Basis-of-Design technical memorandum, including comment resolution of draft technical memorandum.
 - Prepare a 30% level opinion of probable cost.
- **Deliverables**
 - Updated basis of design technical memorandum.
 - 30% plans.

- 30% level opinion of probable cost.
- **Assumptions**
 - 30% plan comments will be resolved in the 60% design task. A second draft of 30% plans will not be prepared.
 - The City will provide consolidated plan and technical memorandum comments.

- **Subtask 0302 – Landscape Schematic**

- **Objective/Goal**

The purpose of this subtask is to prepare a landscape design schematic for the preferred stormwater facility 30% design alternative.

- **Approach**
 - Using the selected alternative plan, prepare a design schematic for landscaping in the disturbed project area.
 - Prepare a plant palette and preferred zones for each.
 - Prepare a landscape schematic plan sheet to be included in the Subtask 0301 set.
 - Update the sheet in response to comments and prepare a second draft.
- **Deliverables**
 - Draft landscape schematic plan sheet (to be included in the Subtask 0301 set deliverable).
 - Second draft updated sheet in response to comments (to be included in the Subtask 0401 set deliverable). (to be included in the Subtask 0401 set deliverable).
- **Assumptions**
 - Landscape limits will be in the stormwater facility project area and not include the entire site restoration.
 - A brief description of landscape considerations will be included in the Basis-of-Design technical memorandum.

- **TASK 04 – FINAL DESIGN**

- **Subtask 0401 – 60% Design of Stormwater Pond**

- **Objective/Goal**

Prepare 60% design-level drawings for the pond retrofit.

- **Approach**

- Prepare 60% design drawing set for the stormwater pond retrofit (up to 12 sheets).
 - Cover Sheet
 - General Notes and Legend
 - Existing Conditions
 - Staging and Temporary Construction Areas
 - Demolition and TESC Plan with Temporary Bypass
 - Site Layout Plan
 - Grading
 - Drainage Plan
 - Miscellaneous Details
 - Restoration Plan
 - Landscape design (plan and details)
- Conduct review meeting with City.
- Submit plan sheets for review.
- Prepare updated Basis-of-Design technical memorandum, including comment resolution of draft technical memorandum.
- Include comment resolution of 30% plans.
- Prepare a 60% level opinion of probable cost.

- **Deliverables**

- Updated basis of design technical memorandum.
- 60% plans.
- 60% level opinion of probable cost.

- **Assumptions**

- The City will provide consolidated plan and technical memorandum comments.
- Comment resolution documentation is provided between 60% and 90% plans. No second set of 60% plans are prepared.

- **Subtask 0402 – 90% Design of Stormwater Pond**

- **Objective/Goal**

Prepare 90% design-level drawings for the stormwater pond retrofit.

- **Approach**

- Prepare 90% design drawing set for the stormwater pond retrofit (up to 12 sheets).
 - Cover Sheet
 - General Notes and Legend
 - Existing Conditions
 - Staging and Temporary Construction Areas
 - Demolition and TESC Plan with Temporary Bypass
 - Site Layout Plan
 - Grading
 - Drainage Plan
 - Miscellaneous Details
 - Restoration Plan
 - Landscape design (plan and details)
- Conduct review meeting with City.
- Submit plan sheets for review.
- Prepare updated Basis-of-Design technical memorandum, including comment resolution of draft technical memorandum.
- Prepare comment resolution of 60% plans.
- Prepare a 90% level opinion of probable cost.
- **Deliverables**
 - 90% plans.
 - 90% level opinion of probable cost.
 - 90% draft specifications
- **Assumptions**
 - The City will provide consolidated plan and technical memorandum comments.
 - Plan updates to address comments will be provided in the Final 100% plan set.
 - Comment resolution documentation is provided only between 90% and final plan sets. Plan updates to address comments on the 90% plans will be provided in the final plan set.
- **Subtask 0403 – 100% Design of Stormwater Pond**
- **Objective/Goal**

Prepare 100% design-level drawings for the stormwater pond retrofit.

- **Approach**

- Prepare 100% design drawing set for the stormwater pond retrofit (up to 12 sheets).
 - Cover Sheet
 - General Notes and Legend
 - Existing Conditions
 - Staging and Temporary Construction Areas
 - Demolition and TESC Plan with Temporary Bypass
 - Site Layout Plan
 - Grading
 - Drainage Plan
 - Miscellaneous Details
 - Restoration Plan
 - Landscape design (plan and details)
- Conduct review meeting with City.
- Submit plan sheets for review.
- Prepare updated Basis-of-Design technical memorandum, including comment resolution of draft technical memorandum.
- Prepare second draft of 100% plans, including comment resolution of draft plans.
- Prepare a 100% level opinion of probable cost.

- **Deliverables**

- First and second draft 100% plans.
- 100% level opinion of probable cost.
- 100% draft specifications

- **Assumptions**

- The City will provide information and resolve any issues related to the existing drainage easement and coordinate temporary site and use impacts, resolve private property issues, and address community comments and impact concerns.
- The City will provide copies and distribution of bid documents and notices of advertisement.
- Deliverables will be submitted in electronic PDF format.
- Technical specifications special provisions will be prepared in WSDOT/APWA format.
- Specifications will be delivered in an electronic format (Word).

- Division 00 and 01 specifications will be prepared by the City.
- Engineer's opinion of cost will be delivered in an electronic format.
- Bid and construction support not included under this contract.
- Bid document will be prepared by the City.

- **TASK 05 – SURVEY**

- **Task Objective**

To provide a topographic base map with a surveyed boundary for use in preparing the design plans.

- **Approach**

- **Subtask 05.01 Survey**

Parametrix will perform topographic mapping. Mapping limits will include surface features within areas of Marine View Drive South, portions of King County Tax Parcel Numbers 1722049131, and 1722049109.

Mapping will consist of locating existing improvements and ground conditions within the above-described properties. Parcel lines, easements, and right-of-way limits will be based upon the applicable public records. Ground features, including tops and toes, breaks, edge of pavement, and ditches, will be mapped at sufficient detail to create 1-foot contours. Structures such as fences, driveways, overhead utilities, and other physical visible improvements will be mapped.

An underground utility locate firm will be hired to mark buried utilities such as gas, water, power, telephone, and TV cable, if such utilities have a conductible source or tracer lines attached. Sanitary and storm structures will be opened and measurements will be made identifying size, type, and invert elevation of incoming and outgoing pipes. Once the field work has been completed, a survey technician will process the data and prepare a base map using AutoCAD Civil 3D, Release 2018 (or later).

- **Subtask 05.02 AutoCAD Base Map Preparation**

Parametrix will process survey field data and generate an AutoCAD drawing showing the existing conditions for the stormwater facility site. A base map using best available data will be prepared but not filed surveyed.

Parametrix will show the existing parcel lines for the project subject properties and to the adjacent ROW.

As described above, an underground utility locate firm will be hired to mark buried utilities that provide a conductible signal. For those utilities constructed without a tracing wire or made from non-conductible material, record drawings may be used to help identify locations and type of utility, if provided by the City.

- **Deliverables**

- AutoCAD drawing in 2018 format (or later) at 1 inch = 20 feet with 1-foot contours, topographic information, and easements along the mapping corridor.
- Triangular Integrated Network (TIN) surface for use in design.

- **Assumptions**

- If necessary, Parametrix will be provided with a current title report including all referenced documents for subject property prior to commencement of work.
- Property corners will not be set, nor will a Record of Survey be prepared.
- Unless otherwise specified by the City, Horizontal Datum shall be NAD 83/11 Washington Coordinate System, North Zone, and Vertical datum shall be NAVD88.
- Parametrix will be provided with reasonable access to all areas requiring surveys.

- **TASK 06 – ENVIRONMENTAL PERMITTING**

- **Subtask 0601 – Environmental Permitting**

- **Objective/Goal**

The propose of this task is to prepare cultural resources and permitting documents to support the planning, design, and construction work for the stormwater facility.

- **Approach**

- Review publicly accessible natural resource databases to identify critical areas, priority habitat and species occurrence, and federally designated critical habitat within the project area.
- Conduct a brief site visit to assess current conditions and identify the presence and general location of regulated critical areas. The findings will be documented in a short memo with features mapped in the field using a hand held GPS.
- Develop a matrix of anticipated environmental permits for each alternative evaluated under Task 2 (above).

- Update the preliminary permit matrix per the stormwater pond retrofit during preliminary design.
- Prepare an Inadvertent Discovery Form.

- **Assumptions**

The following assumptions apply to this subtask:

- Assuming the project would not involve lands covered by water (e.g., wetlands/streams), the project is exempt from SEPA per WAC 187-11-800 (23) for installation, construction, and alternation of land for a stormwater utility connected to a pipe that is 12 inches or less in diameter.
- Zoned as downtown commercial, the subject parcel is a permitted use per 16.52.010B.
- The project activity is considered an exception per DMC 16.10.300 for drainage facilities in a wetland or stream and their buffers.
- The City will lead and be responsible for applications for construction, utility, and right-of-way use permits. Parametrix will provide available support materials for City use.
- The project will not disturbed greater than 1 acre; therefore, it will not require a NPDES Construction Stormwater Permit.
- No evaluation of traffic impacts will be required.
- The City will be responsible for all permit application fees and third-party review fees.
- The City will be responsible for the publication of all notices and announcements.
- All deliverables will be in PDF file format and hardcopies in accordance with City application requirements.
- The preparation of permit applications for wetlands or in-water work is not included in this scope of work, including documentation for Section 106 and the Endangered Species Act.

- **Deliverables**

- For the following deliverables, Parametrix will provide a City Review draft and a City review final:
 - A list of other required local, state, tribal, and federal permits
 - Critical Resource Field Investigation Memo
 - Inadverta

- **TASK 07 – MANAGEMENT RESERVE (DIRECTED SERVICES)**

- **Measurable Task Objective**

The purpose of this task is to facilitate a timely response by Consultant for additional project-related needs that arise above and beyond the current scope. This work may include geotechnical support needs that are deemed necessary depending on the pond retrofit type.

- **Approach**

Consultant shall provide professional engineering services and technical assistance to the City at the direction of authorized City staff. A scope and estimated fee, including any expenses, shall be prepared and approved by the City in advance of any work.

End Scope of Work

CITY OF DES MOINES
2025-2030 CAPITAL IMPROVEMENT PLAN
 (Amount in Thousands)

MVD Pond Retrofit

Project #

SWCIP0035

- Previous Project #

-

CIP Category: Surface Water Management

Managing Department: Plan, Build & PW Admin

Summary Project Description:

This project proposes adding a water quality component to the existing vintage stormwater pond at 22741 Marine View Dr. S. Water quality treatment is a priority at this location as it is adjacent to its receiving water and does not have space to increase its footprint for flow control. Therefore, the retrofit proposes to provide enhanced stormwater treatment using a large at grade custom sized proprietary water quality treatment system or by retrofitting the pond into a stormwater wetland.

Justification/Benefits: Project has been outlined in the 2023 Stormwater Management Action plan as a short-term retrofit project.

PROJECT SCOPE			
Expenditures	Current Budget	Requested Change	Total Budget
Design	150	-	265 150
Land & Right of Way	-	-	-
Construction	546	-	546
Contingency	165	-	173 165
Total Expenditures	861	-	861 861

ANNUAL ALLOCATION							
Project to Date 12/31/23	Scheduled Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028	Plan Year 2029	Plan Year 2030
-	-	265 150	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	546	-	-	-	-
-	-	30 22	143	-	-	-	-
-	-	305 172	689	-	-	-	-

Funding Sources	Current Budget	Requested Change	Total Budget
State of Washington Grants (Unsecured)	861	-	861
Total Funding	861	-	861
Funding Shortfall/Excess	-	-	-

Project to Date 12/31/23	Scheduled Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028	Plan Year 2029	Plan Year 2030
-	-	172	689	-	-	-	-
-	-	172	689	-	-	-	-

OPERATING IMPACT			
Operating Impact	6 Year Total		
Revenue	-	-	-
Expenses	-	-	-
Net Impact	-	-	-

ANNUAL OPERATING IMPACT							
12/31/23	2024	2025	2026	2027	2028	2029	2030
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

→ Surface Water Utility:

70

→ King County Flood Grant (Secured):

225

→ Total Funding:

295

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Marina Vehicle Charging Station Agreement

FOR AGENDA OF: November 21, 2024

DEPT. OF ORIGIN: Marina

ATTACHMENTS:

1. Site Host Agreement with EV Charging Solutions

DATE SUBMITTED: November 7, 2024

CLEARANCES:

- ☒ City Clerk *JK*
- ☐ Community Development _____
- ☐ Courts _____
- ☐ Emergency Management _____
- ☒ Finance *SP*
- ☐ Human Resources _____
- ☒ Legal /s/ Tim George
- ☒ Marina *SP*
- ☐ Police _____
- ☐ Parks, Recreation & Senior Services _____
- ☒ Public Works *MPS*

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *PC*

Purpose and Recommendation

The purpose of this agenda item is for the City Council to review and approve the Site Host Agreement with EV Charging Solutions for the design, construction and installation of 9 electric vehicle charging stations at the Marina. The following motion will appear on the consent calendar:

Suggested Motion

Motion 1: "I move to approve the Site Host Agreement with EV Charging Solutions for the design, construction and installation of 9 electric vehicle charging stations at the Marina, and authorize the City Manager to sign the agreement substantially in the form as attached."

Background

The City has applied for a series of grants to fund marina electrification. This grant in particular will fund the design, installation, operation and maintenance of a high-speed electric vehicle charging station at the marina. The charging station will support nine vehicle-charging ports, and be built such that it can concurrently support electric passenger-only ferry service charging needs at a future date.

All expenses associated with the design, construction and operation of the charging station will be borne by EV Charging Solutions (EVCS). EVCS has received public funding to install and operate stations used for charging and/or recharging electric vehicles. This funding is intended to improve the availability and reliability of electric vehicle charging systems across the State of Washington. Des Moines does not currently have any vehicle charging stations on City owned property. The marina was identified as a desirable location to offer charging stations to the public.

Discussion

The Site Host Agreement is for a period of ten years and EVCS will be solely responsible for the costs of installing the charging stations. After they are installed, the City and EVCS will share in the revenue generated from the sale of electricity. EVCS will be responsible for removing the charging stations once the Agreement has expired if it is not renewed.

Alternatives

The Council may decline to approve the Site Host Agreement. If the Agreement is not approved, the project will not proceed and no electric vehicle charging stations will be installed.

Financial Impact

The City will receive a portion of the energy sales from the stations, specifically between \$.03 and \$.05 per kWh. It is unclear at this time how much revenue would be collected annually. EVCS will be responsible for the cost of the electricity that is sold.

Recommendation

Staff recommends approval of the Agreement.



SITE HOST AGREEMENT

This Site Host Agreement (hereafter the “**Agreement**”) is effective as of _____ (hereafter the “**Effective Date**”) by and between EV Charging Solutions, Inc., a California corporation with its principle at 11800 Clark Street, Arcadia, California 91006 (hereafter “**EVCS**”), and _____ City of Des Moines _____ with its principal place of business located at 21630 11th Avenue S, Suite A Des Moines, WA 98198 (hereafter “**Site Host**”). EVCS and Site Host may collectively be referred to herein as the “**Parties**” or individually as “**Party**.”

RECITALS

WHEREAS, EVCS has access to public and/or private funding to install and operate Level II Charging and/or Direct Current Fast Charging (“**DCFC**”) stations used for charging and/or recharging electric vehicles (hereafter the “**Equipment**”); and

WHEREAS, this funding is intended to improve the availability and reliability of electric vehicle and marine vessel charging systems; and

WHEREAS, Site Host wishes to allow the construction, operation, and/or maintenance of one or more items of Equipment on its real property (hereafter “**Property**” and/or “**Site**”) in the location more specifically identified herein and also wishes to allow public use of the Equipment; and

WHEREAS, the Parties wish to collaborate by utilizing their respective resources to promote the electric transportation sector; and

WHEREAS, the Parties wish to share the revenue realized from the sale of electricity stemming from the utilization of the Equipment on the Property as more fully described below; and

WHEREAS, the Parties desire that this Agreement shall remain in effect, subject to the terms and conditions set forth below, for ten (10) years after the commissioning date (i.e., date when the Equipment is placed in service on the Property);

NOW, THEREFORE, in consideration of the promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, EVCS and Site Host agree as follows:

1. Recitals

The Parties agree that the foregoing Recitals are true, correct, and accurate.

2. EVCS’ General Obligations for Equipment and Services

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EVCS shall provide the following equipment and services at EVCS sole expense:

- a) Purchase of the Equipment (consisting of **3 DCFC Stations** and **6 Level II Stations**), the general specifications for which are detailed in **Exhibit A** together with all other mechanical, electrical, and physical components necessary for the installation, connection, and operation of the Equipment in accordance with this Agreement (the Parties agree that the Equipment delivered to the Property shall be the same or similar to the equipment detailed in **Exhibit A**);
- b) Preparation of the Property and installation of the Equipment at the location(s) approved, specified and identified by Site Host (the “**Project Site**”) and performed by qualified and licensed contractor(s) in accordance with local codes, permitting, and inspection requirements, as detailed in **Exhibit B**. For the purposes of initially creating a rebate application and reserving funding for the Project, EVCS and Site Host may mutually agree to leave Exhibit B blank upon initial execution. Once funding is reserved and further feasibility and recommendations are made by EVCS’ electrical contractor in accordance with Site Host’s written approval, the Parties shall further specify the approved location(s) and Site design by mutual written agreement on Exhibit B;
- c) Payment of all costs of its contractors associated with the delivery, site preparation, installation, and setup of the Equipment at the Project Site;
- d) Upon approval of the Site Host, the design, installation, wiring, connection and integration of the charging system, consumption/use meters, and related equipment into the public power grid in a manner sufficient to allow operation of the charging station(s) and the ongoing metering of power usage from each charging port;
- e) Ongoing maintenance/repairs of the Equipment for the term of the Agreement;
- f) All necessary communications, instructions, and network systems to facilitate public use of the Equipment to charge electric vehicles;
- g) Periodic reports to Site Host on the utilization of the Equipment; and
- h) Upon termination of this Agreement, EVCS shall remove all equipment at no cost to the Site Host.

3. Site Host General Obligations

Site Host shall undertake the following, at Site Host's sole expense:

- a) Provide full, complete and unfettered access to EVCS for the placement, use, and operation of the Equipment at the Project Site for the full term of this Agreement;
- b) Provides the necessary temporary construction access for EVCS and its contractors for preparation of the Project Site and for installation of the Equipment;
- c) Provides mutually agreed locations for necessary ongoing utility easements and / or access for installation, usage, and maintenance of power lines, conduits, meters and Equipment;
- d) Allow full, complete and unfettered ongoing access to the Project Site and Equipment in order for EVCS to collect, use, and distribute data;
- e) Will not knowingly allow the Equipment to be, and will take all reasonable steps to prevent the Equipment from being opened, accessed, modified, or repaired by anyone other than EVCS or its licensed contractors;
- f) Will not sell, alienate, hypothecate, transfer, assign, encumber or otherwise pledge the Equipment;
- g) Use best efforts to prevent damage and vandalism of any type to the Equipment;
- h) Will not, and will not permit or allow any third party to, open, move, modify, reverse engineer, or disassemble the whole or any part of the Equipment or any part thereof in any manner; except as needed to provide engineering expertise to EVCS to modify equipment and/or design as may be needed to make project suitable to charging marine vessels. Site host will be solely responsible for engineering costs associated with modifying equipment to suit marine vessels.
- i) Will not, and will not permit or allow any third party to, uninstall the Equipment;

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- j) Allow EVCS and its approved contractors full, complete and unfettered access to the Project Site for installation, maintenance, repair, replacement and approved de-installation of the Equipment;
- k) Cause the Project Site to be maintained in a clean, safe, and orderly condition, utilizing at least the same standard as to which other areas at the Property that are under the Site Host's control are maintained;
- l) Assign to EVCS all right, title and interest in and to all and any rebates that Site Host may receive relating to the Equipment, and/or this Agreement; including, but not limited to, (a) rebates or other payments based in whole or in part on the cost or size of equipment, (b) performance-based incentives paid as periodic payments, (c) tax credits, grants or benefits, and (d) any other attributes, commodities, revenue streams or payments, in each of (a) through (d) under any present or future law, standard or program and whether paid by a utility, private entity or any governmental, regulatory or administrative authority.
- m) Assign EVCS all right, title and interests in and to environmental credits (e.g., carbon credits) relating to the Equipment, and/or this Agreement; including, but limited to electric vehicle charging or renewable energy credits or certificates, carbon credits and any similar environmental or pollution allowances, credits or reporting rights.
- n) Assign EVCS all right, title and interest in and to the enrollment of the Equipment into a demand response program and any and all economic benefit arising from such an enrollment. If demand response program benefits credits the Site Host utility bill, the utility bill credit will be used to offset cost of electricity described in paragraph 4 and subchapter d (4.d.) and demand charges described in paragraph 4 and subchapter e (4.e.) and if the demand response credits are in excess of demand charges and cost of electricity, EVCS can request Site Host for reimbursement of such excess. The Site Host agrees to issue such a reimbursement within thirty (30) days of request by EVCS.
- o) Promptly execute the Easement Agreement upon the request of EVCS or the applicable utility service provider.

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- p) Shall fully cooperate and promptly communicate with EVCS during the entire time period required by EVCS to complete the preparation of the Project Site and the installation of the Equipment. Site Host understands and acknowledges that EVCS will expend a significant amount of time, resources and effort to assess the Project Site, secure funding for the installation of the Equipment, and initiate engineering and design for the Equipment. Site Host further understands and acknowledges that the timeframe for completion of the Equipment installation is in part dependent on third parties, such as utility providers, rebate and permitting authorities and grant organizations, and thus the amount of time it takes to complete installation of the Equipment at the Project Site is often outside of EVCS' control. Thus, Site Host agrees that its cooperation as described above is of the essence of this Agreement, and the breach of these provisions shall be a material breach that shall cause substantial harm to EVCS.
- q) Provide EVCS with prompt notified of the sale or transfer of the Project Site, which notice shall include current contact information of the buyer or transferee.

4. Revenue Sharing

The Parties agree that:

- a) The Equipment installed by EVCS is intended to generate revenue through the patronage of customers utilizing the Equipment placed with the Site Host.
- b) EVCS shall, in its discretion, determine the price/rate at which electricity shall be sold to consumers utilizing the Equipment.
- c) EVCS will collect the proceeds generated from the sale of electricity from the Equipment placed with the Site Host and pay Site Host **\$0.05** (five cents) for each kWh of electricity sold to customers utilizing the DCFC Equipment and **\$0.03** (three cents) for each kWh of electricity sold to customers utilizing Level II Equipment, plus 100% of the cost of electricity utilized by the equipment; in the event the Site Host is responsible to pay for the cost of such electricity usage. Site Host may, in Site Host's discretion, offer certain customers free or discounted charging rates, provided,

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however, that EVCS will offset any revenue share amounts owed to Site Host by an amount proportionate to the reduction in revenue caused by such discounts. In the event there is a balance owed from Site Host to EVCS as a result of such discounts, Site Host shall remit payment to settle said balance within ninety (90) days of receipt of a request for payment from EVCS.

- d) In the event Site Host incurs any utility provider assessed incremental demand charges strictly in connection with the operation of the installed Equipment, Site Host shall present these charges, including any support and back-up documentation that substantiates the charges to EVCS, and EVCS shall reimburse Site Host for these substantiated charges within ninety (90) days of receipt of a request for payment from EVCS.
- e) Upon mutual agreement of the parties, the right to own the electricity service meter and/or utility service account servicing the Equipment.
- f) EVCS will use commercially reasonable efforts to install a separate electric meter as allowed by the utility provider at the Property through which electrical costs shall be tracked. In the event EVCS deems installing a separate meter is impractical or uneconomical for any reason, the Equipment shall be connected to Site Host's existing electrical meter. In order to allow EVCS to perform the necessary revenue sharing calculations, and reimburse any electrical costs, Site Host will provide EVCS with a hard copy or electronic/digital copy of Site Host's electricity bills or will allow EVCS to view the bills electronically on an on-going basis. In the event EVCS is unable to obtain copies of the electricity bills, or copies are not provided by the Site Host, then EVCS, in its sole discretion, may either (i) withhold payment until the electricity bills are provided, or (ii) calculate the amount of reimbursement for electricity using information available to EVCS from the administrative panel (*i.e.*, which indicates the amount of electricity that was dispensed by the charger(s)) and then assign, in its sole discretion, a per kWh value that will be multiplied by the amount of electricity dispensed by the charger(s). If EVCS chooses the above second option, then (a) once such calculation is made EVCS shall issue reimbursement for electricity based thereon, and (b) if the Site Host thereafter provides copies of appropriate electricity bills to EVCS, then EVCS will true up the calculation and issue payment for any resulting shortfall for the prior 12 months of activity from the date of electricity bills being submitted to EVCS.
- g) EVCS will have forty-five (45) days after the end of each calendar quarter, to remit the appropriate revenue share payment to Site Host. The billing cycle will begin on the first day of the quarter and end on the last day of that same calendar quarter. EVCS shall provide Site Host with a quarterly accounting statement within forty-five (45) days following the end of the previous quarter indicating the total amount of revenue

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generated, including any offsets or reductions to revenue, and the resulting net revenue share amount owed to Site Host.

- h) Notwithstanding anything to the contrary in this Section 4, if the total quarterly amount owed to Site Host is less than one hundred dollars (\$100), then EVCS may, in its sole discretion, choose to withhold payment payout to the Site Host until at least one hundred dollars (\$100) is due to Site Host.
- i) See Exhibit C for Site Host ACH payment information. If such information is provided, EVCS shall make all required payments via ACH direct deposit, until further notice from Site Host.

5. Term of Agreement:

The term hereof shall begin upon the Effective Date. The date the Equipment becomes operational will hereafter be referred to as the "Commencement Date." The term hereof shall expire (unless renewed or extended) ten (10) years from the Commencement Date (hereafter the "Termination Date"), unless sooner terminated in accordance with the provisions hereof.

a) Optional Ten (10) Year Extension Option

At least ninety (90) days but no earlier than one hundred & eighty (180) days prior to the expiration of the initial Term, upon mutual agreement, the parties may extend this Agreement for an additional Ten-Year Extension. If extended, EVCS reserves the right to replace the Equipment at the Project Site with Equipment that is comparable or better to Equipment that was previously installed. If EVCS notifies the Site Host of such intent EVCS will then replace the Equipment no later than one hundred & twenty (120) days after the Termination Date. The terms of this Agreement will remain in effect during that 120-day period after the Termination Date. Site Host will take all reasonable steps to allow EVCS to remove the pre-existing Equipment and replace the pre-existing Equipment with new Equipment. EVCS shall bear the cost to remove and replace the pre-existing Equipment. The removed pre-existing Equipment will then become the exclusive property of EVCS. If EVCS elects to replace the Equipment, this will cause the termination date of the Agreement to extend for an additional ten (10) year term from the expiration of the initial Term. If the existing Equipment is replaced with new Equipment during or at the conclusion of the original Term, site host grants all interest to EVCS of any rebate(s) and/or environmental credits associated with the equipment replacement.

b) Automatic One (1) Year Renewal Clause

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Provided the Parties have not agreed to the Ten (10) Year Extension Option, this agreement will automatically renew at the end of each Term for a further term of one (1) year unless either party gives the other written notice of termination at least thirty (30) days but no earlier than ninety (90) days prior to the end of the relevant term.

c) Early Termination Clause

This Agreement may be terminated upon 30 (thirty) days' written notice to either party without penalty or fee in the following instances:

In the case of EVCS, at any time and for any reason prior to the submission of the permit application for construction of the Equipment, at the Project Site, or thereafter at any time in the event that EVCS determines that the construction or continued operation of the Equipment is impracticable or uneconomical.

In the case of Site Host, in the event the Commencement Date has not occurred within eighteen (18) months from issuance of the approved utility plan, and required utility easement, if applicable, provided that Site Host's rights to terminate under this section shall terminate upon the Commencement Date.

6. Ownership of Equipment and Content

EVCS shall retain title to and ownership of the Equipment. All the information, content, services and software displayed on, transmitted through, stored within, or otherwise used in connection with the use and operation of the Equipment, including, but not limited to data, text, photographs, images, illustrations, video, html, source and object code, software, internet account access, advertising, and the like (collectively, the "Content") is owned exclusively by EVCS. Once this Agreement is terminated EVCS shall remove equipment at no cost to the Site Host.

7. Installation Activities

EVCS shall, at its sole cost and expense, be responsible for all installation activities (hereafter "Installation Activities") required to support the operation of the Equipment, and services therewith, including the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; site preparation, trenching, repaving, and landscaping.

8. Limitations on Use of Project Site

The Project Site and related parking spaces made available to the Project Site may be used for providing publicly-accessible electric vehicle charging. The Site Host may charge a fee to enter the site. Site Host shall provide EVCS, its employees and contractors with reasonable access to the parking spaces and Equipment and shall otherwise provide to EVCS the same amenities and services Site Host provides to other users of Site Host's parking facilities.

9. Utility Charges

EVCS shall be responsible for all electricity costs associated with both the operation of the Equipment and the charging of electric vehicles from the Equipment. Site Host shall cooperate with EVCS efforts regarding provision of electricity to the Equipment. Neither Site Host nor EVCS has any responsibility or liability for interruption, curtailment, failure, or defect in the supply of utilities furnished to the Equipment.

10. Allocation of Environmental Benefits

Site Host assigns to EVCS any renewable energy credits, allowances, or other indicators of environmental benefit attributable to the presence of the Equipment for the entirety of the time the originally installed Equipment is installed at the site but for a minimum of ten (10) years. If this Agreement extends under paragraph 5 and subchapter a (5.a.) or renews under paragraph 5 and subchapter b (5.b.), then paragraph 10 shall continue to remain in effect through the updated termination date.

11. Signage

With prior approval of the Site Host and subject to any applicable permit requirement, EVCS shall have the right to place project-related signage to denote the location of the Equipment and the services available and may place other signage or advertising at the Property as EVCS reasonably determines to be practicable or appropriate.

12. Publicity

During the term of this Agreement, neither party will use the other party's name, logos, trademarks or service marks in any manner without the other party's prior written approval, which will not be unreasonably withheld or delayed.

13. Media Content

It is agreed that EVCS shall have sole control over the solicitation, contracting, and distribution of any and all media content relating to the Equipment, including but not limited to, any media content data transmitted to or from the Equipment and displayed using the Equipment. EVCS will use commercially reasonable efforts to avoid distributing media content that actually and directly conflicts with Site Host's media and advertising.

14. Indemnification

- a) EVCS shall indemnify and hold harmless Site Host, and any tenant, guest, customer, patron, or employee of Site Host, from and against any and all liability and expense of any kind, including reasonable attorneys' fees, arising from injuries or damages to persons or property resulting in any way from the negligence or willful misconduct of EVCS, its contractors, agents, or employees. It is a condition of this indemnification provision that EVCS shall receive prompt notice from Site Host of any claim against Site Host for which indemnification from EVCS is claimed.

- b) Site Host agrees to indemnify EVCS, its officers, board, employees, and agents, and hold all of same harmless from and against any and all liability and expense of any kind, including reasonable attorneys' fees, arising from injuries or damages to persons or property resulting in any way from any act or negligence or willful misconduct of Site Host, its contractors, agents or employees. It is a condition of this indemnification provision that Site Host shall receive prompt notice from EVCS of any claim against EVCS.

15. Breach and Opportunity to Cure

If either party breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of that breach, then the non-breaching party may terminate this Agreement effective as of the end of such thirty (30) day period. Additionally, either party may terminate this Agreement immediately if the other party (i) ceases to do business in the ordinary course; or (ii) either voluntarily or involuntarily files a bankruptcy petition which is not vacated within thirty (30) days of filing. No such termination will be deemed a waiver of any claim for damages by the non-terminating party.

If the Site Host breaches or wrongfully terminates the Agreement prior to the Termination Date, Site Host will be required to reimburse EVCS for all costs incurred relating to the installation of the Equipment within thirty (30) days of receipt of an invoice from EVCS. The Site Host will also be required to reimburse EVCS for the total amount of any rebates EVCS would have received relating to the Equipment, and/or this Agreement had the Agreement not been breached or wrongfully terminated.

16. Disputes

This Agreement is governed by, and must be construed and enforced in accordance with, the laws of the state of Washington, excluding principles of conflicts of laws. For every dispute regarding this Agreement: (i) the prevailing party is entitled to its costs, expenses, and reasonable attorney fees (whether incurred at trial, on appeal, or otherwise) incurred in resolving or settling the dispute, in addition to all other damages or awards to which the party may be entitled; (ii) each party consents to the jurisdiction of the courts within King County, Washington and agrees that those courts have personal jurisdiction over each party; (iii) venue must be within King County, Washington; and (iv) the parties must submit the dispute to mediation held within King County. Every mediation must be completed within 3 months of the date when the initial notice demanding mediation was provided by any party. If, for any reason, the dispute is not resolved through mediation within the 3-month period, then the parties may continue seeking to resolve the dispute by use of any process, including litigation by trial. No waiver of any provision or breach hereof is a waiver of any other provision or breach. All rights and remedies are cumulative and nonexclusive.

17. Notices

All notices and other communications provided hereunder must be in writing and will be deemed given: (i) on the date of hand-delivery; (ii) on the date when sent by facsimile

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(with confirmation of transmission); (iii) on the date when sent by email, with confirmation of receipt; (iv) the day after sending by a nationally recognized overnight delivery service (with confirmation of transmission); or (v) 3 days after sending by certified mail (return receipt requested).

For purposes of this Agreement, addresses for notification, unless changed from time to time in writing, shall be:

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FOR EVCS:

EV Charging Solutions, Inc.
Attn: Thais Grossi,
Chief Operating Officer
11800 Clark Street
Arcadia, California 91006
thaisg@evcs.com
323.400.EVCS (3827)

Salesperson: McKay, Cyan Strategies

Rebate Program: WAEVCP 2023

SITE HOST:

SECONDARY/EMERGENCY CONTACT:

Company: City of Des Moines Marina

Company: City of Des Moines Marina

Attn: Scott Wilkins, Harbormaster

Attn: Katy Bevegni,
Assistant Harbormaster

Add. 1: 22307 Dock Ave S
Des Moines, WA 98198

Add. 1: 22307 Dock Ave S_____
Des Moines, WA 98198

Add. 2: _____

Add. 2: _____

Email: swilkins@desmoineswa.gov

Email: kbevegni@desmoineswa.gov

Phone: (206) 824-5700 _____

Phone: (206) 824-5700 _____

18. Successors and Assigns

The covenants, conditions and agreements contained herein shall bind and inure to the benefit of EVCS and Site Host and their respective successors and assigns. EVCS may freely and in its sole discretion assign this Agreement to a third party upon written notice to Site Host. Site Host may not assign this Agreement to any third party without prior written consent of EVCS.

19. Entire Agreement

This Agreement contains all the agreements between the parties hereto and may not be modified in any manner other than by agreement in writing signed by both the parties hereto and their successors in interest.

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IN WITNESS WHEREOF, this Agreement is executed by both parties, to become effective on the date last executed.

EVCS

SITE HOST

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

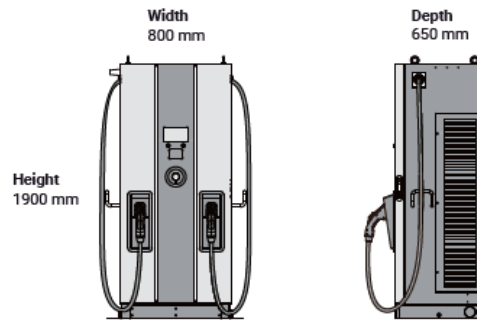
Date: _____

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EXHIBIT A - Electric Vehicle Charging Station Equipment Specifications

- 150 kW DC Fast Charger (3) – Noodoe 150P DCFC or similar
- 7.6 kW Level 2 EVSE (6) – Noodoe AC7LC and or similar

noodoeEV



SPECIFICATIONS

Cloud service	Noodoe EV OS
Maximum output power	150 kW
Output power	CCS2: 200 A @150~500 Vdc or 157 A @950 Vdc CHAdeMO: 120 A @150~500 Vdc
Vehicle connector	CCS2, CHAdeMO
Charging cable length	4 m
Input power	3-phase, 5-wire, 380~415 Vac, 276 A maximum
Grounding system	TN, TT, IT
Efficiency	> 94%
Power factor	> 0.99
Display	7 inch LCD
Communication protocol	OCPP 1.6 JSON
Vehicle communication interface	ISO 15118
Network connectivity	Ethernet, Wi-Fi, 4G
RFID	RFID ISO/IEC 14443 A/B
Ingress protection(IP)	IP55
Impact protection	IK10
Electrical protection	Over voltage protection, over current protection, over power protection, over temperature protection, under voltage protection, surge protection device, insulation monitoring device, short circuit protection
Operating temperature	-30 °C to +50 °C
Dimensions	800 (W) x 1900 (H) x 650 (D) mm
Weight	450 kg
Certifications	CE, RED

Noodoe EV OS



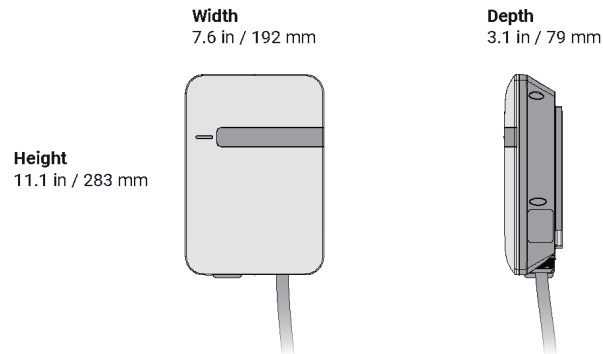
Noodoe Corp.
15F, No.19-13,
Sanhong Road,
Nangang District,
Taipei City 11501,
Taiwan
+886 2 7722 0677
info@noodoe.com
noodoe.com

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SPECIFICATIONS

Cloud service	Noodoe EV OS
Maximum output power	7.6 kW
Output power	32 A @208~240 Vac, 1-phase
Vehicle connector	SAE J1772
Charging cable length	25 feet / 7.6 m
Input power	1-phase, 3-wire, 208~240 Vac, 32 A maximum
Grounding system	TN, TT
Efficiency	> 99%
Power factor	> 0.99
Display	LED indicator, OLED, 20 characters, 2 lines
Communication protocol	OCPP 1.6 JSON
Network connectivity	Wi-Fi, 4G
RFID	RFID ISO/IEC 14443 A/B, ISO 15693
NEMA enclosures(NEMA)	NEMA 4
Impact protection	IK10
Electrical protection	Over voltage protection, under voltage protection, surge protection, ground fault protection, residual current device, short circuit protection, over current protection, over temperature protection
Operating temperature	-22 °F to +122 °F / -30 °C to +50 °C
Dimensions	7.6 (W) x 11.1 (H) x 3.1 (D) in 192 (W) x 283 (H) x 79 (D) mm
Weight	11 lbs / 5 kg
Certifications	UL, FCC, Energy Star

Noodoe EV OS



Noodoe Inc.
9896 Bissonnet,
Suite 440
Houston, TX 7703,
United States
+1 281-888-3429
info@noodoe.com
noodoe.com

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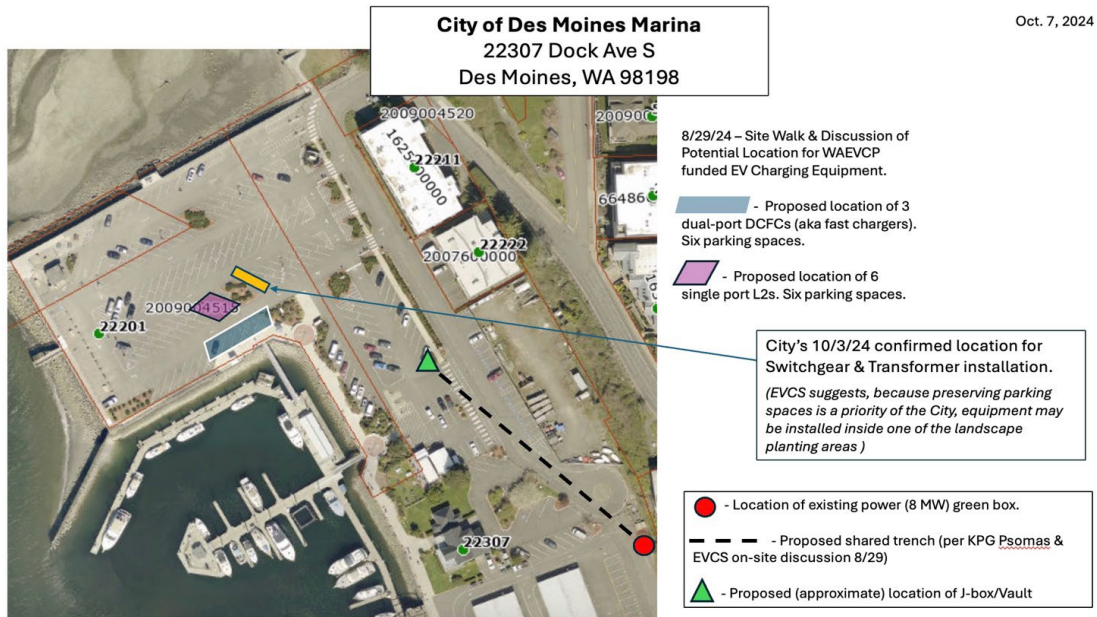
EXHIBIT B – Project Site Info

Utility/Electric Provider: _____

Electric Provider Acct. #: _____

Total Estimated Parking Spaces: _____ / Estimated Number of ADA Spaces: _____

Other: _____



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**EXHIBIT C – Site Host Banking Information (for ACH Payment
Purposes)**

Name on Account: _____

Name of Bank: _____

Bank Account Number: _____

Bank Routing Number: _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing:
2025 Property Tax Levies

FOR AGENDA OF: November 21, 2024

DEPT. OF ORIGIN: Finance

ATTACHMENTS:

DATE SUBMITTED: November 13, 2024

1. Draft Ordinance 24-090
2. Draft Ordinance 24-091
3. 2025 Preliminary Property Tax Worksheet

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

RCW 84.52.020 requires taxing districts to certify the amount to be raised through property taxation to the county legislative authority. The certification should include the regular levy amount, and if applicable, any lid-lifts approved by the voters, plus amounts for new construction, improvements to property and so forth. Draft Ordinance No. 24-091 satisfies the requirement of RCW 84.52.020.

RCW 84.55.120 requires all taxing districts to adopt a resolution or ordinance in order to realize any increase in their regular property tax levy other than increases due to new construction, improvements to property, increased value of state-assessed property annexations, and refunds. Draft Ordinance No. 24-090 satisfies the requirements of RCW 84.55.120.

Suggested Motion

Motion 1: “I move to enact Draft Ordinance No. 24-091, determining the amount of funds to be raised by ad valorem taxes for the year 2025 for general City expenditures.”

AND

Motion 2: “I move to enact Draft Ordinance No. 24-090 authorizing the increase in ad valorem taxes for the year 2025 for general City expenditures.”

Background

General Property Tax Levies must be adopted by the City Council on or before November 30, 2024. (RCW 84.52.020 and RCW 84.52.070).

General Property Taxes

The property tax levy rate is estimated to be \$.8802 per \$1,000 of assessed value; down from \$.89414 in 2024. The levy rate is less than the City's statutory maximum rate limit of \$2.35 per \$1,000 of assessed value. The total citywide preliminary assessed valuation used for the 2025 Tax Roll is \$6,578,494,834 as compared to \$6,214,112,635 for 2024's Tax Roll, which is an increase of 5.86%. The County's 2025-limit factor of a 1% increase is \$55,869 and is included in the 2025/2026 Proposed Biennial Budget. Also included in the 2025/2026 Proposed Biennial Budget is the levy on new construction of \$30,107, and a re-levy of \$87,961 for prior year refunds. In addition, the City seeks to use \$29,630 of its “banked capacity”. The actual increase for 2025 will vary depending on any increase in utility value.

Recommendation

It is recommended that the City Council pass the motions as stated above.

CITY ATTORNEY'S FIRST DRAFT 11/13/2024

DRAFT ORDINANCE NO. 24-090

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON authorizing an increase in the regular property tax levy for the year 2025 for general City expenditures.

WHEREAS, the City Council and the City Manager of the City of Des Moines has met and considered its budget for the calendar year 2025, and

WHEREAS, the City Council, of the City of Des Moines after hearing and after duly considering all relevant evidence and testimony presented, determined that the City of Des Moines requires a regular levy in the amount of \$5,790,457 which includes a \$203,567 increase in property tax revenue from the previous year, and amounts resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property, and amounts authorized by law as a result of any annexations that have occurred and refunds made, in order to discharge the expected expense and obligations of the City and in its best interest, and

WHEREAS, pursuant to RCW 84.55.120 the City Council is required to adopt a separate ordinance specifically authorizing an increase in the regular property tax levy in terms of both dollars and percentage increase from the previous year's levy; now therefore,

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

Sec. 1. Consistent with RCW 84.55.120, the City Council of the City of Des Moines finds that an increase in the regular property tax levy is hereby authorized for the 2025 levy in the amount of \$85,499 which is a percentage increase of 1.53036% from the previous year. This increase is exclusive of additional revenue resulting from the addition of new construction and improvements to property and any increase in the value of state assessed property, and any additional amounts resulting from any annexations that have occurred and refunds made.

Sec. 2. The actual amounts levied pursuant to the 1.53036% increase set forth in section 1 of the Ordinance shall be calculated after the value of state-assessed property (increase in utility value) is provided by King County.

Ordinance No. ____
Page 2 of 2

Sec. 3. Upon adoption, the City Clerk shall certify and forward a copy of this Ordinance to the Metropolitan King County Council and County Assessor for King County, Washington.

Sec. 4. 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. 5. Effective date. This Ordinance shall take effect in full force five (5) days after its passage, approval and publication according to law.

PASSED BY a majority of the City Council of the City of Des Moines this ____ day of _____, 2024 and signed in authentication thereof this ____ day of _____, 2024.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

CITY ATTORNEY'S FIRST DRAFT 11/13/2024

DRAFT ORDINANCE NO. 24-091

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON determining and fixing the amount of taxes levied, and certifying the estimated amounts of funds to be raised by taxes on the assessed valuation of property within the City for the year 2025, the first year of the City of Des Moines' 2025-2026 fiscal biennium, for general City budget expenditures.

WHEREAS, by law, the King County Assessor is responsible for determining the assessed valuation of all taxable property situated within the boundaries of the City of Des Moines for the year 2024, and

WHEREAS, the City Council and the City Manager have considered the anticipated budget requirements of the City of Des Moines for the 2025-2026 fiscal biennium, and

WHEREAS, notice of public hearing was provided as required by law, and

WHEREAS, RCW 84.52.010 allows the City to use any unused capacity from the authorized levy amounts of the King County Library district and South King Fire and Rescue, and

WHEREAS, the City Council, after hearing and after duly considering all relevant evidence and testimony presented, determined that the City of Des Moines requires a total levy in an amount not greater than \$5,790,457, in order to discharge the expected expenses and obligations of the City and in its best interest, and

WHEREAS, pursuant to chapter 84.52 RCW, the City Council is required to determine and fix by ordinance the amount of taxes levied, and to certify the estimated amounts of funds to be raised by taxes on the assessed valuation of property within the City; now therefore,

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

Ordinance No. ____
Page 2 of 3

Sec. 1. Findings. The recitals set forth above are adopted in full as findings of the City Council in support of enactment of this Ordinance.

Sec. 2. The following amount is determined and fixed as the amount of funds to be raised by taxes on the assessed valuation of property within the City for the year 2025 for general City budget expenditures:

The sum of not greater than \$5,790,457, which represents the relevy of the prior year tax levy and \$203,567 increase for 2025, including \$30,107 for new construction, \$29,630 of banked capacity, and \$87,961 as relevy for prior year refunds and \$0 amounts authorized by the voters for excess or special levies, for the fiscal year 2025 in the City of Des Moines.

Sec. 3. The actual amounts levied pursuant to section 1 of this Ordinance shall be calculated after the value of state-assessed property (increase in utility value) is provided by King County.

Sec. 4. Upon adoption, the City Clerk shall certify and forward a copy of this Ordinance to the Metropolitan King County Council and County Assessor for King County, Washington.

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. Effective date. This Ordinance shall take effect in full force five (5) days after its passage, approval and publication according to law.

Ordinance No. ____
Page 3 of 3

PASSED BY a majority of the City Council of the City of
Des Moines this ____ day of _____, 2024 and signed in
authentication thereof this ____ day of _____, 2024.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Preliminary Worksheet 10.31.2024

Attachment #3

TAXING DISTRICT

City of Des Moines

2024 Levy for 2025 Taxes IPD: 1.02570

A. Highest regular tax which could have been lawfully levied beginning with the 1985 levy (refund levy not included).									
Year	2024	5,616,227	x	1.01000	=	5,672,389			
		Highest Lawful Levy Since 1985		Limit Factor/Max Increase 101%					
B. Current year's assessed value of new construction, improvements, and wind turbines, solar, biomass, and geothermal facilities in original districts before annexation occurred times last year's levy rate (if an error occurred or an error correction was made in the previous year, use the rate that would have been levied had no error occurred).									
	33,671,315	*	0.89414	÷	1,000	=	30,107		
	A.V.		Last Year's Levy Rate						
C. Tax Increment finance area increment AV increase (RCW 84.55.010(1)€) (value included in B & D cannot be included in C)									
	0	*	0.89414	÷	1,000	=	0		
	A.V.		Last Year's Levy Rate						
D. Current year's state assessed property value less last year's state assessed property value. The remainder is to be multiplied by last year's regular levy rate (or the rate that should have been levied).									
	45,381,426	-	45,381,426	=	0				
	Current Year's A.V.		Previous Year's A.V.						
	0	*	0.89414	÷	1,000	=	0		
	Remainder from Line D		Last Year's Levy Rate						
E. 1 st Year Lid Lift & Limit Factor>1%									
F. Regular property tax limit: A+B+C+D+E = 5,702,496									
Parts G through I are used in calculating the additional levy limit due to annexation.									
G. To find the rate to be used in H, take the levy limit as shown in Line F above and divide it by the current assessed value of the district, excluding the annexed area.									
	5,702,496	÷	6,578,494,834	*	1,000	=	0.86683		
	Total in Line F		Assessed Value Less Annexed AV						
H. Annexed area's current assessed value including new construction and improvements, times the rate in Line G.									
	0	*	0.86683	÷	1,000	=	0		
	Annexed Area's A.V.		Annexation Rate						
I. Regular property tax limit including annexation F+H = 5,702,496									
J. Statutory maximum calculation									
Only enter fire/RFA rate, library rate, & firefighter pension fund rate for cities annexed to a fire/RFA or library or has a firefighter pension fund.									
	3.60000	-	1.00000	-	0.24808	+	0.00000	=	2.35192
	District base levy rate		Fire or RFA Rate		Library Rate		Firefighter Pension Fund		Statutory Rate Limit
	6,578,494,834	*	2.35192	÷	1,000	=	15,472,094		
	Regular Levy AV		Reg Statutory Rate Limit				Statutory Amount		
K. Highest Lawful Levy For This Tax Year (Lesser of I and J) = 5,702,496									
L. New highest lawful levy since 1985 (Lesser of I minus C and J, unless A (before limit factor increase) is greater, then A 5,702,496									
M. Lesser of J and K 5,702,496									
N. Refunds 87,961									
O. Total: M+N (unless stat max) 5,790,457									
P. Levy Corrections Year of Error: Did the district cause the error?									
1. Minus amount over levied (if applicable) 0									
2. Plus amount under levied (if applicable) 0									
Q. Total Allowable Levy 5,790,457									
R. Tax Base For Regular Levy									
1. Total district taxable value (including state-assessed property, and excluding boats, timber assessed value, and the senior citizen exemption for the regular levy) 6,578,494,834									
S. Tax Base for Excess, Voted Bond Levies and Sr Exempt Lid Lifts									
2. Excess AV 6,483,967,650									
3. Plus Timber Assessed Value (TAV) 688									
4. Tax base for excess and voted bond levies (2+3) 6,483,968,338									
T. Increase Information									
1. Levy rate based on allowable levy 0.88021									
2. Last year's ACTUAL regular levy 5,586,890									
3. Dollar Increase over last year other than New Construction (-) Annexation 85,499									
4. Percent Increase over last year other than New Construction (-) Annexation 1.53036%									

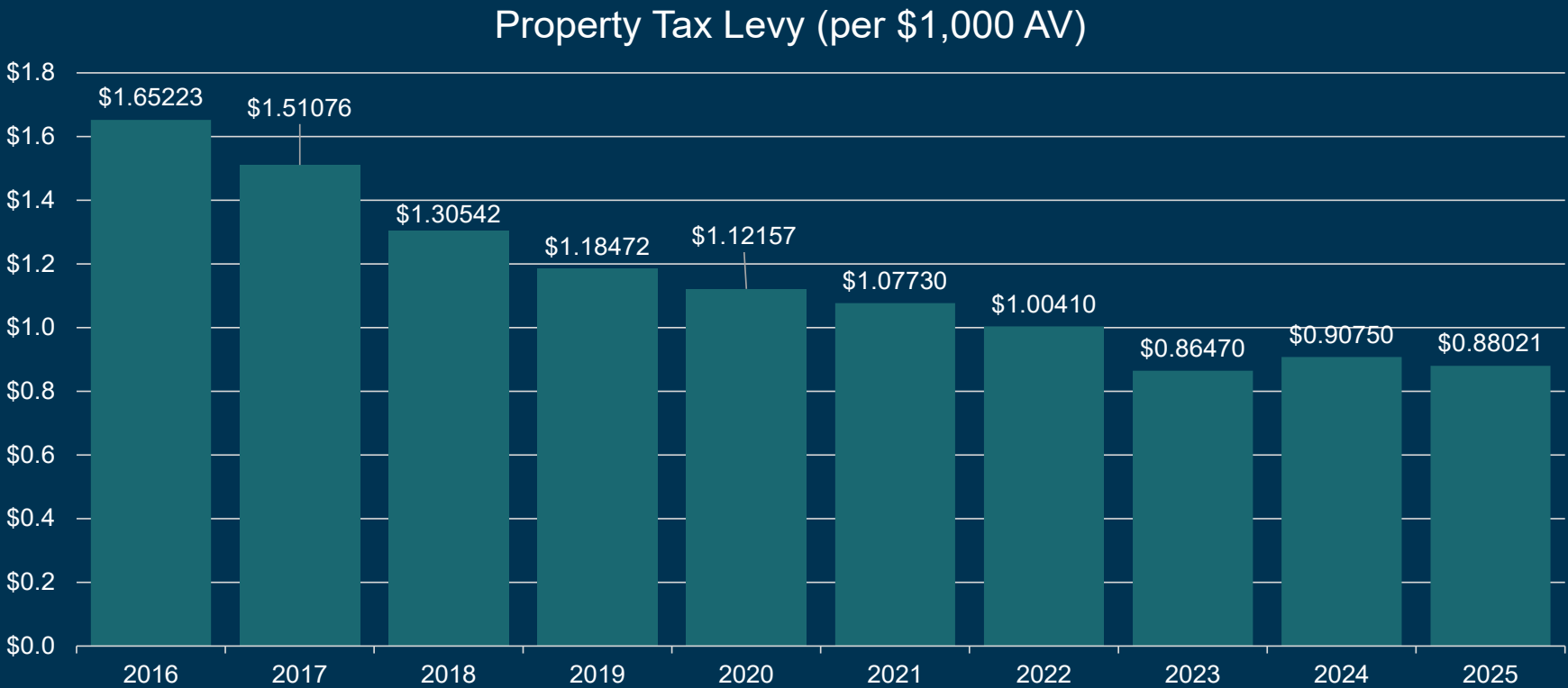
2024 Property Tax Levy

New for 2025

- Proposed Property Tax Levy amount of \$5,790,457
- The proposed levy includes a 1% allowable increase of \$55,869.
- Overall Assessed Valuation within the City of Des Moines increased by about \$364 million to \$6,578,494,834*; an increase of 5.9%.
- The City had an additional \$34 million in new construction, adding \$30,107 to the overall property tax base.
- The proposed tax rate for 2025 is an estimated \$.88021, a decrease of 3% from the current levy for 2024 (\$.9075).

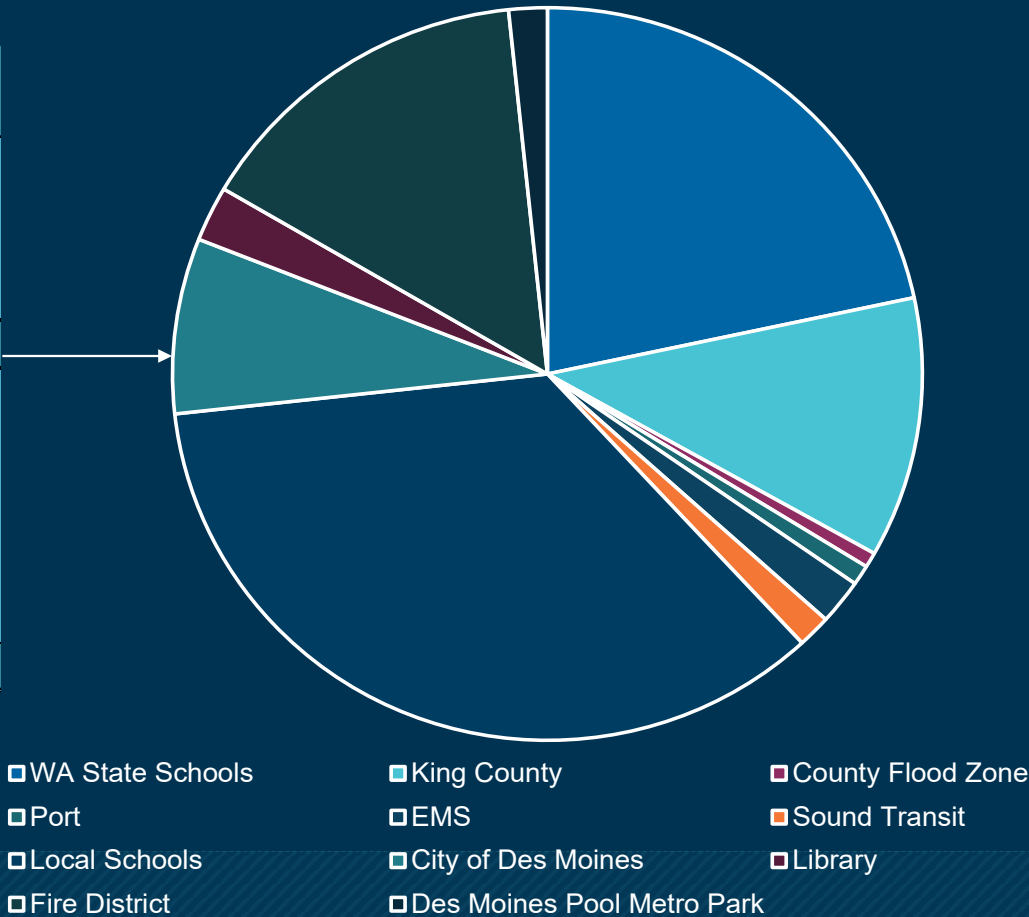
*Estimate of the King County Assessor, as of 10/31/2024

History of Des Moines Property Tax Levy



City Levy vs Total Levy (2024)

Taxing Authority	2024 Levy	% of Total
School District	3.6700	34.83%
WA State Schools	2.2600	21.45%
Fire District	1.5600	14.80%
King County	1.2000	11.39%
City of Des Moines	0.9075	8.61%
Library	0.2600	2.47%
EMS (voted)	0.2000	1.90%
Des Moines Pool Metro Park	0.1800	1.71%
Sound Transit	0.1500	1.42%
Port	0.0900	0.85%
County Flood Zone	0.0600	0.57%
	\$ 10.5375	100.00%



Suggested Motions

Motion 1: “I move to enact Draft Ordinance No. 24-091, determining the amount of funds to be raised by ad valorem taxes for the year 2025 for general City expenditures.”

AND

Motion 2: “I move to enact Draft Ordinance No. 24-090, authorizing the increase in ad valorem taxes for the year 2025 for general City expenditures.”

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2024 Annual Budget Amendments

ATTACHMENTS:

1. Draft Ordinance No. 24-096
2. Appendix A 2024 Amended Annual Budget

FOR AGENDA OF: November 21, 2024

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: November 13, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this Agenda Item is for the City Council to consider Draft Ordinance 24-096, amending the 2024 Annual Budget.

Suggested Motion

MOTION: "I move to enact Draft Ordinance No. 24-096 relating to municipal finance, amending the 2024 Annual Budget adopted in Ordinance No. 1779.

Background

The City and the Des Moines City Council has adopted strong, solvent, and sustainable budgets using sound budgetary policies. In reviewing the 2024 adopted budget, the City maintains the following goals: 1) Remain solvent and strong; 2) Recover from COVID – socially, economically and programmatically; 3) Address reforms to the administration of justice; and 4) Prioritize Redevelopment.

Budget amendments are used by local governments to make adjustments to their approved budgets during the fiscal year. This process allows the City to respond to changing financial conditions, new priorities, or unforeseen expenses that arise after the budget has been adopted.

Additional changes in revenues and expenditures, for all funds, from forecasts used to create the 2024 budget, enacted by Ordinance No. 1779 are in accordance with council direction and approval for fiscal year 2024.

Discussion

The 2024 Annual Budget presented on November 9, 2023 was based upon an estimated carry-forward of the 2023 year-end fund balances. Appendix “A” shows amended 2024 beginning fund balances, which are the actual 2023 ending fund balances.

Changes in budget amounts are detailed below:

General Fund	Change in Budget		Footnote	Description
	Revenue	Expenditure		
City Council		28,000		Professional Services - Consor Communications Study
City Council		17,000	1	Professional Services - Facilitators
City Council		700		Miscellaneous - Council Photos
City Council		3,000		Miscellaneous - Council Chamber Chairs
Department Total	-	48,700		
City Manager's Office		29,000		Council Manager Search Firm
City Manager's Office		200,000	2	Salary and Benefits - Economic Development Director
Department Total	-	229,000		
City Clerk		100,000		Election Services (Lid Lift)
Department Total	-	100,000		
Emergency Management		20,000		Supplies
Department Total	-	20,000		
Jail Services		265,656	3	SCORE jail costs
Department Total	-	265,656		
Municipal Court		40,000		Interpreter Services
Municipal Court		16,000	4	Court Interior Remodel
Department Total	-	56,000		
Police		130,000	5	Police Support Guild Contract retro payment
Department Total	-	130,000		
Senior Services		16,000		Activity Center Chairs
Department Total	-	16,000		
Transfers In	265,656		6	ARPA- SCORE jail costs
Transfers In	200,000		6	ARPA - Police Overtime
Transfers In	143,957		6	ARPA - Crime Analyst/Crisis Response Specialist
Trasnfers Out		100,000	7	Transfer out to Redondo Zone
Department Total	609,613	100,000		
Total General Funds	609,613	965,356		

GENERAL FUND FOOTNOTES

- 1) Expenditures for facilitators for the Citizen's Advisory Council and the November 14, 2025 Council Retreat focusing on City Council vision and values.
- 2) The 2024 budget process preceded the departure of the prior City Manager. The budget did not anticipate this departure and related salary and benefits costs for an Economic Development Director.
- 3) The City had budgeted \$750,000 for SCORE jail costs in 2024 anticipating cost reduction. The costs for jail services in 2024 are \$1,015,656.
- 4) The court remodel complied with the State Supreme Court standards of Public Defense for indigent clients by providing a private consultation space at the court.
- 5) A contract between the Police Support Guild and the City was ratified in 2024. As a result, the Police Support Guild members were "made whole" retroactively back to 2022 when the bargaining unit was formed.
- 6) Repurposing of certain American Rescue Plan Act (ARPA) funds was approved by Council on September 5, 2024.
- 7) An interfund transfer to replenish the cash balance in the Redondo Zone.

FUND	Change in Budget		Footnote	Description
	Revenue	Expenditure		
Street Fund -101	200,000			SANITATION UTILITY TAX 10%
Street Fund -101	80,000			TRANSFER IN FROM REDONDO SPEED ENFORCEMENT
Street Fund -101		100,000		SALARIES AND BENEFITS
Total Street Fund -101	280,000	100,000		
Arterial Pavement Fund -102		20,000		SALARIES AND BENEFITS
Arterial Pavement Fund -102		200,000		OVERLAY PROGRAM
Arterial Pavement Fund -102		755,000	1	TRANSFER TO TRANSPORTATION CAP IMP
Total Arterial Pavement Fund - 102	-	975,000		
Development Fund -105	129,563			TRANSFER IN FROM PBPW AUTOMATION FUND
Total Development Fund - 105	129,563	-		
Hotel/Motel Tax Fund - 111		20,000		SALARY AND BENEFITS/ JULY 4th
Total Hotel/ Motel Tax Fund	-	20,000		
Affordble Housing Tax Fund - 113		4,500		PROFESSIONAL SERVICES (SKHHP)
Total Affordable Housing Tax Fund - 113	-	4,500		
American Rescue Plan Act Fund - 114	4,417,225			TECHNICAL ACCOUNTING ADJ - REVENUE RECOGNITION
American Rescue Plan Act Fund - 114		265,656	2	TRANSFER OUT - SCORE JAIL COSTS
American Rescue Plan Act Fund - 114		200,000	2	TRANSFER OUT - POLICE OVERTIME
American Rescue Plan Act Fund - 114		143,957	2	TRANSFER OUT - CRIME ANALYST/CRISIS RESPONSE SPECILAIST
Total American Rescue Plan Act Fund - 114	4,417,225	609,613		
Redondo Zone Fund - 140	100,000		3	TRANSFER IN FROM GENERAL FUND
Redondo Zone Fund - 140		10,000		SALARY AND BENEFITS
Redondo Zone Fund - 140		3,000		SUPPLIES
Redondo Zone Fund - 140		7,500		REPAIRS AND MAINTENANCE
Redondo Zone Fund - 140		9,000		SECURITY PATROLS
Redondo Zone Fund - 140		20,000		GARBAGE SERVICE
Redondo Zone Fund - 140		4,000		BANK FEES
Redondo Zone Fund - 140		6,298		GF INDIRECT COST ALLOC
Total Redondo Zone Fund - 140	100,000	59,798		
Waterfront Zone Fund - 141		35,000		SALARY AND BENEFITS
Waterfront Zone Fund - 141		6,000		SUPPLIES
Waterfront Zone Fund - 141		(116,952)		TRANSFER OUT TO FUND 203
Total Waterfront Zone Fund - 141	-	(75,952)		
PBPW Automation Fee Fund - 142		20,000		INTERFUND COMPUTER MAINTENANCE
PBPW Automation Fee Fund - 142		129,563		TRANSFERS TO DEVELOPMENT FUND
Total PBPW Automation Fee - 142	-	149,563		
Redondo Speed Enforcement Fund - 191	800,000		4	REDONDO SPEED INFRACTIONS
Redondo Speed Enforcement Fund - 191		60,000	4	SALARY AND BENEFITS
Redondo Speed Enforcement Fund - 191		200,000	4	PROFESSIONAL SERVICES
Redondo Speed Enforcement Fund - 191		10,000	4	INTERPRETER SERVICES
Redondo Speed Enforcement Fund - 191		150,000	4	TRANSFER TO TRANSPORTATIONCAP IMP
Redondo Speed Enforcement Fund - 191		80,000	4	TRANSFER TO STREET MAINTENANCE
Redondo Speed Enforcement Fund - 191		30,000	4	TRANSFER TO TRANSPORTATION CAP IMP
Total Redondo Speed Enforcement Fund - 191	800,000	530,000		

FUND	Change in Budget		Footnote	Description
	Revenue	Expenditure		
2023 LTGO Bond Debt Service - 203		(9,008,000)	5	TRANSFER OUT TO MUNI CAPITAL IMPROVEMENT
Total 2023 LTGO Bond Debt Service Fund - 203	-	(9,008,000)		
REET 1st Quarter % Fund - 301	100,000			REET REVENUE
Total REET 1st Quarter % Fund - 301	100,000	-		
REET 2nd Quarter % Fund - 302	100,000			REET REVENUE
REET 2nd Quarter % Fund - 302		254,000	1	TRANSFER TO MUNICIPAL CAP IMP
Total REET 2nd Quarter % Fund - 302	100,000	254,000		
Park Levy - 305		50,000	1	TRANSFER TO MUNICIPAL CAP IMP
Total Park Levy Fund - 305	-	50,000		
Park In Lieu - 306		30,000	1	TRANSFER TO MUNICIPAL CAP IMP
Total Park In Lieu - 306	-	30,000		
One-Time Revenues Fund - 309		25,000	1	TRANSFER TO TRANSPORTATION CAP IMP
Total One-Time Revenues Fund - 309	-	25,000		
Municipal Capital Improvements Fund- 310	(9,008,000)		5	TRANSFER IN FROM DEBT SERVICE FUND
Total Municipal Capital Improvements Fund- 310	(9,008,000)	-		
Transportation Capital Improvement Fund - 319	30,000			TRANSFER IN FROM REDONDO SPEED ENFORCEMENT
Transportation Capital Improvement Fund - 319		100,000		SALARY AND BENEFITS
Total Transportation Capital Improvement Fund - 319	30,000	100,000		
Traffic In-Lieu Fund- 320		236,000	1	24TH AVE S (SEGMENT 2)
Total Traffic In-Lieu Fund- 320	-	236,000		
Traffic Impact City-Wide Fund- 321		426,000	1	24TH AVE S (SEGMENT 2)
Total Traffic Impact City-Wide Fund- 321	-	426,000		
Surface Water Management Fund - 450		160,000		PROFESSIONAL SERVICES
Surface Water Management Fund - 450		80,000		B+O TAXES - STATE
Surface Water Management Fund - 450		130,000		UTILITY TAXES
Surface Water Management Fund - 450		1,877,000	1	SWM CAPITAL IMPROVEMENT
Total Surface Water Management Fund - 450	-	2,247,000		
Equipment Rental Operations Fund - 500		10,000		SUPPLIES
Equipment Rental Operations Fund - 500		25,000		REPAIRS AND MAINTENANCE
Total Equipment Rental Operations Fund - 500	-	35,000		
Facility Repair and Replacement Fund - 506		80,000		SENIOR CENTER ROOF REPLACEMENT
Total Facility Repair and Replacement Fund - 506	-	80,000		
Self Insurance Fund - 520		7,000		SMALL TOOLS AND EQUIPMENT
Self Insurance Fund - 520		10,000		PROFESSIONAL SERVICES
Total Self Insurance Fund - 520	-	17,000		
Unemployment Insurance Fund - 530		25,000		UNEMPLOYMENT INSURANCE CLAIMS
Total Unemployment Insurance Fund - 530	-	25,000		
Total Other Funds	(3,051,212)	(3,110,478)		

OTHER FUNDS FOOTNOTES

- 1) Aligns the budget with expenditures included in the Capital Improvements Plan approved by Council on September 26, 2024.
- 2) Repurposing of ARPA funds approved by Council on September 5, 2024.
- 3) An interfund transfer to replenish the cash balance in the Redondo Zone.
- 4) The Redondo Speed Enforcement Fund is a new fund created in 2024. These amendments would establish a budget for the fund.
- 5) A budgeted transfer of bond proceeds from the Debt Service fund to the Capital Projects Fund. This transfer is unnecessary as the bond proceeds were recorded directly to the Capital Projects Fund.

Recommendation

Staff recommends enacting Draft Ordinance 24-096.

CITY ATTORNEY'S FIRST DRAFT 11/13/2024

DRAFT ORDINANCE NO. 24-096

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance, amending Ordinance No. 1779 (uncodified) (Budget 2024) and authorizing certain expenditures in the amounts specified in this Ordinance.

WHEREAS, the City Council finds that current and capital revenues and expenditures for the City differ from forecasts used to create the 2024 budget, enacted by Ordinance No. 1779, and further finds that such differences justify certain adjustments regarding obligations incurred and expenditures of proceeds for fiscal year 2024, and

WHEREAS, the City Council finds that the 2024 budget amendments to the City's budget are in the public interest; now therefore,

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

Sec. 1. Finding. Each and every of the findings expressed in the recitals to this Ordinance are hereby adopted and incorporated by reference.

Sec. 2. Amendment to 2024 Budget. Appendix "A" of Ordinance No. 1779 (Uncodified) (2024 Budget) are amended by Appendix "A" attached to this Ordinance and incorporated herein by this reference as though fully set out.

Sec. 3. Ratification and confirmation. All acts taken by City officers and staff prior to the enactment of this Ordinance that are consistent with and in furtherance of the purpose or intent of this Ordinance are hereby ratified and confirmed by the City Council.

Sec 4. 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.

Ordinance No. ____
Page 2 of 2

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

Sec 5. Effective date. This Ordinance shall take effect and be in full force (5) five days after its final passage by the Des Moines City Council.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2024 and signed in authentication thereof this ____ day of _____, 2024.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

**ORDINANCE NO.24-096- APPENDIX A
SUMMARY OF SOURCES AND USES - 2024 AMENDED BUDGET**

FUNDS	2024 ORIGINAL BUDGET				BUDGET AMENDMENTS		BUDGET AMENDMENTS		2024 AMENDED BUDGET			
	Beginning Fund Balance	Revenue	Expenditure	Ending Fund Balance	Revenue	Expenditure	Revenue	Expenditure	Beginning Fund Balance	Revenue	Expenditure	Ending Fund Balance
General Fund	4,671,467	26,153,182	26,250,237	4,574,412	466,570	988,699	609,613	965,356	4,671,467	27,229,365	28,204,292	3,696,540
Special Revenue												
Streets	814,573	2,400,331	2,198,602	1,016,302	-	-	280,000	100,000	814,573	2,680,331	2,298,602	1,196,302
Arterial Pavement Pavement	2,887,697	1,122,500	1,308,000	2,702,197	-	-	-	975,000	2,887,697	1,122,500	2,283,000	1,727,197
Development	1,299,846	2,778,462	3,582,824	495,484	-	-	129,563	-	1,299,846	2,908,025	3,582,824	625,047
Police Drug Seizure	137,857	26,000	20,500	143,357	-	-	-	-	137,857	26,000	20,500	143,357
Hotel-Motel Tax	178,550	110,750	130,000	159,300	-	-	-	20,000	178,550	110,750	150,000	139,300
Affordable Housing Tax	92,852	30,000	30,000	92,852	-	-	-	4,500	92,852	30,000	34,500	88,352
American Rescue Plan Act	164,255	1,750	3,973,617	(3,807,612)	-	-	4,417,225	609,613	164,255	4,418,975	4,583,230	-
Redondo Zone	30,154	69,500	102,151	(2,497)	-	-	100,000	59,798	30,154	169,500	161,949	37,705
Waterfront Zone	97,909	260,750	356,204	2,455	-	-	-	(75,952)	97,909	260,750	280,252	78,407
PSPW Automation Fee	646,711	141,500	77,924	710,287	-	-	-	149,563	646,711	141,500	227,487	560,724
Urban Forestry	-	5,000	5,000	-	-	-	-	-	-	5,000	5,000	-
Abatement	38,708	5,500	2,500	41,708	-	-	-	-	38,708	5,500	2,500	41,708
Automated Speed Enforcement (ASE)	322,947	381,500	442,000	262,447	-	-	-	-	322,947	381,500	442,000	262,447
Redondo Speed Enforcement	-	-	-	-	-	-	800,000	530,000	-	800,000	530,000	270,000
Transportation Benefit District	2,683,707	959,000	1,450,000	2,192,707	-	-	-	-	2,683,707	959,000	1,450,000	2,192,707
Total Special Revenue Funds	9,395,766	8,292,543	13,679,322	4,008,987	-	-	5,726,788	2,372,522	9,395,766	14,019,331	16,051,844	7,363,253
Debt Service												
REET 2 Debt Service	9,318	234,576	234,576	9,318	-	-	-	-	9,318	234,576	234,576	9,318
2023 LTGO Debt Service	-	800,000	9,808,000	(9,008,000)	-	-	-	(9,008,000)	-	800,000	800,000	-
2018 LTGO Debt Service	113,222	226,600	226,600	113,222	-	-	-	-	113,222	226,600	226,600	113,222
Total Debt Service Funds	122,540	1,261,176	10,269,176	(8,885,460)	-	-	-	(9,008,000)	122,540	1,261,176	1,261,176	122,540
Capital Project												
REET 1	2,510,960	560,000	1,545,000	1,525,960	-	-	100,000	-	2,510,960	660,000	1,545,000	1,625,960
REET 2	1,577,833	552,500	1,585,576	544,757	-	-	100,000	254,000	1,577,833	652,500	1,839,576	390,757
Park Levy	421,145	195,500	285,000	331,645	-	-	-	50,000	421,145	195,500	335,000	281,645
Park In Lieu	363,033	100,750	46,000	417,783	-	-	-	30,000	363,033	100,750	76,000	387,783
One Time Sales Tax	1,753,348	5,000	660,000	1,098,348	-	-	-	25,000	1,753,348	5,000	685,000	1,073,348
Municipal Capital Improvements	11,382,932	15,626,000	16,558,359	10,450,573	-	-	(9,008,000)	-	11,382,932	6,618,000	16,558,359	1,442,573
Transportation Capital Improvements	683,611	8,008,000	8,320,641	370,970	-	-	30,000	100,000	683,611	8,038,000	8,420,641	300,970
Traffic In Lieu	408,772	452,500	540,000	321,272	-	-	-	236,000	408,772	452,500	776,000	85,272
Traffic Impact - City Wide	1,151,993	301,250	473,000	980,243	-	-	-	426,000	1,151,993	301,250	699,000	554,243
Traffic Impact - Pac Ridge (S)	607,052	100,750	-	707,802	-	-	-	-	607,052	100,750	-	707,802
Total Capital Project Funds	20,860,679	25,902,250	30,013,576	16,749,353	-	-	(8,778,000)	1,121,000	20,860,679	17,124,250	31,134,576	6,850,353
Enterprise												
Marina	16,883,153	5,163,967	13,160,007	8,887,113	-	-	-	-	16,883,153	5,163,967	13,160,007	8,887,113
Events and Facilities Rentals	-	1,234,135	1,011,899	222,236	(1,234,135)	(1,011,899)	-	-	-	-	-	-
Surface Water Management	31,112,974	6,162,436	7,657,981	29,617,429	-	(750,000)	-	2,247,000	31,112,974	6,162,436	9,154,981	28,120,429
Total Enterprise Funds	47,996,127	12,560,538	21,829,887	38,726,778	(1,234,135)	(1,761,899)	-	2,247,000	47,996,127	11,326,403	22,314,988	37,007,542
Internal Service												
Equipment Rental Operations	102,202	1,238,024	811,082	529,144	-	-	-	35,000	102,202	1,238,024	846,082	494,144
Equipment Rental Replacement	5,403,358	753,280	1,122,000	5,034,638	-	-	-	-	5,403,358	753,280	1,122,000	5,034,638
Facility Repair and Replacement	769,951	461,150	546,000	685,101	-	-	-	80,000	769,951	461,150	626,000	605,101
Computer Replacement	1,640,668	412,800	939,985	1,113,483	-	-	-	-	1,640,668	412,800	939,985	1,113,483
Self Insurance	876,768	1,286,315	1,266,927	896,156	-	-	-	17,000	876,768	1,286,315	1,283,927	879,156
Unemployment Insurance	512,272	51,950	42,500	521,722	-	-	-	25,000	512,272	51,950	67,500	496,722
Total Internal Service Funds	9,305,219	4,203,519	4,728,494	8,780,244	-	-	-	157,000	9,305,219	4,203,519	4,885,494	8,623,244
	92,351,798	78,373,208	106,770,692	63,954,314	(767,565)	(773,200)	(2,441,599)	(2,145,122)	92,351,798	75,164,044	103,852,370	63,663,472

The slide features a dark teal background on the left and a light green background on the right. A thin vertical teal line separates the two sections. The title '2024 ANNUAL BUDGET AMENDMENTS' is centered in white text. A small teal triangle points to the left of the title. The right side has faint white geometric patterns.

2024 ANNUAL BUDGET AMENDMENTS

■ Budget Adjustments Overview

- “Budget compliance is determined at the end of the fiscal period. Therefore, amendments may be done at any time during the fiscal period, but *cannot be done after the fiscal period...*”
– Washington State Auditor’s Office

▸ Budget Amendments – General Fund

- Revenue Increases
 - Transfers in from ARPA fund
 - SCORE Jail Costs
 - Police Overtime
 - Crime Analyst/Crisis Response Specialist

Repurposing of these ARPA funds was approved by Council on September 5, 2024.

- Net Increase \$609,613

■ Budget Amendments – General Fund

- Expenditure Increases
 - Professional Services
 - City Council (Consort Communications Study)
 - Police Support Guild retro payment
 - City Manager's Office
 - Search Firm
 - Economic Development Director salary and benefits
 - Transfer out to Redondo Zone
 - Court Remodel
- Net Increase \$965,356

■ Budget Amendments – Other Funds

- Establishment of Redondo Speed Enforcement Fund budget
- Elimination of Bond Proceeds transfer
- Alignment of budget with Capital Improvements Plan
- Senior Center Roof Replacement
- PBPW Automation fees transferred to Development Fund for computer maintenance costs
- REET revenue exceeds budgeted expectations
- ARPA revenue adjustment – technical accounting adjustment

▸ Suggested Motion

- Motion: “I move to enact Draft Ordinance No. 24-096 relating to municipal finance, amending the 2024 Annual Budget adopted in Ordinance No. 1779.”

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Water District 54 Franchise
Amendment

ATTACHMENTS:

1. Draft Ordinance 24-099
2. Ordinance no. 1510

FOR AGENDA OF: November 21, 2024

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: November 8, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine O'Brien*

Purpose and Recommendation

The purpose of this agenda item is to introduce to the Council for a first reading Draft Ordinance no. 24-099 which would amend the franchise agreement with King County Water District 54 granted in Ordinance no. 1510 to include a 6% franchise payment in lieu of paying a water utility tax.

Suggested Motion

Motion 1: "I move to pass Draft Ordinance 24-099 to a second reading on the next available regular City Council agenda."

Background

The City of Des Moines, like other cities in Washington, is facing budget challenges in trying to provide essential services to its citizens. To address a potential budget shortfall of approximately \$4.5 million dollars, City staff have searched for strategies to reduce the shortfall both on the spending side and on the revenue side.

In order to address similar challenges in 2015/2016, the City considered the imposition of a utility tax on the City's water and sewer utilities. At the time, the question of whether the City had the authority to impose a utility tax on other governmental water and sewer utilities was an unsettled question of law. Given this uncertainty, the City and several water and sewer utilities found it in their interests to negotiate new franchise agreements that would provide certainty to both sides.

There are five water/sewer utilities that service the City of Des Moines. In 2016, the City Council approved franchise agreements with three of them (Highline Water District, Southwest Suburban Sewer District and Midway Sewer District) that authorized a franchise payment of 6% of total revenue in lieu of the imposition of a utility tax. In exchange for this franchise payment, the City agreed during the term of the franchise (10 years) to not impose a utility tax.

The franchise agreement with Water District 54 does not contain a waiver of utility tax and the District does not pay the City 6% of total revenue. The only provision for payment is an annual \$5,000 payment to cover the City's administrative cost.

In response to the challenges facing the City in the 2025-2026 biennial budget, staff brought forward a proposal to impose a 6% gross receipts utility tax on water utilities who had not bargained for an exemption from such a tax in their franchise agreements. Prior to the full Council's consideration of the draft ordinance, Water District 54 contacted the City regarding an amendment to the District's franchise agreement to bring their agreement in line with other water utilities paying a franchise payment in consideration of being exempted from the imposition of a utility tax at an agreed rate for the remaining term of the franchise.

At the October 24, 2024 regular City Council meeting, staff introduced Draft Ordinance 24-083 which would have imposed a water utility tax. A representative from the district and staff informed the Council of the district's request to discuss an amendment to the franchise agreement. Staff recommended to continue the matter to the November 21, 2024 in order to have discussions with the district. The Council directed staff to return to the November 21 meeting with either the draft ordinance for consideration of possible final action or an amendment of the franchise agreement.

Discussion

Since those new franchise agreements were signed, Washington courts have made clear that cities have the legal authority to impose a utility tax on water/sewer utilities operating within City limits. *Lakehaven Water & Sewer District et al. v. City of Federal Way* (2020). As a result, the City is not prohibited or limited in imposing a utility tax on WD54 in an amount the Council deems fit and will have the same freedom with respect to Lakehaven following the expiration of their agreement.

This ad hoc situation has created a lack of uniformity among water utility rate payers in the City. Highline customers provide the six percent franchise payment that contributes to providing City services, while WD 54 and Lakehaven customers do not. Imposing a 6% utility tax would achieve rough parity between WD 54 and the utilities paying franchise payments, but it is imperfect. The bargained-for

franchise payments contains exclusions for certain gross income of the utilities, including late fees, shut-off and reconnect fees, delinquent service charge collection costs and expenses, impact fees, permit fees and costs or connection charges.

The proposed amendment to the franchise agreement imposes a 6% franchise payment on the revenue of the District subject to the same exclusions contained in the franchise agreements held by the other utilities. In exchange, the City agrees to exempt the District from any water utility tax the City may impose during the term of the franchise. The agreement also eliminates the annual \$5,000 administrative fee paid by the District. Except for these changes, the franchise agreement continues in full force.

Alternatives

The Council may:

1. Pass the draft ordinance to a second reading
2. Decline to pass the draft ordinance to a second reading.

State law forbids a franchise agreement from being adopted on first reading.

Financial Impact

Staff estimates that the tax would provide additional revenue of approximately \$70,000-\$75,000 in the first year. The proposed utility tax was estimated to bring in approximately \$88,000 in the first year.

Recommendation

Staff recommends the Council pass Draft Ordinance 24-099 to a second reading.

Council Committee Review

N/A

CITY ATTORNEY'S FIRST DRAFT 11/13/2024

DRAFT ORDINANCE NO. 24-099

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, amending the nonexclusive franchise to King County Water District No. 54, a Washington special purpose municipal corporation, its successors and assigns in Ordinance No. 1510 to construct, maintain, operate, replace, and repair a water system, in, across, over, along, under, through, and below the public rights-of-way of the City.

WHEREAS, King County Water District No. 54 has a valid franchise agreement with the City that expires in 2031, and

WHEREAS, the existing franchise agreement does not include a franchise payment provision that mirrors the language in other franchise agreements with water or sewer utilities operating in the City, and

WHEREAS, in order to align the terms of this franchise agreement with that of other special purpose districts operating with the City, the parties have agreed to amend the existing franchise to include a franchise payment provision that mirrors other agreements, and

WHEREAS, the City Council has the authority to grant and amend franchises for the use of its right-of-way and other public properties (RCW 35A.47.040), and

WHEREAS, the City of Des Moines has determined that it is in the best interests of the public to amend the District's franchise on the terms and conditions set forth in this franchise agreement amendment; now, therefore,

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

Sec. 1. Section 1 of Ordinance No. 1510 (uncodified) shall be amended to read as follows:

Definitions. Where used in this franchise agreement ("Franchise"), the following definitions shall apply:

(1) "District" means the King County Water District No. 54, a special purpose municipal corporation, and its respective successors and assigns.

(2) "City" means the City of Des Moines, a Washington municipal corporation, and its successors and assigns.

(3) "Franchise Area" means all of the public roads, streets, avenues, alleys, highways, and other rights-of-way of the City as now laid out, platted, dedicated or improved within the District; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the area in which the City has jurisdiction; provided, that the Franchise Area shall not include or convey any right to the District to install facilities on, or to otherwise use, City owned or leased properties; and provided that the terms of this franchise (i.e., permitting and enforcement) shall not

apply to those public roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the area until such time that the City has assumed jurisdiction thereof.

(4) "Facilities" means the District's water system, lines, mains, pump stations, appurtenances, and all other necessary or convenient appurtenances for the purpose of providing water service.

(5) "Director" means the City's Director of Planning, Building and Public Works.

(6) "Revenue" means income received by the District from the sale of metered water to direct retail customers whose properties receiving such service from the District's water system are located within the City. Revenue shall not include: late fees; shut-off and reconnect fees; delinquent service charge collection costs and expenses; surcharges; impact or mitigation fees; permit fees and costs; any type of connection charges, general facilities charges, or local facilities charges; local improvement district and utility local improvement district assessments and payments; grants; contributed assets (contributions in aid of construction); income to recover the cost of fire suppression facilities and to pay for the provision of fire suppression services; loans; income from legal settlements not related to water sales to District customers; income from telecommunication leases or licenses; income from real property or from real property sales; income from the sale of surplus equipment, tools or vehicles; interest income; penalties; hydraulic modeling fees; water system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

Sec. 2. Section 24 of Ordinance No. 1510 (uncodified) shall be amended to read as follows:

Franchise ~~Fee for administrative costs~~Payment.

(1) In consideration of the rights granted the District under this Franchise, the District shall pay to the City a Franchise payment ("Franchise payment") in the amount of six percent (6.0%) of the District's Revenue during the Term of this Franchise, beginning January 1, 2025, subject to the provisions of section 24(2) herein.

(2) Franchise payments shall be paid to the City in bi-monthly installments due and payable within thirty (30) days following the end of the bi-monthly period.

(3) Should the District be prevented by judicial or legislative action from paying any or all of the Franchise payments, the District shall be excused from paying that portion of the Franchise payment. Should a court of competent jurisdiction declare the Franchise payment invalid, in whole or

in part, then the District's obligation to pay the Franchise payments to the City under this section shall be terminated in accordance with and to the degree required to comply with such court action, provided, the Parties agree to meet to discuss alternatives and amendments to this Franchise to retain the essential purposes of this section. If the Parties are unable to agree on appropriate amendments to this Franchise, the City shall have the right to void section 24(4) of this Agreement and may impose an Excise Tax on the District's Revenue; provided, if any such Excise Tax exceeds six percent (6%), the District shall have the right to terminate this Franchise and shall have the right to bring an action to challenge the legal validity of any such Excise Tax.

(4) In consideration of the District's payment of a Franchise payment to the City as provided in section 24 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear any legal authority it may have to impose a utility, business and occupation tax, public utility tax, privilege tax, excise tax or any other tax (collectively "Excise Tax") upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise.

(5) If a court of competent jurisdiction determines the City may not agree to forbear its statutory authority to impose an Excise Tax upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise, or may not agree to limit any such Excise Tax on the District's revenues, gross receipts, or gross income, and thereafter the City imposes an Excise Tax on the District, the District shall have the cumulative rights and options, at its sole election, to (1) terminate this Franchise and the payment of Franchise payments to the City, or (2) elect not to terminate this Franchise and may elect to pay any such Excise Tax, provided the District's Franchise payments herein to the City shall be credited against any such Excise Tax the City may impose.

(6) The District shall have the right to recover the Franchise payments from the District's ratepayers residing within the City and may identify the Franchise payments as a separate billing item on utility customer billings.

(7) The District agrees while this Franchise is in effect that it will not pursue or support any legal challenge to the Franchise payment set forth herein.

(8) If the District fails to pay any fee required under this Franchise within ninety (90) days after the due date thereof, there shall be added to such fee a penalty of 1.5 percent (1.5%) of the amount of such fee.

~~The District is to pay an annual fee of \$5000.00. This fee will provide reimbursement to the City for the costs and expenses associated with administering the franchise by the~~

~~City. Said annual Franchise Fee shall be paid by February 1st of each year following the acceptance date of this Franchise.~~

Sec. 3. Acceptance by Franchisee. The District shall, within sixty (60) days after the effective date of this Franchise, file with the City Clerk the Statement of Acceptance, attached hereto as Exhibit "A," and incorporated by reference.

Sec. 4. Except as modified by this Ordinance, all terms and conditions of Ordinance No. 1510 shall remain in full force and effect.

Sec. 5. 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 ____ day of _____, 2024 and signed in authentication thereof this ____ day of _____, 2024.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Exhibit "A"

HONORABLE MAYOR AND CITY COUNCIL
CITY OF DES MOINES, WASHINGTON

In the Matter of the
Application of King County
Water District No. 54, a
special purpose municipal
corporation, for a Franchise
to Construct, Operate, and
Maintain Facilities In, Upon,
Over, Under Along, Across and
Through the Franchise Area of
the City of Des Moines, WA

FRANCHISE ORDINANCE
NO. _____

ACCEPTANCE

WHEREAS, the City Council of the City of Des Moines, Washington, has granted a franchise to King County Water District No. 54, a special purpose municipal corporation, its successors and assigns, by enacting Ordinance No. 1510, bearing the date of April 28, 2011 and

WHEREAS, the City Council of the City of Des Moines, Washington, has amended the grant of franchise to King County Water District No. 54, a special purpose municipal corporation, its successors and assigns, by enacting Ordinance No. _____, bearing the date of _____, 2024 and

WHEREAS, a copy of Ordinance No. ____ amending said franchise was received by the King County Water District No. 54 on _____, 2024, from said City of Des Moines, King County, Washington; now therefore,

KING COUNTY WATER DISTRICT No. 54, a Washington a special purpose municipal corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Des Moines, King County, Washington.

IN TESTIMONY WHEREOF said King County Water District No. 54 has caused this written Acceptance to be executed in its name by its undersigned _____ thereunto duly authorized on this _____ day of _____, 2024.

ATTEST:

**KING COUNTY WATER DISTRICT No.
54**

**COPY RECEIVED FOR CITY OF DES
MOINES:**

By: _____
Its: _____

Des Moines City Clerk

ORDINANCE NO. 1510

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, granting King County Water District No. 54, a Washington special purpose municipal corporation, its successors and assigns, the right, privilege, authority, and nonexclusive franchise, to construct, maintain, operate, replace, and repair a water system, in, across, over, along, under, through, and below the public rights-of-way of the City.

WHEREAS, King County Water District No. 54 ("District") currently owns, operates, and maintains a water system within Des Moines' public right-of-way located in the franchise area, and

WHEREAS, the District is seeking to establish a comprehensive franchise with the City of Des Moines for water system lines within Des Moines' current and future public right-of-way, and

WHEREAS, pursuant to Ordinance No. 86, approved on February 21, 1961, the District was previously granted a franchise agreement to operate within the City limits, and

WHEREAS, the existing Franchise expired on February 21, 2011, and the District and the City therefore desire to renegotiate a new Franchise, and

WHEREAS, in order to maintain control over the use of City of Des Moines' rights-of-way by utilities operating within the City of Des Moines, it is appropriate to enter into franchise agreements with such utilities, and

WHEREAS, the District is such a utility, and has negotiated this franchise agreement with the City of Des Moines acceptable to both parties, and

WHEREAS, the City Council has the authority to grant franchises for the use of its right-of-way and other public properties (RCW 35A.47.040), and

WHEREAS, the City of Des Moines has determined that it is in the best interests of the public to grant the District a franchise on the terms and conditions set forth in this franchise agreement; now, therefore,

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

Sec. 1. Definitions. Where used in this franchise agreement ("Franchise"), the following definitions shall apply:

(1) "District" means the King County Water District No. 54, a special purpose municipal corporation, and its respective successors and assigns.

(2) "City" means the City of Des Moines, a Washington municipal corporation, and its successors and assigns.

(3) "Franchise Area" means all of the public roads, streets, avenues, alleys, highways, and other rights-of-way of the City as now laid out, platted, dedicated or improved within the District; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the area in which the City has jurisdiction; provided, that the Franchise Area shall not include or convey any right to the District to install facilities on, or to otherwise use, City owned or leased properties; and provided that the terms of this franchise (i.e., permitting and enforcement) shall not apply to those public roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the area until such time that the City has assumed jurisdiction thereof.

(4) "Facilities" means the District's water system, lines, mains, pump stations, appurtenances, and all other necessary or convenient appurtenances for the purpose of providing water service.

(5) "Director" means the City's Director of Planning, Building and Public Works.

Sec. 2. Franchise Grant/Acceptance.

(1) **Grant of Franchise.** The City does hereby grant to Franchisee, subject to the terms of this Franchise, the right, privilege, authority and franchise to:

(a) Lay, construct, extend, repair, renew, and replace Facilities in the Franchise Area; and

(b) To charge and collect tolls, rates and compensation for such utility service and such uses.

(2) **Acceptance by Franchisee.** The District shall have no rights under this Franchise, nor shall the District be bound by the terms and conditions of this Franchise, unless the District shall, within sixty (60) days after the effective date of this Franchise, file with the City Clerk the Statement of Acceptance, attached hereto as Exhibit "A," and incorporated by reference.

Sec. 3. Conditions of use.

(1) **Non-Franchise Area City property.** This Franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across, or to otherwise use City-owned or leased properties of any kind outside the Franchise Area, or to install Facilities on, under, over, across or otherwise use any City owned or leased property within the Franchise Area other than public roads, streets, avenues, alleys, and highways of the City. The District shall place Facilities within the Franchise Area, but not on any other public property owned, in whole or in part, leased, or otherwise occupied by the City unless an easement is granted.

(2) **Operation costs.** To the extent permitted by law and as otherwise expressed in this agreement, the District shall be solely responsible for the operation, maintenance, repair and construction of its Facilities.

(3) **Facilities abandonment.** The District will notify the City when a Facility has been deemed obsolete and its use discontinued. The Facility shall be removed by the District, at its expense, within one hundred (180) days of the date the Facility's use is discontinued. The City may deem a District's facility obsolete if the Facility ceases to be operational for more than ninety (90) days and the District has not initiated repair or removal. If the District fails to begin repair or remove the Facility, the City or its agent may cause the Facility to be removed pursuant to Section 13 of the Franchise. However, with the express written consent of the City, the District may leave such Facilities in place. The City's consent shall not relieve the District of the obligation and/or costs to subsequently remove or relocate such Facilities at the City's request, in which case the District shall perform such work at no cost to the City in accordance with section 13. The provisions of this Section shall survive the expiration, revocation or termination of this Franchise.

Sec. 4. Franchise term. This Franchise shall take full force and effect five calendar days after being approved by the City, and shall be valid for a period of 20 years; provided, that this Franchise shall not take effect and the District shall have no rights under this Franchise unless the District files a written acceptance of this Franchise with the City pursuant to Section 2.2 of this Franchise. This Franchise may be extended by mutual written agreement of the parties.

Sec. 5. Location of facilities.

(1) **Location.** The location of existing Facilities, their depths below the surface of ground or grade of a right-of-way (if available), shall be submitted to the City in the form of a map showing the approximate location of the District's existing water system within the Franchise Area. Upon written request by the City, the District shall update such map to reflect actual or anticipated improvements to the District's water system within the Franchise Area. Any such map (or update thereof) so submitted shall be for City informational purposes only and shall not obligate the District to undertake any specific improvements, nor shall such map be construed as a proposal to undertake any specific improvements.

(2) **GIS data.** The District shall provide, at such time as the District develops and employs Geographic Information System ("GIS") technology for its water system maps and records throughout its service area, information required in section 5.1 in digital GIS format for its Facilities within the Franchise Area.

(3) **Design markings.** In the event the City desires to design new streets or intersections, renovate existing streets, or

make any other public improvements, the District shall at the City's reasonable request, provide the location of the District's underground Facilities within the Franchise Area by either field markings or by locating the Facilities on the City's design drawings, and shall provide all other reasonable cooperation and assistance to the City.

(4) No warranty or waiver. Nothing herein is intended to expand, or relieve the parties of their respective obligations arising under Chapter 19.122 RCW or other applicable law with respect to determining the location of utility facilities prior to construction. Further, neither the provisions of this Franchise nor the absence of any specific provision in this Franchise is intended to limit, detract from or render ineffective any disclaimer (including, without limitation, any disclaimer as to accuracy or completeness) placed by the District on any map furnished to the City pursuant to Section 5.1 and 5.2 of this Franchise.

Sec. 6. Non-interference of City operations. The District agrees to maintain its Facilities and perform all work within the Franchise Area: (1) so as not to unreasonably interfere with the free passage of traffic, (2) in accordance with the laws of the State of Washington and City ordinances, regulations, resolutions and rules, and (3) as required by the Director of Planning, Building and Public Works.

Sec. 7. Requirement to obtain permits.

(1) Permits. The District shall, at its expense, obtain all permits (including rights-of-way permits) and pay all fees required by applicable City ordinances, regulations, resolutions and rules prior to commencing any work within the Franchise Area, excluding routine maintenance work. Permit applications shall: (1) show the position and location of the Facilities to be constructed, laid, installed, or erected at that time; (2) show their relative position to existing rights-of-way or property lines upon prints drawn to scale, unless otherwise approved by the Director; (3) designate rights-of-way by their names and; (4) show improvements as required by the Director, such as, but not limited to, sidewalks, curbs, gutters, shoulders of roadway, ditches, paved roadways, roadways to property lines, turnouts, parking strips, telephone or electric distribution poles, and pipes existing on the ground to be occupied. The District shall specify the class and type of materials to be used, equipment to be used, and mode of safeguarding and facilitating the public traffic during construction. The manner of excavation, construction, installation, backfill, and temporary structures such as, but not limited to, traffic turnouts and road obstructions shall meet the standards of the Des Moines Street Design and Construction Standards and be satisfactory to the Director. All traffic control shall be in accordance with the right-of-way permit, and shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). The District shall indicate on the right-of-way use permit application the time needed to complete the work. The time needed to complete the work is

subject to approval by the City as a condition of the issuance of the right-of-way permit.

(2) **Exception to permit requirement.** In the event of an emergency in which the District's Facilities within the Franchise Area are in a condition as to immediately endanger the safety or health of life, property or the environment, the District may take action immediately to correct the dangerous condition without first obtaining any required permit so long as (1) the District informs the City of the nature and extent of the emergency and the work to be performed prior to or at the commencement of the work, if reasonably possible, or immediately following cessation of the emergency; and (2) such permit is obtained by the District as soon as practicable thereafter.

(3) **Routine maintenance.** The District shall have the right to conduct routine maintenance to repair, modify, supplement, replace or upgrade the District's Facilities, provided that the District shall obtain any necessary Right-of-Way Use Permit and any other permits or authorizations required by all applicable federal, state, and local laws, rules and regulations prior to the performance of any said routine maintenance. Non-emergency related activities such as water main flushing, valve exercising, and other routine maintenance activities shall be allowed to occur without a right-of-way permit.

(4) **Notice of entry.** At least forty-eight (48) hours prior to entering right-of-way adjacent to private property to perform the installation, maintenance, repair, reconstruction, or removal of facilities, except those emergency activities exempted from permit requirements, a written notice describing the nature and location of the work to be performed shall be communicated to the private property occupant to be impacted by the District's work. Examples of acceptable notice include but are not limited to a pre-printed door hanger, mailed letter, and/or sandwich boards.

Sec. 8. Standard of performance. The District shall not excavate for a distance of more than one hundred feet (100') without immediately backfilling and compacting to surface grade and permit requirements. Backfilled trench areas within a driving lane must be patched, either temporarily or permanently, or plated, before the end of the workday in which they have been opened. Trench areas within the right-of-way, but not within a driving lane, must also be plated, patched backfilled, and/or patched within the time limits specified by the City on the right-of-way use permit. Final surface restoration shall be completed within thirty (30) days and shall be equal to or better than the surface condition prior to permit issuance.

The District shall, in carrying out any authorized activities within the Franchise Area, comply with all applicable laws, ordinances, codes and standards, as now existing or hereafter adopted or amended, and shall comply with the terms of this Franchise, whether or not the work is performed by the District, its agents, employees, subcontractors, or other third parties at

the District's direction. Upon completion of any installation of the District's Facilities within the Franchise Area, the District shall submit to the Director plans, stamped by a Professional Engineer licensed by the State of Washington (if required in the permit), showing the "record drawings" location of the Facilities. Nothing herein is intended to relieve the parties of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Sec. 9. Survey markers and monuments. The District shall, using a licensed surveyor, immediately replace all markers or monuments disturbed during any work by the District within the Franchise Area. The District shall pay all costs associated with such lost, destroyed or disturbed monuments or markers.

Sec. 10. Surface markings/stakes. Prior to the District commencing any excavation work within the Franchise Area that disturbs any monument or marker, the District shall, using a licensed surveyor, reference all monuments and markers relating to subdivisions, plats, highway, and other surveys. The reference points shall be located so that they shall not be disturbed during the District's operations under this Franchise. The method referencing these monuments or other points shall be approved by the City before placement. The construction shall be made as expeditiously as conditions permit, and as directed by the City. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement of the monuments, shall be borne solely by the District. A complete set of reference notes for monuments, markers, and other ties shall be filed with the City. In the event of any conflict or inconsistency between this section 10 and chapter 19.122 RCW, as now existing or hereafter amended, chapter 19.122 RCW will control.

Sec. 11. Notification to fire district. If it is necessary to shut down or diminish the water pressure so that fire hydrants may be affected, the District shall notify the appropriate fire district by telephone followed by faxed transmittal or written notification, that water pressure or fire flow conditions have been affected. In case of a planned shutdown or diminished water flow, at least forty-eight (48) hour prior notification to the fire district is required. If more than one fire hydrant is affected, the District must provide a map of the affected area to the fire district.

Sec. 12. Right of City to undertake maintenance work. The laying, construction, maintenance, and operation of the District's system of water pipes, and appurtenances granted under this Franchise shall not preclude the City, its accredited agents or its contractors from doing necessary maintenance work contiguous to the Facilities, provided that the District shall have sufficient notice of regrading or excavating in order that the District may protect its lines or pipe or property.

Sec. 13. Right of City to complete work. In the event the District fails to comply with any applicable federal, state or City laws, ordinances, rules, regulations or standards or with any of the terms of this Franchise, and such noncompliance continues for a period of fourteen (14) days after the District receives written

notice from the City regarding the noncompliance, the City may, but in no event is the City obligated to, order any work completed, including without limitation the District's obligation to repair pursuant to section 15 herein and the District's obligation to remove facilities pursuant to section 14 herein. If the City causes such work to be done by its own employees or by any person or entity other than the District, the City will notify the state Department of Health or Department of Ecology, as appropriate, prior to such work. The District shall, upon the City's written request, immediately reimburse the City for all reasonable costs and expenses incurred by the City in having such work performed, which costs may include the City's reasonable overhead expenses and attorneys fees.

Sec. 14. Notice to Franchisee of work by City.

(1) **City reservation of rights.** The City reserves the right to use, occupy and enjoy the Franchise Area for any purpose that is not inconsistent with the terms and conditions of this Franchise. The Rights reserved herein include, without limitation, the construction of any City owned electrical, water, sewer or storm drainage line, installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, and other public street improvement projects. This Franchise is not an exclusive franchise. Without limiting the District's rights under this Franchise, this Franchise shall not in any manner prohibit the City from granting other and further franchises in, under, over, upon and along the Franchise Area.

(2) **City's duties.** In the event the City undertakes any work, including necessary maintenance within a right-of-way in which the District's Facilities are located, and such work necessitates the relocation of the District's then existing Facilities within the Franchise Area, the City shall:

(a) Provide written notice to the District requesting such relocation within a reasonable time prior to the commencement of such City work; and

(b) Provide the District with copies of pertinent portions of the City's plans and specifications for such City work so that the District may relocate its Facilities to accommodate such City work.

(c) Coordinate to minimize conflicts between existing Facilities and Franchise Area improvements where possible.

(3) **District's duties.** After receipt of the City notice requesting the relocation of the Facilities pursuant to subsection 14.2 (a) and receipt of the plans and specifications pursuant to subsection 14.2(b), the District shall, within such reasonable time as approved by the Director, raise, lower, or move such Facilities within the Franchise Area at its sole cost and expense so as to conform to such new grades as may be established, and place the pipe in a location or position causing

the least interference with the improvement, repair, or alteration contemplated by the City.

(4) **Exclusivity.** This section 14 shall govern all relocations of District Facilities required in accordance with this Franchise. Nothing in this section 14 shall require the District to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement on property owned by a person or entity other than the City.

Sec. 15. Damage repair. In case of damage by the District or by the Facilities of the District to rights-of-way, or to public and private improvements to rights-of-way, the District agrees to repair the damage at its own cost and expense. The District shall, upon discovery of such damage, immediately notify the City. The City will inspect the damage, and set a time limit for completion of the repair. If the City discovers damage caused by the District to rights-of-way, or to public and private improvements to rights-of-way, the City shall give the District notice of the damage and set a time limit so the Franchisee may repair the damage. In the event the District does not repair a right-of-way or an improvement to a right-of-way as required in this section, the City may repair the damage pursuant to section 13 of this Agreement.

Sec. 16. General maintenance of facilities. The District will maintain Facilities located within the District's Area in good operating condition and repair in a manner consistent with applicable law and prudent utility practice, and will comply with the following procedures:

(1) The District will provide the City, on an annual basis upon the City's written request, a proposed schedule of its routine Facility replacement or repair activities within the District's Area.

(2) The District will meet, at least annually upon the City's written request, with a City representative to discuss the City's concerns regarding the timing, scope, nature or method of such repair or replacement activities within the District Area.

Sec. 17. Emergency operations. Prior to the beginning of each winter storm season, the District will, at the request of the City, attend an annual coordination meeting with the City to discuss the District's Emergency Response Plan. At the request of the City, a copy of those portions of the District's Emergency Response Plan that the District makes generally publicly available will be provided to the City at the coordination meeting, along with appropriate telephone number and pager numbers during each emergency.

Sec. 18. Default.

(1) **Notice of default.** If the District shall fail to comply with any of the provisions of this Franchise, the City may

serve a written notice to the District ordering such compliance and the District shall have sixty (60) days from the receipt of such notice in which to comply.

(2) **Revocation of Franchise.** If the District is not in compliance with this Franchise after the expiration of the sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by the District cannot reasonably be corrected with due diligence within such sixty (60) day period (Franchisee's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which the District may so comply shall be extended, upon notice to the Director, for such time as may be reasonably necessary and so long as the District commences promptly and diligently to effect such compliance.

Sec. 19. Limited rights. This Franchise is intended to convey only a limited right and interest to Franchisee in the Franchise Area. This Franchise is not a warranty of title or conveyance of any ownership interest in or to the Franchise Area to the District.

Sec. 20. Eminent domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or a portion of the District's Facilities within the Franchise Area for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the Franchise Area conferred by this Franchise.

Sec. 21. Vacation. If at any time the City, by ordinance, vacates all or any portion of public streets, roads and/or rights-of-way within the Franchise Area, the City will not be liable for any damages or loss to the District by reason of such vacation. The City agrees to exert reasonable good faith efforts to reserve a minimum 15 foot wide easement for the District's existing or proposed Facilities when a street, public way, or area is vacated. The City may, after thirty (30) days written notice to the District, terminate this Franchise with respect to any such vacated area.

Sec. 22. Compliance with laws. The District shall comply with all applicable federal, state and City laws, ordinances, resolutions, regulations, standards and procedures, as now existing or hereafter amended or adopted, including without limitation the State Environmental Protection Act; the Federal Occupational Safety and Health Act of 1970 (OSHA), and the Washington Safety and Health Act of 1973 (WISHA) provided, however, that if any term or condition of this Franchise and any term or condition of any City law, code, ordinance, resolution, regulation, standard, procedure, permit, or approval are in conflict, the term or condition of this Franchise will control.

Sec. 23. Guarantee. The District shall guarantee work completed by the District after the date of this franchise for a

period of ten (10) years from completion against settlement or conditions requiring repair.

Sec. 24. Franchise Fee for administrative costs. The District is to pay an annual fee of \$5000.00. This fee will provide reimbursement to the City for the costs and expenses associated with administering the franchise by the City. Said annual Franchise Fee shall be paid by February 1st of each year following the acceptance date of this Franchise.

Sec. 25. Indemnification. The District agrees to indemnify and hold harmless and defend the City, its elected officials, officers, employees, agents, and volunteers from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from resulting from, or connected with this Franchise to the extent caused in part or in whole by the acts, errors or omissions of the District, its officers, partners, shareholders, agents, employees, or by the District's breach of this Franchise. This section shall not be construed to require the District to indemnify, hold harmless or defend the City against claims or damages arising from the negligence of the City, its agents or employees. In the event any claim, demand, suit or action is commenced against the City that constitutes an obligation of the District pursuant to this section 25, the City shall promptly notify the District thereof, and the District shall defend any such claim, demand, suit or action. The District shall not settle or compromise any such suit or action except with prior written consent of the City, which shall not be unreasonably withheld. The City shall have the right at all times to participate through its own attorney in any suit or action which arises pursuant to this Franchise when the City determines that such participation is required to protect the interest of the City or the public. In the event it is determined that RCW 4.24.115 applies to this Franchise, the District agrees to defend, hold harmless and indemnify the City to the maximum extent permitted thereunder, to the full extent of Franchisee's negligence.

Sec. 26. Insurance.

(1) Minimum limits. The District agrees to carry as a minimum, the following insurance, in such forms and with such carriers as are satisfactory to the City.

(a) Workers compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

(b) Commercial general liability insurance with limits of liability not less than \$5,000,000 each occurrence and \$5,000,000 aggregate for bodily injury, including personal injury or death, products liability, contractual coverage, operations, explosion, collapse, underground and property damage; and

(c) Automobile Liability insurance with limits of liability not less than \$5,000,000 each accident for bodily injury, or death and property damage.

(2) Mandatory insurance provisions. The commercial general liability insurance and automobile liability insurance policies shall be endorsed to contain the following provisions:

(a) The City, its officers, elected officials, employees, and volunteers are to be named as additional insured with respect to liability out of the operations of the District;

(b) Coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(c) Coverage shall not be suspended, canceled, modified or reduced except after thirty (30) days prior written notice to the City delivered by certified mail, return receipt requested; and

(d) Coverage shall be primary as to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance by the City, its officers, officials, employees or volunteers shall be in excess of Franchisee's required insurance.

(3) Verification of coverage. The District shall furnish the City with certificates of insurance and original endorsements evidencing the coverages required by this section. The certificates and endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf and must be received and approved by the City annually. At the City's request, the District shall deliver certified copies of all required insurance policies.

(4) Self-Insurance. In satisfying the insurance requirements set forth in this section, the District may self-insure against such risks in such amounts as are consistent with good utility practices. The District shall provide the City with sufficient written evidence, upon request, that such insurance (or self-insurance) is being so maintained by Franchisee. Such written evidence shall include, to the extent available from the District's insurance carrier, a written certificate of insurance with respect to any insurance maintained by the District in compliance with this section.

Sec. 27. General provisions

(1) Entire agreement. This Franchise contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Franchise and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

(2) **Modification.** No provision of this Franchise may be amended or added to except by agreement in writing signed by both of the Parties.

(3) **Assignment.** The District shall not have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the City, which consent will not be unreasonably withheld. Any assignee shall, within thirty (30) days of the date of any approved assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, the District shall have the right, without such notice or such written consent, to mortgage its rights, benefits and privileges in and under this Franchise to the Trustee for its bondholders.

(4) **Attorney fees.** In the event the City or the District defaults on the performance of any terms in this Franchise, and the District or the City places the enforcement of the Franchise or any part thereof or the collection of any monies due, or to become due hereunder, in the hands of an attorney, or files suit upon the same, the prevailing party shall be entitled to an award of all reasonable attorneys' fees, costs and expenses. The venue for any dispute related to this Franchise shall be King County, Washington.

(5) **No waiver.** Failure of either party to declare any breach or default by the other party immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but such party shall have the right to declare any such breach or default at any time. Failure of either party to declare one breach or default does not act as a waiver of such party's right to declare another breach or default.

(6) **Governing law.** This Franchise shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

(7) **Authority.** Each individual executing this Franchise on behalf of the City and the District represents and warrants that such individual is duly authorized to execute and deliver this Franchise on behalf of the District or the City.

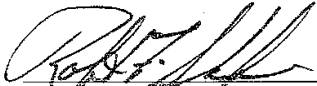
(8) **Notices.** Any notices required to be given by the City to the District or by Franchisee to the City shall be delivered to the parties at the following addresses:

CITY OF DES MOINES:	KING COUNTY WATER DISTRICT No.
	54:
Director of Planning, Building and Public Works	District Manager
21630 11th Ave. S., Ste D	922 South 219th Street
Des Moines, WA 98198	Des Moines, WA 98198
Tel: 206-870-6522	Tel: 206-878-7210
Fax: 206-870-6544	Fax: 206-824-1909

Ordinance No. 1510
Page 14 of 14

Sec. 30. 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 28th day of April, 2011 and signed in authentication thereof this 28th day of April, 2011.


MAYOR

APPROVED AS TO FORM:


Assistant City Attorney

ATTEST:


City Clerk

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1510, Adopted April 18, 2011.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance grants King County Water District No. 54, a Washington special purpose municipal corporation, its successors and assigns, the right, privilege, authority, and nonexclusive franchise, to construct, maintain, operate, replace, and repair a water system, in, across, over, along, under, through, and below the public rights-of-way of the City.

The full text of the ordinance will be mailed without cost upon request.

Sandy Paul, CMC
City Clerk

Published: May 5, 2011

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, Sandy Paul, CMC, the duly qualified City Clerk of the City of Des Moines, a Non-charter Code City, situated in the County of King, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 1510, an ordinance of the City of Des Moines, entitled:

ORDINANCE NO. 1510

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, granting King County Water District No. 54, a Washington special purpose municipal corporation, its successors and assigns, the right, privilege, authority, and nonexclusive franchise, to construct, maintain, operate, replace, and repair a water system, in, across, over, along, under, through, and below the public rights-of-way of the City.

I further certify that said Ordinance No. 1510 was: (i) introduced on the 28th day of April, 2011; (ii) submitted to the City Attorney on the 28th day of April, 2011; (iii) published on the 5th day of May, 2011, according to law; (iv) approved by a majority of the entire legislative body of the City of Des Moines, at a regular meeting thereof on the 28th day of April, 2011; and (v) approved and signed by the Mayor of the City of Des Moines on the 28th day of April, 2011.

WITNESS my hand and official seal of the City of Des Moines, this 29th day of April, 2011.

Sandy Paul cmc
Sandy Paul, City Clerk
City of Des Moines, WA

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, Sandy Paul, CMC, the duly qualified City Clerk of the City of Des Moines, a Non-charter Code City, situated in the County of King, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 1510, an ordinance of the City of Des Moines, entitled:

ORDINANCE NO. 1510

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, granting King County Water District No. 54, a Washington special purpose municipal corporation, its successors and assigns, the right, privilege, authority, and nonexclusive franchise, to construct, maintain, operate, replace, and repair a water system, in, across, over, along, under, through, and below the public rights-of-way of the City.

I further certify that said Ordinance No. 1510 was: (i) introduced on the 28th day of April, 2011; (ii) submitted to the City Attorney on the 28th day of April, 2011; (iii) published on the 5th day of May, 2011, according to law; (iv) approved by a majority of the entire legislative body of the City of Des Moines, at a regular meeting thereof on the 28th day of April, 2011; and (v) approved and signed by the Mayor of the City of Des Moines on the 28th day of April, 2011.

WITNESS my hand and official seal of the City of Des Moines, this 29th day of April, 2011.



Sandy Paul, City Clerk
City of Des Moines, WA

HONORABLE MAYOR AND CITY COUNCIL
CITY OF DES MOINES, WASHINGTON

In the Matter of the
Application of King County
Water District No. 54, a
special purpose municipal
corporation, for a Franchise
to Construct, Operate, and
Maintain Facilities In, Upon,
Over, Under Along, Across and
Through the Franchise Area of
the City of Des Moines, WA

FRANCHISE ORDINANCE
NO. 1510

ACCEPTANCE

WHEREAS, the City Council of the City of Des Moines, Washington, has granted a franchise to King County Water District No. 54, a special purpose municipal corporation, its successors and assigns, by enacting Ordinance No. 1510, bearing the date of April 28, 2011 and

WHEREAS, a copy of said Ordinance granting said franchise was received by the King County Water District No. 54 on APRIL 29, 2011, from said City of Des Moines, King County, Washington; now therefore,

KING COUNTY WATER DISTRICT No. 54, a Washington a special purpose municipal corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Des Moines, King County, Washington.

IN TESTIMONY WHEREOF said King County Water District No. 54 has caused this written Acceptance to be executed in its name by its undersigned COMMISSIONER thereunto duly authorized on this 17 day of MAY, 2011.

ATTEST:

KING COUNTY WATER DISTRICT No.
54

By: [Signature]
Its: COMMISSIONER

COPY RECEIVED FOR CITY OF DES
MOINES:

[Signature]
Sandy Paul, City Clerk
Des Moines City Clerk

Draft Ordinance 24-099

Water District 54

Franchise Amendment

November 21, 2024

Staff Presentation: Assistant City Attorney Matt Hutchins

Background

- In October, staff brought forward a proposed utility tax ordinance of 6% for utility providers that do not have a franchise agreement that prohibits utility tax.
- Currently would have only applied to Water District 54.
- Council directed staff to negotiate with WD54 to see if a franchise payment could be incorporated into a franchise amendment.

Current Status

- Agreement has been reached to include a 6% franchise payment into the existing franchise with WD 54 consistent with other utilities.
- Draft Ordinance 24-099 reflects this agreement.
- Franchise Agreements/Amendments require two readings per state law.

Recommended Motion

- “I move to pass Draft Ordinance 24-099 to a second reading on the next available regular City Council agenda.”

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Square Footage Tax

FOR AGENDA OF: November 21, 2024

ATTACHMENTS:

1. Draft Ordinance no. 24-082

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: November 13, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this agenda item is to introduce to the Council for a first reading Draft Ordinance no. 24-082 which would impose a square footage tax on businesses employing a warehouse in the course of engaging in business in the City of Des Moines.

Suggested Motion

Motion 1: "I move to pass Draft Ordinance 24-082 to a second reading on the next available regular City Council agenda."

Background

Like many Cities, one major source of revenue for the City of Des Moines is the City's Business and Occupation (B&O) tax. Businesses receive the benefit of city services such as public safety, and a B&O tax ensures that businesses using those services to make profits for their owners contribute their fair share of the costs of those services.

The most widely used and known version of the B&O tax is one that is imposed on gross receipts of the business activity conducted in the city. Generally speaking, gross receipts represent the proceeds of sale or the value of goods and services produced in the City. The rate for a gross receipts tax is capped at 0.2% by state law absent approval for a higher rate by the voters. The gross receipts tax rate in Des Moines is 0.2%. Other bases for a B&O tax do exist, however, including a head tax on employees or a tax on the square footage utilized by a business in the city.

A gross receipts tax is an effective way of capturing the amount of business activity occurring for certain kinds of businesses, but can be very poor with respect to other businesses. Other cities in the state have recognized that this failure is particularly true with respect to warehousing. While businesses see great value to their bottom line in storing and/or distributing their merchandise, without sales or manufacturing on site, no taxable events occur for the purposes of a gross receipts tax. Millions of dollars in merchandise may be transported on city roads and protected by city police, but the contribution to these city services through B&O tax may be literally zero.

Some cities such as Kent and Auburn have chosen to address this disconnect by assessing its B&O tax on warehouse business activities on a square foot basis. Rather than using gross receipts, this separate tax is assessed as a quarterly rate multiplied by the square footage the floor space used by the business in the conduct of its business.

Discussion

There are currently seven large warehouse buildings in the Des Moines Business Park that have been developed in the past decade or so, with more proposed in the new Des Moines Business Park West development. The buildings can accommodate a single tenant or multiple tenants.

In order to gauge whether imposing a square footage tax may be appropriate, staff did a quick survey of B&O taxes paid by business park tenants. For the years 2022-2024, of eleven businesses identified as having been Business Park tenants during that period, it appears that four paid no B&O tax. Of the businesses who did pay B&O tax, one paid less than \$300 per year, three paid approximately \$3000 per year, one paid between \$6000 and \$10,000 per year, and two have paid between \$10,000 and \$20,000 per year. At least a portion of those taxes paid can likely be attributed to retail sales on site.

The chart below represents the square footage for reported uses of the seven warehouse buildings in the Des Moines Business Park from the King County Assessor's website, separated by tenant. (Phase 2, not included, is the location of the FAA building, not subject to City taxation)

Building	Street Address	warehouse	office	manufacturing		Total
1A	2341 S 208th St	127,112	1,450			128,562
		31,072	1,978			33,050
1B	2231 S 208th St	72,878	3,503			76,381
		68,475				68,475
1C	2021 S 208th St	143,694	9,838	13,025		166,557
		62,793	4,290			67,083
3A	2361 S 211th St	39,591	9,711	102,698		152,000
3B	2141 S 211th St	82,135	5,698			87,833
		217,131	13,849			230,980
		29,632				29,632
4A	21202 24th Ave S	259,631	6,305			265,936
4B	21402 24th Ave S	97,092	7,687			104,779
		36,430				36,430
		104,779				104,779
Total		1,372,445	64,309	115,723		1,552,477

The Business Park contains over 1.5 million square feet of floor space that can be employed for for-profit business. That area is about 40 times the size of the average grocery store in the U.S. For the years 2022 and 2023, this area generated slightly less than \$50,000 in B&O tax. Businesses without taxable retail sales events also do not generate sales taxes.

The proposed tax would assess an alternative business and occupation tax on businesses that operate warehouses in the course of business in the City that would apply if the square footage tax assessed exceeds the tax assessed on gross receipts. The initial quarterly tax rate would total \$0.13 per square foot of total warehouse area. The tax is proposed to adjust annually per the Seattle area CPI. The tax would not apply to taxpayers whose taxable warehouse area totals less than 4,000 square feet in the City. This is a threshold after which the tax would apply to all taxable area, and not an exemption. Businesses renting warehouse space where they maintain control over the premises would be responsible for the tax rather than the owner of the warehouse.

Examples of other cities imposing square footage taxes are as follows:

- Auburn: \$0.10/square foot per quarter; 4,000 sq ft threshold
- Dupont: \$0.15/square foot per quarter; 20,000 sq ft threshold
- Kent: \$0.12/square foot per quarter (beginning Jan 1); 4,000 sq ft threshold
- North Bend: - \$0.15/square foot per quarter for the first 25,000 square feet
- \$0.10/square foot per quarter for the next 25,000 square feet
- \$0.04/square foot per quarter for 50,001+ square feet; 10,000 sq ft threshold

Alternatives

The Council may:

1. Pass the draft ordinance to a second reading
2. Adopt the draft ordinance as presented
3. Adopt the draft ordinance with changes
4. Decline to adopt the draft ordinance or pass to a second reading

Financial Impact

Staff estimates that the tax could provide approximately an additional \$700,000-\$800,000 in revenue in the first year. Should the Des Moines Creek Business Park West project develop as proposed, this could result in over \$200,000 in additional annual revenue.

Recommendation

Staff recommends the Council pass Draft Ordinance 24-082 to a second reading.

Council Committee Review

The Finance Committee reviewed a staff proposal to impose a square footage tax at the September 25, 2024 committee meeting. The committee provided direction on details of the proposal such as tax rate and threshold exemption amounts and recommended staff prepare a draft ordinance for consideration by the full council.

CITY ATTORNEY'S FIRST DRAFT 11/13/2024

DRAFT ORDINANCE NO. 24-082

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to taxation, imposing a square footage tax, and amending DMMC 3.84.050.

WHEREAS, RCW 35A.82.020 authorizes code cities to impose business licensing requirements and excises upon business transacted within such a city to the extent permitted by the general law, and

WHEREAS, in 2004, the City Council of the City of Des Moines enacted Ordinance no. 1355, enacting a Business and Occupation (B&O) tax at a rate of 0.2% of gross receipts of the business, codified at DMMC chapter 3.84, and

WHEREAS, in 2012, the City Council enacted Ordinance no. 1555 repealing and replacing DMMC chapter 3.84 to bring the B&O tax provisions in line with the model ordinance developed by the Association of Washington Cities to promote uniformity among Washington cities, and

WHEREAS, with the passage of several measures that limit sources of revenue for cities, including I-695 and I-747, the City B&O tax has become a significant stable source of ongoing revenue to help provide vital City services, such as public safety, roads maintenance, parks and recreation, and human services, and

WHEREAS, entities doing business in the City benefit from City services funded by the B&O tax and those services allow them to generate profits for shareholders, and

WHEREAS, the development of the Des Moines Creek Business Park has enabled millions of dollars of commercial activity to occur in the City, spread over more than a million square feet of commercial space, and

WHEREAS, despite the high level of commercial activity generated in the DMCBP benefitting from the provision of public safety and other services provided by the City, the B&O tax based on gross receipts has failed to assess an equitable tax burden on warehouse businesses relative to other businesses in the City, and

WHEREAS, other Washington cities have found that imposition of a business and occupation tax assessed on the square footage of

Ordinance No. ____
Page 2 of 8

warehouse space utilized in the conduct of business in the city allowed the cities to bring more equity between businesses and generate revenue to fund important city services, and

WHEREAS, the City Council finds that imposition of a square footage tax in the City of Des Moines will likewise allow warehouse businesses to fund City services in a manner that more reasonably reflects the benefit received relative to other businesses located in the City and generate vital revenue to support those services, and

WHEREAS, the City Council finds that this Ordinance is appropriate and necessary to preserve the public health, safety, and general welfare; now therefore,

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

Sec. 1. DMMC 3.84.050 and section 6 of Ordinance No. 1555 are amended to read as follows:

Imposition of the tax - Tax or fee levied.

~~(1)~~ Except as provided in subsection (23) of this section and in the exemptions in DMMC 3.84.110, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the city, whether the person's office or place of business be within or without the city. The amount for the gross receipts tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as ~~follows described in subsection (1) of this section. The amount for the square footage tax shall be determined by application of rates against the square footage of the business space within the city as described in subsection (2) of this section. The amount of tax due to the city shall be the larger of the amounts calculated under each tax, as measured for each tax reporting period.~~

(1) Gross receipts tax

(a) Upon every person engaging within the city in business as an extractor; as to such persons the amount of

the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of two-tenths of one percent. The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

(b) Upon every person engaging within the city in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the city, multiplied by the rate of two-tenths of one percent. The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the city.

(c) Upon every person engaging within the city in the business of making sales at wholesale, except persons taxable under subsection (2) of this section; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two-tenths of one percent.

(d) Upon every person engaging within the city in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two-tenths of one percent.

(e) Upon every person engaging within the city in the business of (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) processing for hire; as to such persons, the amount of tax on such

business shall be equal to the gross income of the business multiplied by the rate of two-tenths of one percent.

(f) Upon every person engaging within the city in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of two-tenths of one percent.

(g) Upon every other person engaging within the city in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of two-tenths of one percent. This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

(2) Square footage tax

(a) Upon every person who leases, owns, occupies, or otherwise maintains a business warehouse or outdoor warehouse within the city for purposes of engaging in business activities in the city there shall be a tax measured by the number of square feet of business warehouse floor space or outdoor warehouse space. Beginning January 1, 2025, the amount of the tax shall be equal to \$0.13 for each quarterly period of a calendar year for each square foot of business warehouse or outdoor warehouse floor space that is leased, owned, occupied, or otherwise maintained within the city during the reporting period, calculated to the nearest square foot. On January 1 of each successive year, the rate shall be increased by the product of the prior year's rate and the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bellevue, Washington area, for the preceding 12-month period ending August 31st, published

by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI"), rounded to the nearest tenth of one cent (\$0.001).

(b) For purposes of this subsection, "business warehouse" means every structure or any part thereof that is used for the storage of merchandise, goods, wares, commodities, inventory, materials, equipment or other items (whether or not for compensation) in furtherance of engaging in business.

(c) For purposes of this subsection, "outdoor warehouse" means an area that is outdoors and primarily used for the storage of merchandise, goods, wares, commodities, inventory, materials, equipment or other items (whether or not for compensation) in furtherance of engaging in business.

(d) For purposes of this subsection, the square footage of a business warehouse shall be computed by measuring to the inside finish of permanent outer building walls and shall include space used by columns and projections necessary to the building. Square footage shall not include stairs, elevator shafts, flues, pipe shafts, vertical ducts, heating or ventilation shafts, janitor closets, and electrical or utility closets.

(e) For purposes of this subsection, outdoor warehouse space is measured based on the entire space used for outdoor warehousing and is not measured solely based on the size of the goods, wares, merchandise, or commodities that are being stored. The square footage of an outdoor warehouse shall only include those areas used and/or intended to be used for the storage of goods, wares, merchandise, commodities, inventory, materials, equipment, or other items (whether or not for compensation) in furtherance of engaging in business.

Square footage shall not include: areas used only for employee, customer, or visitor parking; dock high loading areas; buildings or areas used only for retail floor space or rentals to consumers; landscaped areas; storm water facilities; maneuvering areas or drive aisles; areas used only for garbage or recycling pickup; rights-of-way; or

other areas clearly not used for the storage of items described in this subsection.

(f) Persons with more than one business warehouse or outdoor warehouse within the city must include all business warehouse floor space and outdoor warehouse space for all locations within the city.

(g) When a person rents space to another person, the person occupying the rental space is responsible for the square footage business tax on that rental space. Space rented for the storage of goods in a business warehouse or outdoor warehouse where no walls or other barriers separate the goods, and where the exclusive right of possession in the space is not held by the person to whom the space is rented, shall be included in the warehouse floor space of the person that operates the warehouse, and not by the person renting the warehouse space. Space rented out in "self-storage" facilities whereby customers have direct access to individual storage areas by separate entrances, shall be included in the warehouse business floor space of the person that operates the warehouse business, and not by the person renting the warehouse space.

(23) The gross receipts tax imposed in subsection (1) of this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the city during any calendar year is equal to or less than \$50,000. The square footage tax imposed in subsection (2) of this section shall not apply to any person unless that person's total area of warehouse space within the city exceeds four thousand square feet.

Sec. 2. Petition for referendum.

(1) **Referendum allowed.** A referendum procedure is required pursuant to RCW 35.21.706 for cities first imposing a business and occupation tax. A petition for referendum may be filed with the City Clerk within seven (7) days of passage of this ordinance. Within ten (10) days, the City Clerk shall confer with the Petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate,

Ordinance No. ____
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concise, and positive ballot title from the designated local official. The Petitioner shall have thirty (30) days in which to secure the signatures of not less than fifteen percent (15%) of the registered voters of the City, as of the last municipal general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The City Clerk shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election ballot within the City or at a special election ballot as provided pursuant to RCW 35.17.260(2).

(2) **Exclusive referendum procedure.** The referendum procedure provided for in this ordinance shall be exclusive in all instances for any City ordinance imposing a business and occupation tax or increasing the rate of the tax, and shall supersede the procedures provided under chapter 35A.11 RCW and all other statutory or ordinance provisions for initiative or referendum which might otherwise apply.

Sec. 3. 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. 4. Effective date. This ordinance shall take effect and be in full force on January 1, 2025.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2024 and signed in authentication thereof this ____ day of _____, 2024.

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M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

Draft Ordinance 24-082

Square Footage Tax



November 21, 2024
Staff Presentation: Matthew Hutchins,
Assistant City Attorney

Background

- ▶ City has a structural budget issue
- ▶ Total amount of all property taxes in the city can only increase 1%
- ▶ Property tax rates fall as property values and city costs increase
- ▶ As costs increase year over year, revenues fall behind
- ▶ Are any taxable activities being under assessed?

Des Moines Creek Business Park

- ▶ 1,500,000+ square feet of warehouse space
- ▶ 4 tenants: \$0 in B&O tax
- ▶ 1 tenant: <\$300 per year
- ▶ 3 tenants: ~\$3000 per year
- ▶ 1 tenant: \$6-10,000 per year
- ▶ 2 tenants: \$10-20,000 per year

- ▶ No sales = no sales tax

Square Footage Tax

- ▶ Assessed on square foot warehouse space used in business
- ▶ Alternative tax -- not additional
- ▶ Taxpayer pays whichever tax is higher
- ▶ Initial rate \$0.13 per square foot per quarter
- ▶ Annual CPI adjustment
- ▶ Threshold floor area 4,000 square feet
 - ▶ Businesses under the threshold not assessed sq ft tax

Suggested Motion

“I move to pass Draft Ordinance 24-082 to a second reading on the next available regular City Council agenda.”