

**AMENDED AGENDA**

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
VIA ZOOM**

**July 16, 2020 – 5:00-8:00 p.m.**

**NOTE: The City of Des Moines is currently operating under a Proclamation of Emergency issued on March 5, 2020 and Governor Inslee's Stay-at-Home order issued March 23, 2020 in response to the COVID-19 Pandemic. Accordingly, this meeting will be held virtually using Zoom.**

**Public Comment continues to be encouraged and will be accepted in the following manner:**

- (1) In writing, either by email to the City Clerk's Office at <https://www.desmoineswa.gov/FormCenter/City-Forms-3/Council-Meeting-Comments-49> or by mail; Attn: City Clerk Office, 21630 11<sup>th</sup> Avenue S., Des Moines WA 98198 no later than 4:00 p.m. day of the meeting. Only your name and the subject of your public comment will be read into the record at the Council meeting. The full written correspondence will be scanned and attached to the Council packet and uploaded to the website as part of the permanent record.**
- (2) By participation via Zoom. If you wish to provide oral public comment please email the City Clerk's office at <https://www.desmoineswa.gov/FormCenter/City-Forms-3/Council-Meeting-Comments-49> no later than 4:00 p.m. day of the meeting to receive your Zoom log-in and personal identification number. Please note that Zoom attendees do not interact with one another; they join in listen-only mode until it is their turn to address the Council.**

**City Council meetings can also be viewed live on Comcast Channel 21 or live streamed on the City's website at [www.desmoineswa.gov](http://www.desmoineswa.gov).**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**CORRESPONDENCE**

**COMMENTS FROM THE PUBLIC VIA ZOOM/Written PUBLIC COMMENT**

**ADMINISTRATION REPORT**

Item 1: ECONOMIC DEVELOPMENT

**CONSENT CALENDAR**

- Page 5      Item 1:      APPROVAL OF VOUCHERS  
**Motion** is to approve for payment vouchers and payroll transfers through July 09, 2020 in the attached list and further described as follows:  
Total A/P Checks/Vouchers #160940-161035      \$ 934,157.66  
Electronic Wire Transfers # 1479-1487      \$ 512,988.12  
Payroll Checks # 19385-19385      \$ 435.16  
Payroll Direct Deposit #270001-270143      \$ 352,912.55  
  
Total Checks and Wires for A/P and Payroll:      \$1,800,493.49
- Page 7      Item 2:      DRAFT RESOLUTION 20-040: 2020-2025 HAZARD MITIGATION PLAN  
**Motion** is to adopt Draft Resolution No. 20-040 approving the 2020-2025 Hazard Mitigation Plan for the City of Des Moines and authorize the Plan to be transmitted for inclusion in King County's Hazard Mitigation Plan.
- Page 47      Item 3:      LUA2018-0067; BLUEBERRY LANE III MODIFIED SHORT SUBDIVISION PRELIMINARY APPROVAL CONCURRENCE  
**Motion** is to concur with City staff preliminary approval of the Blueberry Lane III Modified Short Subdivision, City File No. LUA2018-0067.
- ~~Page 61      Item 4:      BARNES CREEK/KENT- DES MOINES ROAD CULVERT PROJECT- DESIGN AGREEMENT GCB 2959 WITH WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (WSDOT)  
**Motion** is to approve Local Agency Agreement CGB2959 Amendment between the City of Des Moines and the Washington State Department of Transportation for the design and permitting of the Barnes Creek/Kent-Des Moines Road Culvert Replacement Project in the amount of \$575,000, plus a 20% contingency and further authorize the City Manager or his designee to sign said Amendment, substantially in the form as submitted.~~
- Page 85      Item 5:      NATIONAL PARK AND RECREATION MONTH PROCLAMATION  
**Motion** is to approve the Proclamation recognizing July as Parks and Recreation Month in Des Moines.
- Page 89      Item 6:      COLLECTIVE BARGAINING AGREEMENT TEAMSTERS LOCAL NO. 763  
**Motion** is to approve the Collective Bargaining Agreement between the City of Des Moines and the Teamsters Local 763 effective January 1, 2020 through December 31, 2022, and to authorize the City Manager to execute and sign a clean copy of this Agreement substantially in the form as attached.

Page 131 Item 7: WASHINGTON STATE DEPARTMENT OF COMMERCE – SHELTER PROGRAM GRANT  
**Motion** is to approve the City to jointly apply for the Shelter Program Grant through the Department of Commerce and authorize the City Manager to sign the required letter of support from the City.

Page 139 Item 8: FINANCIAL MANAGEMENT SYSTEM SOFTWARE AND IMPLEMENTATION SERVICES  
**Motion** is to approve Tyler Technologies License and Service Agreement for the Munis ERP software application, and authorize the City Manager to sign the Agreements substantially in the form as attached.

**~~NEW BUSINESS~~**

~~Page 195 Item 1: PAY AND DISPLAY PARKING SYSTEM FOR THE MARINA AND BEACH PARK  
Staff Presentation: Harbormaster Scott Wilkins~~

Pay and Display Parking System for the Marina and Beach Park  
Agenda Item to be brought back before Council in late September for discussion.

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

**PRESIDING OFFICER’S REPORT**

**EXECUTIVE SESSION**

**NEXT MEETING DATE**

August 6, 2020 City Council Budget Retreat

**ADJOURNMENT**

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**CITY OF DES MOINES**  
**Voucher Certification Approval**

**July 16, 2020**

**Auditing Officer Certification**

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

As of July 16, 2020 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through July 9, 2020 and payroll transfers through July 3, 2020 included in the attached list and further described as follows:

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



Beth Anne Wroe, Finance Director

	# From		# To	Amounts
<b>Claims Vouchers:</b>				
Total A/P Checks/Vouchers	160940	-	161035	934,157.66
Voided Checks		-		0.00
Electronic Wire Transfers	1479	-	1487	512,988.12
<b>Total claims paid</b>				<b>1,447,145.78</b>
<b>Payroll Vouchers</b>				
Payroll Checks	19385	-	19385	435.16
Direct Deposit	270001	-	270143	352,912.55
<b>Total Paychecks/Direct Deposits paid</b>				<b>353,347.71</b>
<b>Total checks and wires for A/P &amp; Payroll</b>				<b>1,800,493.49</b>

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# AGENDA ITEM

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Draft Resolution 20-040: 2020 – 2025  
Hazard Mitigation Plan

FOR AGENDA OF: July 16, 2020

DEPT. OF ORIGIN: Emergency Management

ATTACHMENTS:

1. Draft Resolution 20-040: 2020 – 2025  
Hazard Mitigation Plan
2. 2020 – 2025 Hazard Mitigation Plan

DATE SUBMITTED: July 7, 2020

CLEARANCES:

- Community Development \_\_\_\_\_
- Marina \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

CHIEF OPERATIONS OFFICER: \_\_\_\_\_

- Legal /s/ TG
- Finance \_\_\_\_\_
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: 

**Purpose and Recommendation**

The purpose of this agenda item is to seek City Council approval of Draft Resolution No. 20-040 formally adopting the City of Des Moines 2020 – 2025 Hazard Mitigation Plan. This Plan assesses natural and human-caused hazards that can impact our City and develops strategies to reduce risk and build resilience. This plan will be part of the larger King County Hazard Mitigation Plan with 60 planning partners - including school districts, water districts, and cities who have participated in the process and developed annexes.

**Suggested Motion**

**Motion 1:** “I move to adopt Draft Resolution No. 20-040 approving the 2020 - 2025 Hazard Mitigation Plan for the City of Des Moines and authorize the Plan to be transmitted for inclusion in King County’s Hazard Mitigation Plan.

## **Background**

Disasters are a part of life in the Pacific Northwest, ranging from catastrophic earthquakes to annual wildfires and severe flooding. The Regional Hazard Mitigation Plan (RHMP) promotes programs and projects that build a foundation of resilience before, during, and after these emergencies. It also meets requirements for receiving federal Hazard Mitigation Assistance grants.

The City specific Plan has been developed to become a part of the larger RHMP.

## **Discussion**

The City of Des Moines is vulnerable to numerous technological, natural and human-initiated hazards. The Plan as prepared identifies those risks specific to Des Moines and identifies vulnerability and impact summaries.

The Hazard Mitigation Plan began with the Des Moines City Manager and City Council recognizing that participating in the planning process with King County would be a benefit to the City of Des Moines. The City of Des Moines Emergency Management staff began participating in the 2020 King County Regional Hazard Mitigation Plan training programs and planning process. The plan began with an initial meeting with the Des Moines planning team to discuss known and potential threats for Des Moines and the surrounding area as well as mitigation efforts and planning already taking place and noted in the current CIP Plan.

Assistant Chief of Police; Mark Couey and Emergency Preparedness Manager; Shannon Kirchberg led the development of the City of Des Moines Hazard Mitigation Plan and will maintain the document in cooperation with the King County Office of Emergency Management and the State of Washington Military Department Emergency Management Division. The Des Moines Emergency Operations Committee, Planning, Building & Public Works (PBPW) staff, Emergency Management staff and South King Fire & Rescue (SKF&R) provided technical review for plan development.

The City focused on building pre-existing programs and identifying gaps that may lead to disaster vulnerabilities, in order to work on ways to address these risks through mitigation. These results were evaluated against the City of Des Moines current CIP. The City held two public meetings educating Des Moines residences about the Hazard Mitigation Plan and importance of whole community involvement. A mitigation survey has been placed on the City of Des Moines web site providing an opportunity for the public to comment. City staff attended the Des Moines Waterfront Farmers Market on September 21, 2019 with handouts and information about the Mitigation Plan and information on how to locate the questionnaire on line. Staff conducted an interactive tally to gain an understanding of what the community sees as the largest hazards that could affect the City of Des Moines.

City staff took part in several planning and training sessions about the Hazard Mitigation template provided by King County. Additionally, the planning team met one on one with King County Emergency Operations Center (LCEOC) staff about Des Moines specific questions.

The planning process will: (1) result in a Disaster Mitigation Act of 2020 compliance; (2) coordinate with the King County plan and activities; and (3) build a network of local organizations that can play an active role in plan implementation.

The City of Des Moines will also participate in regional planning efforts with the King County Office of Emergency Management and the Washington State Military Department - Emergency Management Division to ensure the City of Des Moines is in line with regional state goals and objectives.

**Alternatives**

The Council could decline to approve the plan and not be part of the full King County Regional Hazard Mitigation Plan or approve the Plan with amendments. (Not recommended)

**Financial Impact**

Approval of a Hazard Mitigation Plan is a prerequisite to receiving FEMA funds. By adopting this Draft Resolution, the City will be eligible to receive future funds that otherwise may not be available.

**Recommendation**

Police, Legal and Administration recommend adopting the Draft Resolution.

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**CITY ATTORNEY'S FIRST DRAFT, 7/8/2020****DRAFT RESOLUTION NO. 20-040**

**A RESOLUTION OF THE CITY OF DES MOINES, WASHINGTON,** adopting a Hazard Mitigation Plan for the City of Des Moines for the years 2020-2025.

**WHEREAS,** the City Council of the City of Des Moines recognizes that Des Moines has exposure to natural and man-made hazards that increase the risk to life, health, property, and the environment, and

**WHEREAS,** proactive mitigation of known hazards before disaster events occur can reduce or eliminate long-term risk to life, health, safety, and the environment, and

**WHEREAS,** Congress enacted the Disaster Mitigation Act of 2000, codified at 42 U.S.C. § 5121, et seq., requiring that local governments establish a mitigation plan for identifying natural hazards, risks, and vulnerabilities of that local government as a condition of receiving federal hazard mitigation funds, and

**WHEREAS,** King County and certain cities, towns, and special purpose districts within King County have engaged in a process to create consistent mitigation strategies that will allow for efficient resource management and consistency across the planning area, and

**WHEREAS,** the City of Des Moines has chosen to participate in the regional hazard mitigation planning process, and

**WHEREAS,** through the regional hazard mitigation planning process, City staff have developed a City of Des Moines Hazard Mitigation Plan for the years 2020-2025 that complies with the Disaster Mitigation Act of 2000; works in coordination with the King County plan and activities; and builds a network of local organizations that can play an active role in plan implementation, and

**WHEREAS,** the City Council of the City of Des Moines finds that adoption of the City of Des Moines Hazard Mitigation Plan for the years 2020-2025 is appropriate and necessary to protect the public health and welfare; now therefore,

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

Resolution No. \_\_\_\_\_  
Page 2 of 2

**Sec. 1.** The City Council adopts the Hazard Mitigation Plan for the City of Des Moines for the years 2020 through 2025, which is attached to this Resolution as Attachment "A" and by this reference incorporated herein.

**Sec. 2.** The City Clerk is directed to file one certified copy of this Resolution and Exhibit with King County Emergency Management within thirty (30) days of the date of adoption of this Resolution.

**PASSED BY** the City Council of the City of Des Moines, Washington this \_\_\_\_\_ day of \_\_\_\_\_, 2020 and signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk



# City of Des Moines Plan Annex

## Introduction

The following is a summary of key information about the jurisdiction and its history:

- **Date of Incorporation**—06/15/1959
- **Current Population**—31,580 as of 04/01/2019
- **Population Growth**— Based on existing data, the City of Des Moines has experienced moderate population growth over the past few years. At just over 5% growth between 2015 and 2019, it is notably higher than the population growth of the United States but comparable to the State of Washington's 1.6% annual growth rate.
- **Location and Description**—Des Moines is long and narrow and is situated along the shores of Puget Sound. Covering 6.4 square miles, Des Moines is the 12<sup>th</sup> largest city in King County and ranked 39<sup>th</sup> in the State of Washington. The cities of Normandy Park and SeaTac form Des Moines northwest and northeast borders, while the cities of Kent and Federal Way form the east and south borders. Very few major thoroughfares/arterials dissect the City, and the topography includes bluffs, steep slopes, several creeks, wetlands and beaches.
- **Brief History**—Early explorers to the area that would eventually become Des Moines included Coastal Indian Tribes, British Naval Captain George Vancouver and individuals associated with the Hudson Bay Company. The first homestead claim certificate was granted in 1872 and the plat of the Town of Des Moines was recorded in 1889. Des Moines became a destination for commerce dependent on the moving of goods and people via Puget Sound as well as a destination for visitors wanting to enjoy the water due to its direct access to the Puget Sound. After World War II the population of the area continued to grow and businesses were established. The talk of annexation from neighboring cities prompted the incorporation as a City in 1959. The proximity to both Seattle and Tacoma draws a population of residents whom want to live in an area with a small town feel and still have access to the amenities of the nearby larger cities.
- **Type of Government** – Des Moines operates under a council-manager form of government. The City Council is comprised of seven non-partisan members elected every two years to serve four-year terms. Council members elect the Mayor and Deputy Mayor. The City consists of eight departments: Administration; Legal; Finance; Police; Marina; Planning, Building and Public Works; Court; and Parks, Recreation and Senior Services. The Director of Emergency Management assumes responsibility for the adoption of this plan as well as the coordination with other city departments for the implementation
- **Climate**—Des Moines' weather is typical to western Washington. Wet, rainy winters and mild summers result in mostly mild temperatures. Des Moines like most of the Seattle-Tacoma area, is shielded from extreme temperatures by the Cascade Mountain Range, with an average daily temperatures in the 70's during the summer and in the 40's during the winter. The winter months result in significant amounts of rain with occasional snowfall. Des Moines receives on average 38 inches of precipitation annually.

### Jurisdiction Profile

The city of Des Moines





## Development Trends

Growth and development in the City of Des Moines is influenced by activities outside the city, including: state regulations; regional economic trends, development plans, transportation systems and commuting patterns; development within bordering jurisdictions; and local influences such as Seattle-Tacoma International Airport (Sea-Tac Airport) and Highline College.

Recent growth in the City has been attributed to the build out of the Des Moines Creek Business Park, new mixed use projects and residential development. Creation of new family wage jobs and quality housing have contributed to our thriving community.

By year 2040, the Puget Sound Region is expected to add 5 million people and 3 million new jobs. Des Moines is required to accommodate a portion of this growth and has planned for an additional 3,480 Housing Units and 5,800 new jobs by 2040. The City has established the vision, public policy and the regulatory framework to ensure that growth occurs in a manner that supports economic development and job growth; creates strong neighborhoods with a range of housing, commercial, and transportation options; and champion healthy neighborhoods that provide families with a clean environment.

### Jurisdiction Point of Contact:

Name: Mark Couey

Title: Assistant Chief of Police

Entity: City of Des Moines Police

Phone: 206-870-6564

Email: [mcouey@desmoineswa.gov](mailto:mcouey@desmoineswa.gov)

### Plan Prepared By:

Name: Shannon Kirchberg

Title: Emergency Preparedness  
Manager

Entity: City of Des Moines

Phone: 206-870-6562

Email: [skirchberg@desmoineswa.gov](mailto:skirchberg@desmoineswa.gov)

## Des Moines Risk Summary

The City of Des Moines is vulnerable to numerous technological, natural and human-initiated hazards. While our overall hazards are similar to those identified in the King County Regional Hazards Mitigation Plan and Washington State Enhanced Hazard Mitigation Plan, based on the analysis performed, the City of Des Moines has determined it is vulnerable to:

### Hazard Risk and Vulnerability Summary

HAZARD	RISK SUMMARY	VULNERABILITY SUMMARY	IMPACT SUMMARY
<b>Avalanche</b>	The City of Des Moines is not directly impacted by avalanche threat, although a secondary impact could be the economic impact from closure of mountain passes.	None	None
<b>Earthquake</b>	The City of Des Moines as a whole is at risk for earthquakes. The largest fault lines capable of earthquakes are Cascadia Fault Seattle Fault and Tacoma Fault	Being a coastal City, the City of Des Moines Marina Floor, Des Moines Beach Park, Redondo Beach and Downtown Marina Business district are at the highest risk due to liquefaction and Tsunami. An earthquake would have a significant impact on transportation systems, water and other utilities required for sustaining life and required for recovery.	Life support for survivors will not be available for several days due to extensive damage to roadways and bridges. The City of Des Moines has done a good job in retrofitting existing bridges and culverts. Continue the practice of ensuring future projects protect roads, bridges, utilities and needed infrastructure to ensure continuity of Government as quickly as possible.
<b>Flood</b>	While much of the City of Des Moines waterfront area is at risk for coastal flooding (along the Puget sound), the vast majority of the City is on higher ground. Due to the elevation of the area, flooding would be localized. The City of Des Moines does not have any repetitive loss properties to address.	As the largest asset of Des Moines, the Des Moines Marina is at risk from flooding due to King Tides, rising sea levels, Tsunami and storm surge.	Throughout the management of the Capital Improvement Plan the City of Des Moines will focus all upgrades at the Marina to ensure it can withstand flooding. The north sea wall replacement will increase the sustainability of the north and center lots of the Marina and ensure the Des Moines Marina can withstand Puget Sound surges.



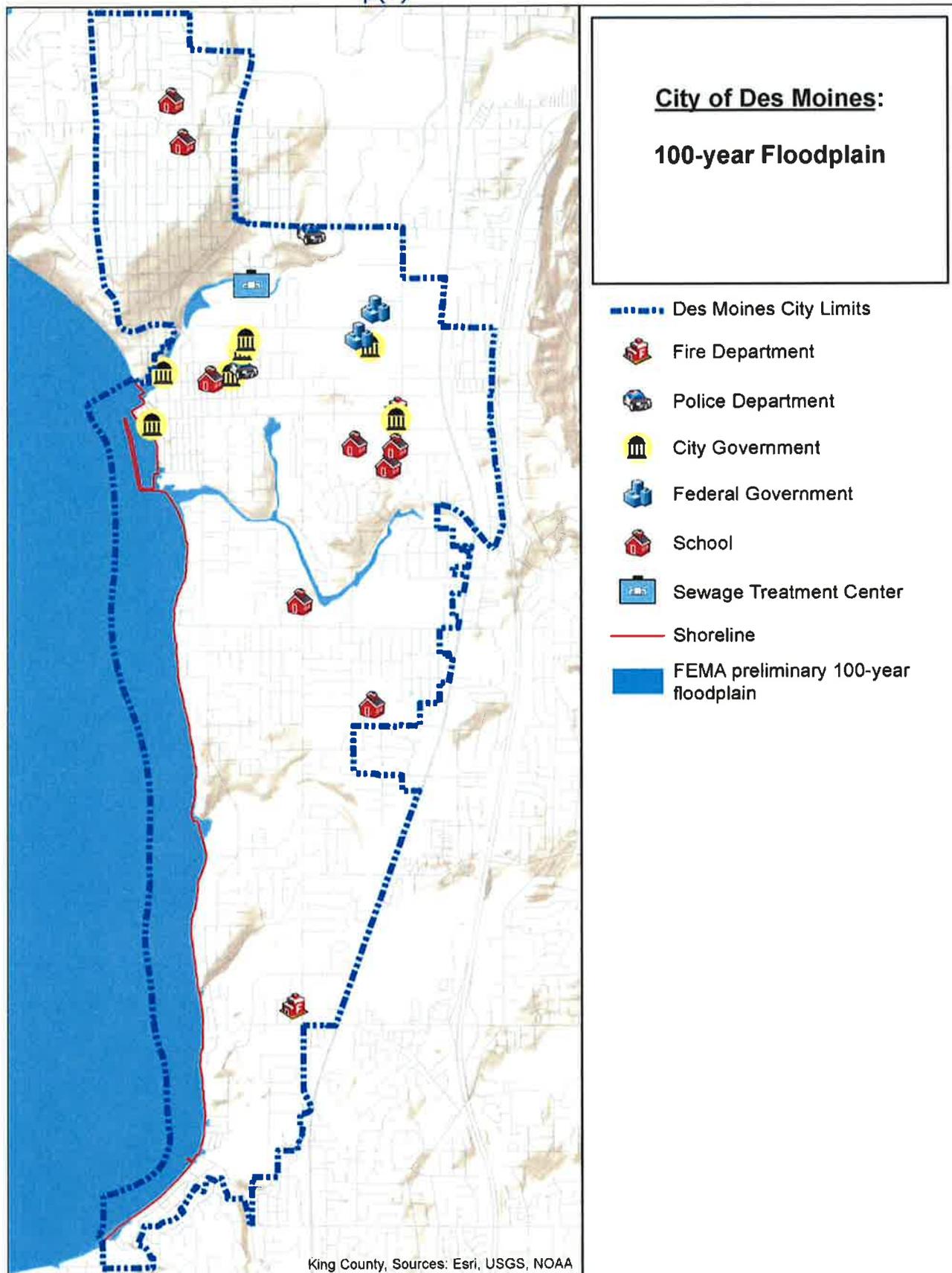
<b>Landslide</b>	Landslides are at most times unpredictable and not forecasted. These acts are the movement of land including trees and manmade materials. When landslides occur, they can cause massive loss of public and private property.	The City of Des Moines has very little landslide area. Areas that are at risk are also on the west coast located on the edge of Puget Sound.	Minimal risk. Manage building and development high-risk areas through current and future building codes.
<b>Severe Weather</b>	The City of Des Moines as a whole is susceptible to severe weather seasonally. Highest impact to the area is mild to large snow and ice events. Due to the proximity to Puget Sound, winds can also have an impact on areas near the west of the City.	The effects of severe weather in the City of Des Moines can include flooding, power outages, land/mudslides, and road closures. There is minimal snow removal equipment or budget associated for such service in the City of Des Moines. Local community member vehicles and drivers are often poorly equipped to travel roadways under such conditions. For this reason, impacts from unusually heavy snowfalls and severe winters tend to be dramatic though short-lived.	When severe weather hits, the impacts are normally very short lived in our area. Road equipment improvements as well as sand and deicer that the City keeps on hand need will be evaluated to determine new acceptable levels. . Inventory levels of both have been increased to ensure a quick response to dangerous road conditions as experience in the 2019 Winter Storm event.
<b>Tsunami</b>	Models for Tsunami risk and the City of Des Moines are ever changing. The impact of such hazards are determined by the fault area.	The Seattle fault line currently shows the largest threat due to the direction and proximity to Des Moines. Current models indicate that tide surges could exceed 18 feet above sea level but would take up to 2 hours to crest allowing time for evacuation.	Ensure future renovations and upgrades to City infrastructure at the Des Moines Waterfront Redondo and Marina District include review and mitigation against Tsunami modeling.
<b>Volcano</b>	Eruptions of Mt. Rainier would result in lahar flows through the Auburn, Kent, Renton and valley floor. Given the altitude of the majority of the City of Des Moines, volcanic threats such as lahars, debris flow and lava flows are unlikely.	Most significant impact for Des Moines would be in access to the south and the evacuation of survivors from the Valley of Kent, Renton and Auburn.	Strengthen relationships with at risk cities within the Tri-County area. Familiarize ourselves with the evacuation plans that could influence the City of Des Moines to be as prepared as possible.

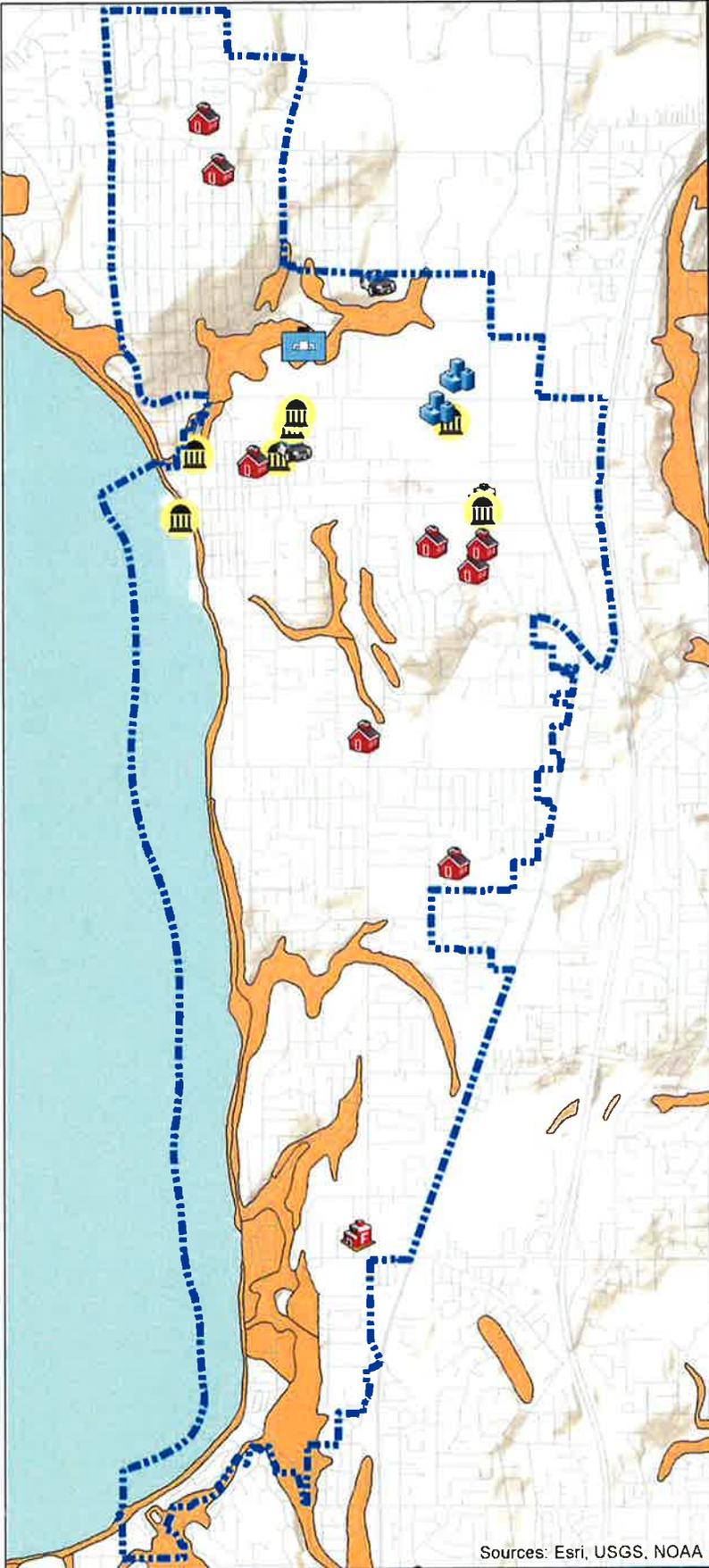
<p><b>Wildfire</b></p>	<p>The City of Des Moines has limited wildland urban-interface areas, as the majority of the western edge of the City is the coastal Puget Sound. The City is at the same risk for wildfires as the rest of the county and <b>general region</b>.</p>	<p>None</p>	<p>None</p>
<p><b>Civil Disturbance</b></p>	<p>Civil Disturbance is an activity arising from a mass act of civil disobedience in which the participants become hostile toward authorities incur difficulties in maintaining public safety and order, over a disorderly crowd. It is in any form prejudicial to <b>public law and order</b>.</p>	<p>There can be a significant impact to cities during and after civil disturbances. These can be profound and have a direct impact on the community. These kinds of disturbances can include looting and the destructions of private and public property.</p>	<p>Des Moines has no history of civil disorder.</p>
<p><b>Cyber Attack</b></p>	<p>Just like all other governments and businesses across the nation, the City of Des Moines relies on computers/networks to conduct its normal business and is susceptible to cyberattack.</p>	<p>The City has implemented numerous systems, services and devices (internal and external networks) to conduct operations. These digital networks are vulnerable to intentional incidents (cyber-attacks) and unintentional incidents (accidental release of information or access to sensitive information). Cyber-attacks impact radio, telephone, and computer networks used to manage City services, potentially resulting in loss of those services or the inability to dispatch police, fire or medical as required for a given incident.</p>	<p>Although the City of Des Moines has not had any reports of cyber-attacks, our internal IT department is very active in ensuring all servers are protected/patched and have the latest and best in protection for all networks, servers and e-mail.</p>
<p><b>Dam Failure</b></p>	<p>Des Moines is not at risk of dam failures due to being located on the West Hill of Kent Valley.</p>	<p>The City of Des Moines is not at risk of flooding from a breach or release of water from local dams. Our vulnerability is that several of the westbound evacuation routes from low-lying areas in Kent and Auburn as these routes lead to the City of Des Moines.</p>	<p>Strengthen relationships with at risk Cities within the King County area. Familiarize ourselves with evacuation plans that could affect the City of Des Moines to</p>



			be as prepared as possible.
<b>Hazardous Materials Incident</b>	Des Moines does not have any hazardous materials within its City Limits	There are no hazardous materials manufactured within the city limits of Des Moines. The only hazards would be those of local utilities and/or businesses with fuel tanks on their property as the City has at their Public Works Service Center and Des Moines Marina	Coordinate response with local Fire, Police and State agencies as needed in any hazardous material spill.
<b>Public Health Emergency</b>	The National Disaster Medical System Federal Partners Memorandum of Agreement defines a public health emergency as "an emergency need for health care [medical] services to respond to a disaster, significant outbreak of an infectious disease, bioterrorist attack or other significant or catastrophic event.	Just as any other city within King County, Des Moines is at risk for any Public Health Emergency that may take place.	Des Moines has no history of Public Health Emergencies
<b>Structure Fire</b>	Structure fires are hazardous to all location both residential and business. The City of Des Moines handles structure fires through a partnership with South King Fire & Rescue.	There are 2 fire stations in the city limits of Des Moines. Station 67 located on 223 <sup>rd</sup> Street and Station 66 located on 15 <sup>th</sup> Ave South.	The City of Des Moines will continue to maintain its already strong relationship with South King Fire & Rescue.
<b>Terrorism</b>	Targets of terrorism are usually in large cities with high dense populations. Targets range from Government buildings, community facilities, airports and stadiums. Targets are large gathering places that would create attention across all media platforms including TV, radio and social media platforms.	The City of Des Moines would not be a direct target of terrorism. However, due to the City of Des Moines location to the south of Sea-Tac Airport, Des Moines could be indirectly involved in an attack on the Port.	The City of Des Moines will work closely with the Emergency Management Team at Sea-Tac Airport to ensure a strong working relationship. The City will share its Comprehensive Emergency Plan as appropriate with the Port to ensure we are working in support of any incident that may potentially take place.

## Hazard and Asset Overview Map(s)

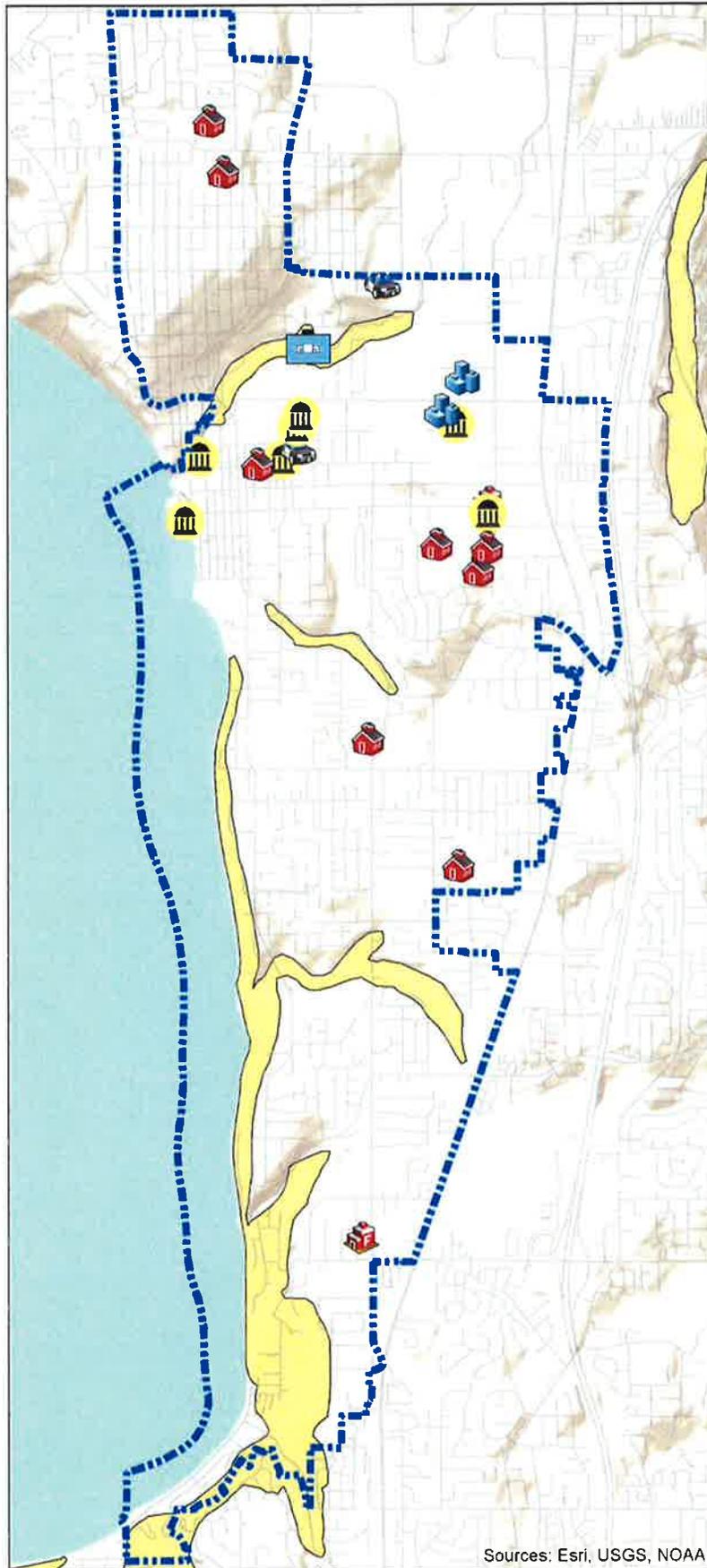




**City of Des Moines:**  
**Erosion Hazards**

- Des Moines City Limits
- Fire Department
- Police Department
- City Government
- Federal Government
- School
- Sewage Treatment
- Erosion Hazards

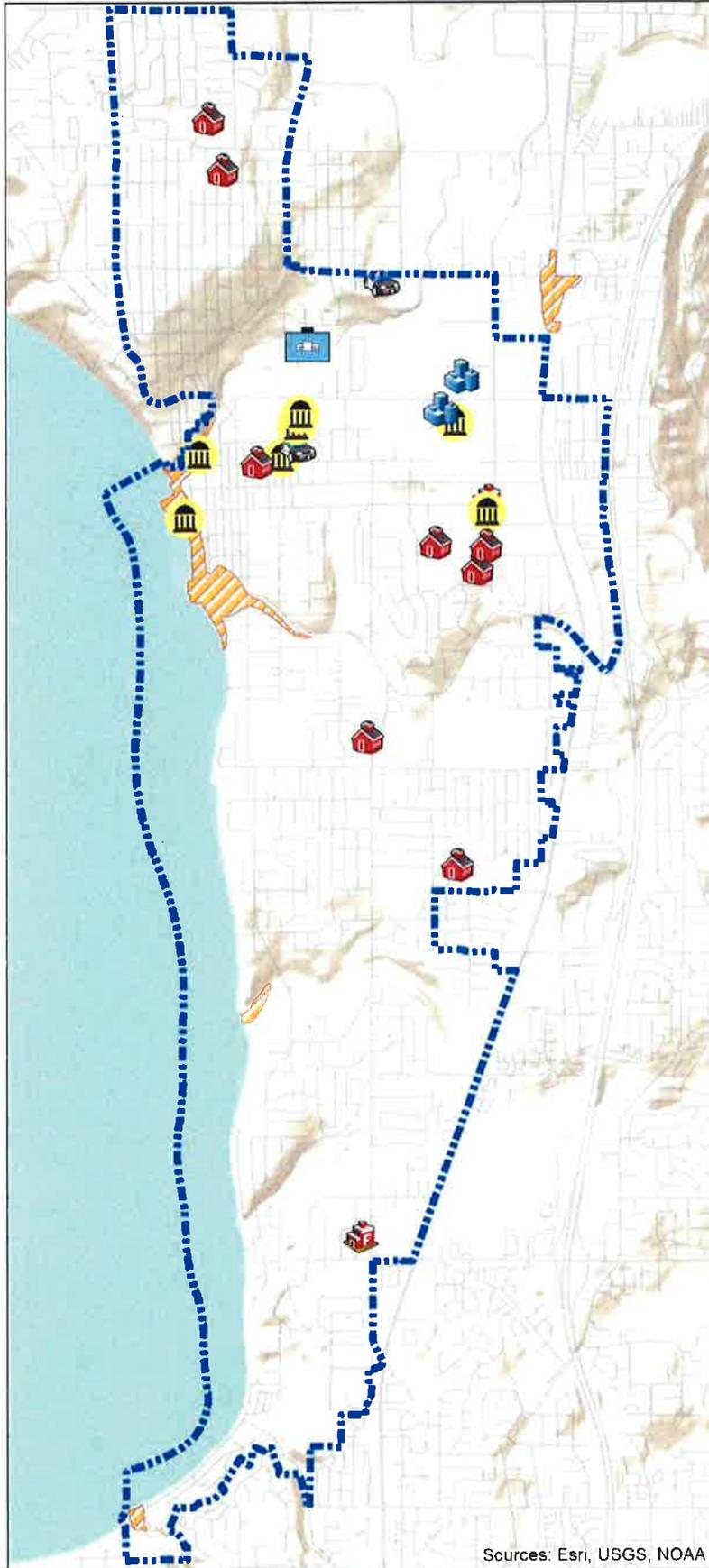
Sources: Esri, USGS, NOAA



**City of Des Moines:**  
**Landslide Hazards**

- Des Moines City Limits
- Fire Department
- Police Department
- City Government
- Federal Government
- School
- Sewage Treatment
- Landslide Hazards

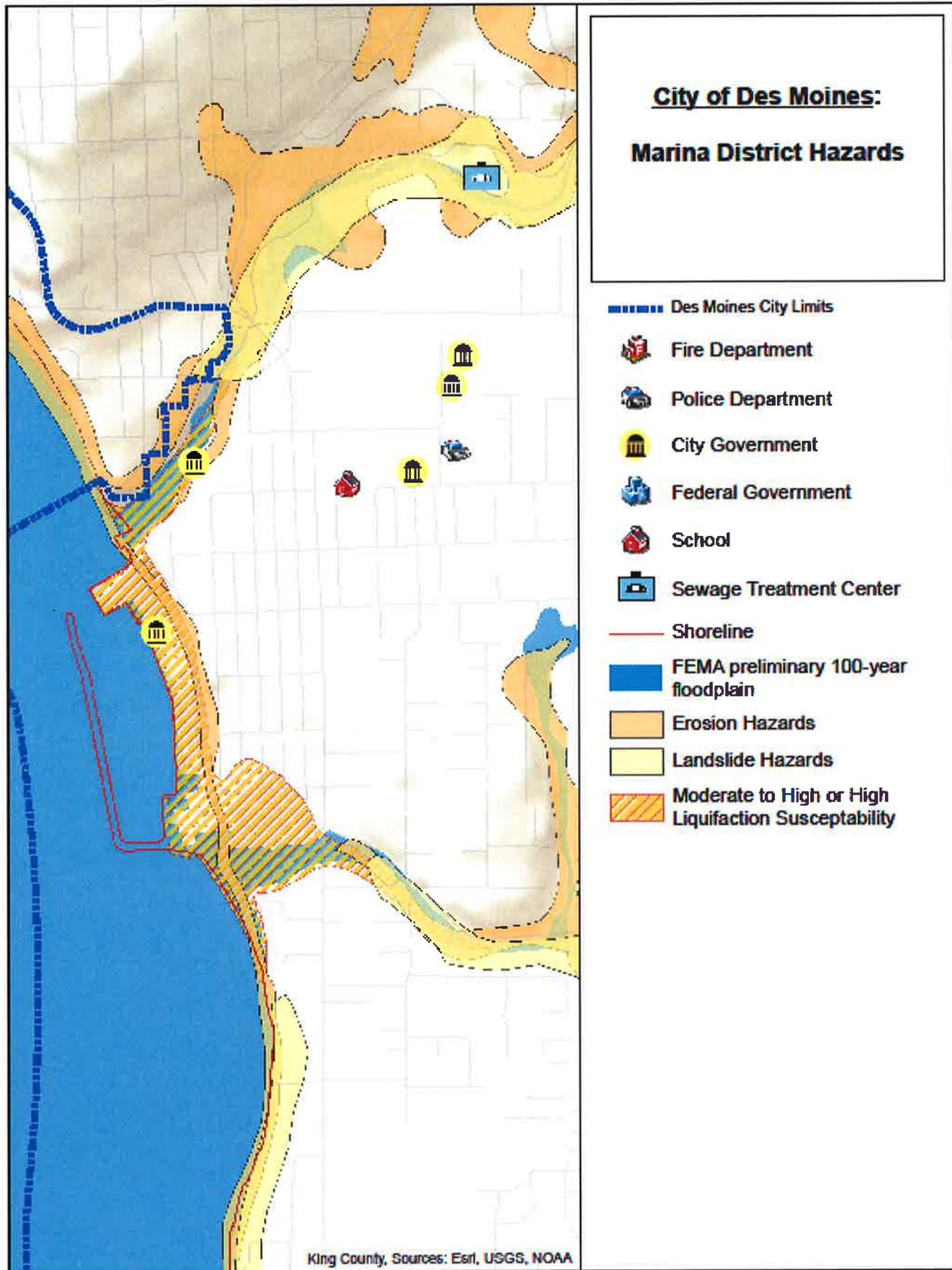
Sources: Esri, USGS, NOAA

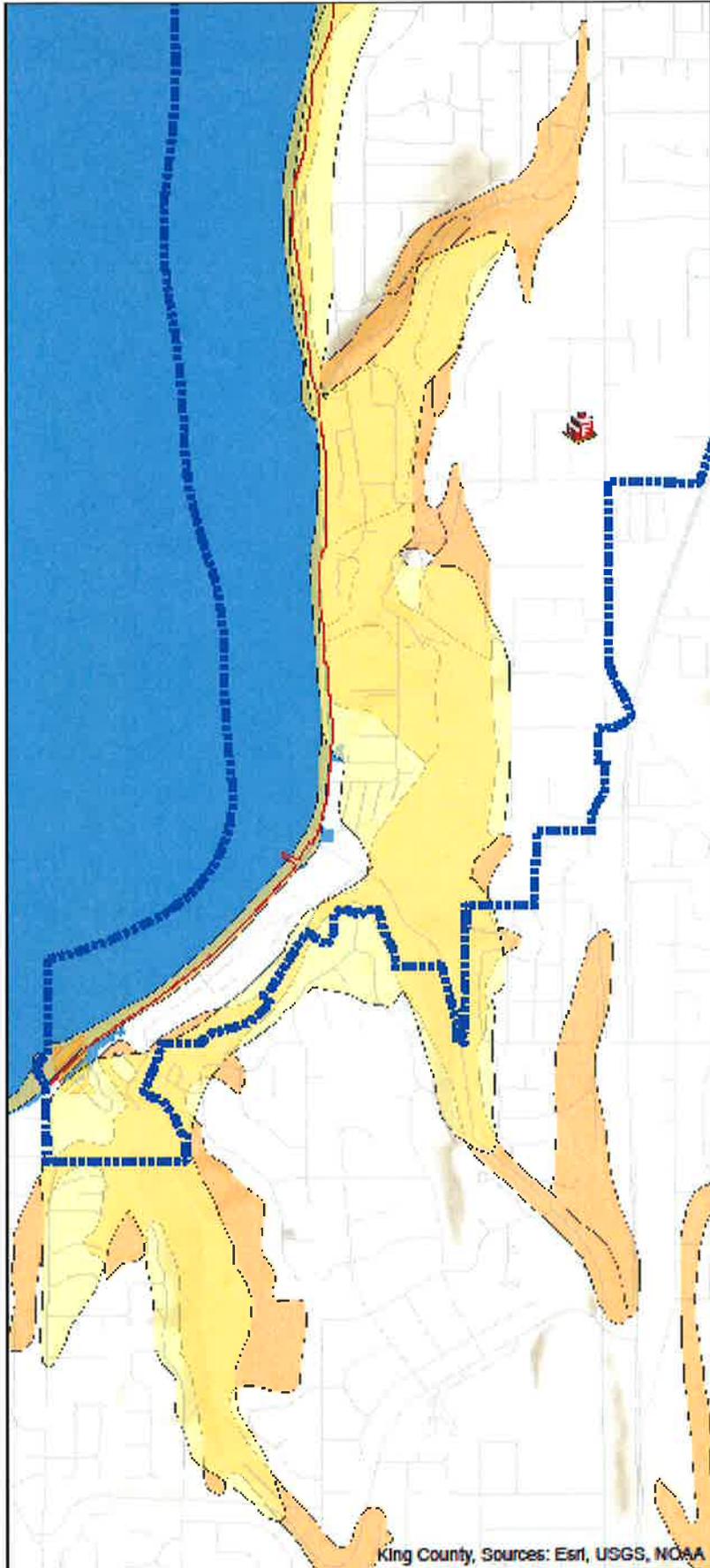


### City of Des Moines: Liquifaction Susceptibility

- Des Moines City Limits
- Fire Department
- Police Department
- City Government
- Federal Government
- School
- Sewage Treatment Center
- Moderate to High or High Liquefaction Susceptibility

Sources: Esri, USGS, NOAA





### City of Des Moines: **Redondo Beach Hazards**

- Des Moines City Limits
- Fire Department
- Police Department
- City Government
- Federal Government
- School
- Sewage Treatment Center
- Shoreline
- FEMA preliminary 100-year floodplain
- Erosion Hazards
- Landslide Hazards
- Moderate to High or High Liquifaction Susceptibility

King County, Sources: Esri, USGS, NOAA



## Plan Update Process

The Hazard Mitigation Plan began with the Des Moines City Manager and City Council recognizing that participating in the planning process with King County would be a benefit to the City of Des Moines. The City of Des Moines Emergency Management staff began participating in the 2020 King County Regional Hazard Mitigation Plan training programs and planning process. The plan began with an initial meeting with the Des Moines planning team to discuss known and potential threats for Des Moines and the surrounding area as well as mitigation efforts and planning already taking place and noted in the current CIP Plan.

Assistant Chief of Police; Mark Couey and Emergency Preparedness Manager; Shannon Kirchberg led the development of the City of Des Moines Hazard Mitigation Plan and will maintain the document in cooperation with the King County Office of Emergency Management and the State of Washington Military Department Emergency Management Division. The Des Moines Emergency Operations Committee, Planning, Building & Public Works (PBPW) staff, Emergency Management staff and South King Fire & Rescue (SKF&R) provided technical review for plan development.

The City focused on building pre-existing programs and identifying gaps that may lead to disaster vulnerabilities, in order to work on ways to address these risks through mitigation. These results were evaluated against the City of Des Moines current CIP. The City held two public meetings educating Des Moines residences about the Hazard Mitigation Plan and importance of whole community involvement. A mitigation survey has been placed on the City of Des Moines web site providing an opportunity for the public to comment. City staff attended the Des Moines Waterfront Farmers Market on September 21, 2019 with handouts and information about the Mitigation Plan and information on how to locate the questionnaire on line. Staff conducted an interactive tally to gain an understanding of what the community sees as the largest hazards that could affect the City of Des Moines.

City staff took part in several planning and training sessions about the Hazard Mitigation template provided by King County. Additionally, the planning team met one on one with King County Emergency Operations Center (LCEOC) staff about Des Moines specific questions.

The planning process will: (1) result in a Disaster Mitigation Act of 2020 compliance; (2) coordinate with the King County plan and activities; and (3) build a network of local organizations that can play an active role in plan implementation.

The City of Des Moines is committed to keeping the Hazard Mitigation Plan current and relevant to hazards that the City of Des Moines is vulnerable to. To achieve this, the City of Des Moines will review the Hazard Mitigation Plan, annually and/or after each disaster. Eighteen months before the plan comes due for the formal five-year update and adoption as required, the review process for the update will begin. The Des Moines Emergency Operations Committee, under direction of the City Manager, will facilitate the plan review and update. This planning team will stay intact during the five-year cycle. The City of Des Moines will also participate in regional planning efforts with the King County Office of Emergency Management and the Washington State Military Department - Emergency Management Division to ensure the City of Des Moines is in line with regional state goals and objectives.



### Jurisdiction Planning Team

NAME	TITLE	ORGANIZATION	CONTRIBUTION
Michael Matthias	City Manager	Administration	Approval
Dan Brewer	Chief Operations Officer	Administration	Review/Approval
Susan Cezar	Chief Strategic Officer	Administration	Review/Approval
Mark Couey	Assistant Chief of Police	Police	Review/Research/Approval
Brandon Carver	Public Works Director	Public Works	Review/Approval
Andrew Merges	Transportation & Engineering Service Manager	Transportation	Review and Input
Loren Reinhold	Surface Water Management Utility Manager	Surface Water Management	Review and Input
Denise Lathrop	Planning and Development Services Manager	Planning and Community Development	Review and Input
Max Mousseau	GIS Analyst	IT	Maps/Analytics
Scott Wilkins	Harbormaster	Marina	Review and Input
Shannon Kirchberg	Emergency Preparedness Manager	Emergency Management	Research

### Plan Update Timeline

PLANNING ACTIVITY	DATE	SUMMARY	ATTENDEES
Meeting at EOC	07/15/2019	Meeting with KCEOC staff for one on one training on Mitigation Plan	Shannon Kirchberg George Delgado Max Mousseau Thomas Sharp Derick Hiebert
Mitigation Action Plan Training	07/25/2019	Training on writing a Hazard Mitigation Strategy for the 2020 Annex	Shannon Kirchberg Max Mousseau Denise Lathrop
Grant Training	08/22/2019	Hazard Mitigation Funding Workshop	Shannon Kirchberg Nicole Nordholm
Mitigation Plan Training	09/05/2019	Meeting with new Assistant Chief of Police and KCEOC on Hazard Mitigation Strategist.	Shannon Kirchberg Mark Couey Derick Hiebert
2009 Mitigation Plan Update	09/10/2019	Meeting with Loren Reinhold, Surface Water Management Utility Manager, to update 2009	Shannon Kirchberg Loren Reinhold

		mitigation strategies for the 2020 mitigation plan.	
<b>2020 Mitigation Map Review</b>	09/12/2019	Meeting with GIS office. Review of current maps and editing for plan and Farmers Market Outreach event on 09-21-19. Maps to be printed 26 X 31 for display at the event.	Shannon Kirchberg Max Mousseau
<b>2020 Mitigation meeting with IT Department</b>	09/16/2019	Meeting to discuss assets at risk within the IT Department. What would be required to ensure continuity of Government, what is at risk, what is needed to ensure City Government could keep running or get back up and running quickly after a disaster.	Shannon Kirchberg Dale Southwick
<b>2020 Mitigation Plan Review</b>	09/16/2019	Meeting with Susan Cezar to review information collected for the Hazard Mitigation Plan. Get feedback and additional recommendation for information to be included in the plan for 2020.	Shannon Kirchberg Susan Cezar
<b>2020 Mitigation Plan Review</b>	09/18/2019	Meeting with Andrew Merges, Transportation and Engineering Manager, to review CIP and Hazard Mitigation Action Items.	Shannon Kirchberg Andrew Merges
<b>2020 Mitigation Plan Review</b>	09/18/2019	Meeting with John Blackburn, Public Works Superintendent, to review the CIP and Hazard Mitigation plan.	Shannon Kirchberg John Blackburn



### Public Outreach

Public participation is vital to any planning initiative, and mitigation planning is no different. The Plan has remained posted on the City of Des Moines website ([www.desmoineswa.gov/hmp](http://www.desmoineswa.gov/hmp)) during the various stages of plan development. The public was asked to provide input via email, surveys, etc.

The City of Des Moines will continue to seek public input on the mitigation plan. The plan will be maintained on the City’s website, seeking public participation in the planning, updating and review meetings. During plan updates, we will again post the process on the City’s website and social media channels as well as announce it at public meetings, and continue to attempt to get community participation and input. Documentation from our public participation during the 2020 process is below.

EVENT	DATE	SUMMARY	ATTENDEES
<b>Des Moines Area Emergency Management Group</b>	04-23-19	Attendees- Des Moines Area Emergency Management partners. Held at the Dining Hall in the Beach Park. Discussed Hazard Mitigation. King County Office of Emergency Management discussing the King County Regional Hazard Mitigation Plan and how it impacts all of us.  Attendees to consider what specific vulnerabilities they see as major threats to resources, properties and/or future development plans. From the discussion, a list of threats identified have been made available to the group to use in future planning.	Kyle Jacobson, CHI Franciscan; Tom Sharp, KCEM; John Bowmen, Lakehaven Water/Sewer; Eric Clarke, King County Water District 54; Lawrence Pickard, City of Des Moines; Corey Cummins, Recology; Brandon Carver, City of Des Moines; Scott Wilkins, City of Des Moines; Beth Anne Wroe, City of Des Moines; Susan Cezar, City of Des Moines; Randy Boyd, Highline Public Schools; George Delgado, City of Des Moines
<b>Waterfront Farmers Market</b>	09/21/2019	King County brought a relief map of King County to share with the public during the day. Public was asked what the City’s assets are and what they see as most at risk in our community.	Shannon Kirchberg Derrick Hiebert Sarah Yancey



		<p>The City handed out flyers directing attendants to go to the City of Des Moines web site to fill out the Hazard Mitigation Survey on line. In addition, there were printed surveys that were at the booth for individuals to fill in and leave behind.</p> <p>King County provided Emergency Readiness pamphlet's, Whistles, Car USB Chargers and Build an Emergency Preparedness Kit flyer.</p>	
<b>Hazard Mitigation Survey</b>	09/16/2019	<p>The Hazard Mitigation team created a questionnaire on Survey Monkey. The survey has been loaded on the City of Des Moines web site. The survey has been promoted through social media pages throughout the community including City of Des Moines and community pages.</p>	Shannon Kirchberg
<b>Hazard Vote Talley</b>	09/21/2019	<p>Des Moines and South King Fire &amp; Rescue conducted a survey at the Des Moines Farmers Market. Market attendees vote for the 2 hazards they believe to be their highest concern and second highest concern. The highest was Earthquake with the second being Landslide.</p>	Shannon Kirchberg Sarah Yancey-Nuss



## Jurisdiction Hazard Mitigation Program

The City of Des Moines hazard mitigation strategies were developed through the following process. A planning team was organized utilizing representatives from Planning, Engineering, Community Development, Police Department, Parks and Recreation, Public Works and Park Maintenance. Together this team created a list of mitigation strategies. These strategies were prioritized by a process identified at the county level and document into the base plan.

Each department that submitted a mitigation strategy will work through the strategy as outlined. The strategy will be reviewed and updated each year with all members of the mitigation team. The team will work together to advocate for the completion of all strategies in the plan, including securing funding to complete all projects.

### Process to Integrate the Mitigation Plan

The success of this Mitigation plan requires coordination between all planning efforts. The City of Des Moines will attain proper integration of the plan by ensuring consistency across all planning, capitalize on multi-benefit initiatives that are supported across multiple planning processes and ensuring a common measuring process for results.

This Hazard Mitigation plan highlights information pertaining to vulnerabilities and risk for other plans to take into consideration. The Mitigation Plan will in turn rely on other plans and processes to implement strategies, since the mitigation plan is not itself a regulatory or budgetary document.

There are many plans and planning processes within the City of Des Moines that impact hazard risk. These include strategic plans, long-range plans, resource plans, and capital plans. To ensure the Hazard Mitigation plan is incorporated across all areas, the plan will be reviewed and updated annually during the Budget and CIP review each August.

### Plan Monitoring, Implementation, and Future Updates

King County leads the mitigation plan monitoring and update process and schedules the annual plan check-ins and bi-annual mitigation strategy updates. Updates on mitigation projects are solicited by the county for inclusion in the countywide annual report. As part of participating in the 2020 update to the Regional Hazard Mitigation Plan, every jurisdiction agrees to convene their internal planning team at least annually to review their progress on hazard mitigation strategies and to update the plan based on new data or recent disasters.

As part of leading a countywide planning effort, King County Emergency Management will send to The City of Des Moines any federal notices of funding opportunities for the Hazard Mitigation Assistance Grant Program. Proposals from partners will be assessed according to the prioritization process identified in this plan and the county will, where possible, support those partners submitting grant proposals. This will be a key strategy to implement the plan.

**Goals are broad policy statements of the community’s vision for the future.** They help describe the contribution each strategy makes toward major objectives that reach beyond any individual department or discipline. In alignment of this and with the Plan’s purpose, King County’s Regional Hazard Mitigation Steering Committee adopted King County’s Determinants of Equity as Mitigation Plan Goals:

- 1) Access to Affordable, Healthy Food
- 2) Access to Health and Human Services
- 3) Access to Parks and Natural Resources
- 4) Access to Safe and Efficient Transportation
- 5) Affordable, Safe, Quality Housing
- 6) Community and Public Safety
- 7) Early Childhood Development
- 8) Economic Development
- 9) Equitable Law and Justice System
- 10) Equity in Government Practices
- 11) Family Wage Jobs and Job Training
- 12) Healthy Built and Natural Environments
- 13) Quality Education
- 14) Strong, Vibrant Neighborhoods



The next plan update is expected to be due in April 2025. All jurisdictions will submit letters of intent by 2023, at least two years prior to plan expiration. The county will lead the next regional planning effort, beginning at least 18 months before the expiration of the 2020 plan.

### **Continued Public Participation**

The City of Des Moines and King County maintain substantial public outreach capabilities, focusing on personal preparedness and education. Information on ongoing progress in implementing the hazard mitigation plan will be integrated into public outreach efforts. This will provide Des Moines residents, already engaged in personal preparedness efforts, with context and the opportunity to provide feedback on the Cities progress and priorities in large-scale mitigation. In the vertical integration of risk-reduction activities from personal to local to state and federal, it is important that the public understand how its activities support, and are supported by, larger-scale efforts.

The outreach and mitigation teams with the City of Des Moines and King County will work with media and other agency partners to publicize mitigation success stories and help explain how vulnerabilities are being fixed. When possible, public tours of mitigation projects will be organized to allow community members to see successful mitigation in action.



### Hazard Mitigation Authorities, Responsibilities, and Capabilities

#### Plans

PLAN TITLE	RESPONSIBLE AGENCY	POINT OF CONTACT	RELATIONSHIP TO HAZARD MITIGATION PLAN
<b>Comprehensive Plan</b>	Police	Mark Couey	The City’s development regulations including the comprehensive plan provide for identification, regulations, and protection of environmentally sensitive areas, geological hazard areas, and flood hazard areas. The comprehensive and mitigation plans are mutually supportive and provide direction for the City’s planning efforts.
<b>Comprehensive Emergency Management Plan</b>	Police	Mark Couey	The CEMP has a direct relationship to the Hazard Mitigation plan. The CEMP is developed, taking the risks outlined in the Mitigation Plan into consideration. Our CEMP is in reaction to the hazards identified in the risk assessment in the plan.
<b>Capital Improvement Plan</b>	Chief Operation Officer	Dan Brewer	The Capital Facilities Plan and the Mitigation Plan address the mitigation efforts related to the City’s infrastructure and will normally be included in the Capital Facilities Plan for consideration and funding by the city’s leadership.
<b>Storm Water Comprehensive Plan</b>	Surface Water	Loren Reinhold	The Storm Water Comprehensive Plan and the Mitigation Plan are linked in that mitigation efforts related to the City’s surface water management and will be included in the Storm Water Comprehensive Plan for consideration and funding by the city’s leadership.



*Programs, Policies, and Processes*

PROGRAM/POLICY	RESPONSIBLE AGENCY	POINT OF CONTACT	RELATIONSHIP TO HAZARD MITIGATION PLAN
<b>Building Codes</b>	Planning and Community Development	Susan Cezar	The building codes of the city of Des Moines are in consideration of all-hazards. The City has the ability to modify building codes upon adoption reflecting risks and hazards for the City.
<b>Emergency Management Program</b>	Police	Mark Couey	The City's emergency management program is based from the risk assessment in the Mitigation Plan. Our educational programs use the risks identified to educate the public on what may happen in Des Moines and how to best prepare for the impact to their homes, business and family.
<b>Critical Areas Ordinance</b>	Planning and Community Development; Surface Water Management	Susan Cezar/Loren Reinhold	The relationship of the mitigation plan and the critical areas ordinance, both address some of the same natural features, especially flood, groundwater protection areas and geologic hazards. They both also share the common purpose of protecting public health, safety and general welfare.



### Entities Responsible for Hazard Mitigation

AGENCY/ORGANIZATION	POINT OF CONTACT	RESPONSIBILITY(S)
Office of the City Manager	Michael Matthias	Responsible for the mitigation planning process, identifying City assets at risk, creating mitigation strategies and implementing strategies.
Chief Operations Officer	Dan Brewer	Responsible for the mitigation planning process, identifying City assets at risk, creating mitigation strategies and implementing strategies.
Community Development	Susan Cezar	Responsible for the mitigation planning process, identifying City assets at risk, creating mitigation strategies and implementing strategies.
Police/Emergency Management	Mark Couey	Responsible for the mitigation planning process, identifying City assets at risk, creating mitigation strategies and implementing strategies.
Emergency Management	Shannon Kirchberg	Responsible for the mitigation planning process, creating mitigation strategies and implementing strategies as assigned.
Public Works	John Blackburn	Responsible for identifying City assets at risk, creating mitigation strategies and implementing strategies.
GIS Analytics	Max Mousseau	Maps/Analysis
Parks	Susan Cezar	Responsible for identifying City assets at risk, creating mitigation strategies and implementing strategies.
Information Systems	Dale Southwick	Responsible for identifying City assets at risk, creating mitigation strategies and implementing strategies.
South King Fire	Vic Pennington	Responsible for identifying City assets at risk, creating mitigation strategies and implementing strategies.

### National Flood Insurance Program

#### National Flood Insurance Program Compliance

What department is responsible for floodplain management in your community?	Community Development
Who is your community's floodplain administrator? (title/position)	Susan Cezar, LEG Chief Strategic Officer
What is the date of adoption of your flood damage prevention ordinance?	Chapter 16.15 Flood Hazard Areas 1583 - 2013
When was the most recent Community Assistance Visit or Community Assistance Contact?	The last Community Assistance Visit (CAV) or Community Assistance Contact (CAC) was in 2007. Addressed during that contact, was that the City of Des Moines Flood Hazard Areas Code did not meet or exceed the model FEMA ordinance, as required. A new ordinance was drafted and adopted shortly after (Ordinance 1407) that now mirrors the model FEMA ordinance.
Does your community have any outstanding NFIP compliance violations that need to be addressed? If so, please state what they are?	No. Des Moines is NFIP Community #060264 and is currently in compliance with NFIP regulations.



<b>Do your flood hazard maps adequately address the flood risk within your community? If so, please state why.</b>	Yes. The City is using the most up to date FEMA maps. The City of Des Moines participated in the latest FEMA review, and is aware new maps will be available in 2020.
<b>Does your floodplain management staff need any assistance or training to support its floodplain management program? If so, what type of training/assistance is needed?</b>	Yes. Currently staff in Community Development are trained in floodplain management. There was a recommendation that at least one person in engineering should be certified as well.
<b>Does your community participate in the Community Rating System (CRS)? If so, what is your CRS Classification and are you seeing to improve your rating? If not, is your community interested in joining CRS?</b>	No. Not at this time.
<b>How many Severe Repetitive Loss (SRL) and Repetitive Loss (RL) properties are located in your jurisdiction?</b>	SRL: 0 RL: 0
<b>Has your community ever conducted an elevation or buy out of a flood-prone property? If so, what fund source did you use? If not, are you interested in pursuing buyouts of flood prone properties?</b>	No. Not at this time.

## Hazard Mitigation Strategies

### *2009 Hazard Mitigation Strategy Status*

STRATEGY	DESCRIPTION	PRIORITY	STATUS
<b>Hazard Mitigation and Damage Tracking</b>	Create a data base and tracking mechanism for damages and other issues related to hazards in the City of Des Moines	Moderate	Not completed
<b>North Twin Bridge Seismic Retrofit and Safety Improvements</b>	Rehabilitate this City Bridge for preservation and maintaining the existing integrity for safe use. Rehab to include Seismic and safety improvements	High	Completed
<b>Saltwater State Park Bridge Seismic Retrofit</b>	Rehabilitate this 75 year old bridge for seismic safety, preservation and maintaining the existing integrity for safe use, Rehab will include seismic and safety improvements	Moderate	Completed
<b>Barnes Creek/Kent Des Moines Road Culvert Replacement</b>	Replacement of existing culvert with a new 42-inch diameter concrete culvert and instillation of	Low	Completed



	an energy dissipater structure at the downstream end of the culvert.		
<b>Severe Weather, Landslide, Earthquake, Terrorism, Civil Unrest, Hazardous Material, Transportation</b>	Replacement of the 350 feet existing storm drainage and ditches with 18-inch pipe	High	Not Completed
<b>Barnes Creek Detention Facility/223<sup>rd</sup> Street</b>	Construction of a 2.96 acre-foot storm water detention facility and replacement of the Barnes Creek culvert at 223 <sup>rd</sup> Street	Moderate	Completed
<b>North Hill Elementary/ 199<sup>th</sup> Street to 4<sup>th</sup> Ave Pipeline Replacement</b>	Replacement of existing 12-inch storm drainage with 24-inch pipeline	High	Completed
<b>24<sup>th</sup> Ave Pipeline Replacement/Upgrade</b>	Replacement of existing 12-inch storm drain with 36-inch trunk line	Moderate	Completed
<b>Des Moines Neighborhood Emergency Teams (NET)</b>	Neighborhood based citizen emergency preparedness program that provides training and guidelines for personal and neighborhood preparedness.	High	Not Completed
<b>Lower Massey Creek Channel Modifications</b>	Provide stream bank modifications from 10 <sup>th</sup> Ave South to Marine View Drive, add approximately 300 feet of berm on the north bank; install 10-12 anchored log weirs and bank logs for erosion control.	Low	Completed
<b>Lower Des Moines Creek Channel Modification</b>	Provide channel widening and deepening at various locations bank stabilization, construction of two in stream sediment traps and bank restoration and revegetation	Moderate	Not Completed

*2020 Hazard Mitigation Strategies*

STRATEGY	LEAD AGENCY/POC	TIMELINE	PRIORITY
<b>Des Moines Marina North Bulkhead Replacement</b>	Transportation/Engineering	Complete by 2023	High
<b>Citywide Fiber Communication Plan</b>	IT	Complete by 2022	Medium
<b>Pavement Preservation Program</b>	Transportation	Complete by 2025	Medium
<b>Redondo Beach Drive – Seawall Pile Corrosion Protection</b>	Transportation	Complete by 2025	Medium
<b>Redondo Bulkhead Replacement</b>	Public Works	Complete by 2025	Medium
<b>Flood Prevention Projects</b>	SWM	Complete by 2025	Medium
<b>Cyber Security</b>	IT	Complete by 2022	High
<b>Community Resilience</b>	Emergency Preparedness	Ongoing	High



### Hazard Mitigation Strategy - Des Moines Marina North Bulkhead

Lead Points of Contact (Title) Andrew Merges; Transportation & Engineering Services Manager	Partner Points of Contact (Title) Scott Wilkins – Harbormaster	Hazards Mitigated / Goals Addressed 1, 2, 3, 4, 6, 12	Funding: Tax, General Fund, Grants, REET. 15 million
Strategy Vision/Objective Replace the north marina parking lot bulkhead and revetment to also include wider sidewalks and pedestrian amenities supporting multimodal emergency management operations, marina operations, and public land-water access.			
Mitigation Strategy Existing north marina bulkheads are experiencing structural deficiencies and have been damaged by storm activities, which require periodic spot rebuilding. Replacing the bulkheads will provide long-term protection with lower maintenance costs. Public access to waterfront activities will also be improved from the north parking lot to the marina facilities, Beach Park, and fishing pier.			
2-Year Objectives Obtain all required Permits Begin Phase 1 Construction	5-Year Objectives Phase 1 complete Phase 2 permitted Phase 2 construction	Long-Term Objectives Marina Floor able to withstand full scale regional incident and aid in response and recovery missions via land, air andwater	
Implementation Plan/Actions <i>This can provide a timeline, indicate partners, discuss implementation stages, etc. Use this to discuss how the strategy/program will be implemented over the long term.</i>  Complete design and permitting for Phase 1 & 2 Solicit for construction Bids Phase 1 Construction Phase 1 Solicit for construction Bids Phase 2 Construction Phase 2			
Performance Measures Phase 1 and phase 2 completed full by 2025			



### Hazard Mitigation Strategy – Citywide Fiber Communication System

Lead Points of Contact (Title) Dale Southwick; IT Manager	Partner Points of Contact (Title) Andrew Merges; Transportation & Engineering Services Manager; WSDOT; KC Transportation	Hazards Mitigated / Goals Addressed 6, 9	Funding: TBD 400 thousand
<p>Strategy Vision/Objective</p> <p>Eliminate the possibility of losing network connectivity between City facilities in the event that the city fiber optic cables are damaged. Ensure government communication resiliency and redundancy for emergency services. Coordinate and optimize traffic signal timing throughout City. Improve communications and coordination with the Washington State Department of Transportation and King County.</p>			
<p>Mitigation Strategy</p> <p>Currently the fiber connections between City facilities has a single non-redundant path for connectivity. Completing the fiber loop will add redundancy to the network so that if the fiber is damaged at any single point the entire network will not be down.</p>			
<p>2-Year Objectives</p> <p>Secure funding and install fiber.</p>	<p>5-Year Objectives</p> <p>Complete fiber communications system</p>	<p>Long-Term Objectives</p> <p>Provide Fiber Redundancy</p>	
<p>Implementation Plan/Actions</p> <ol style="list-style-type: none"> <li>1) Determine funding source.</li> <li>2) Work with city engineering to identify fiber installation pathway.</li> <li>3) Install and test fiber.</li> <li>4) Simulate fiber failure to test redundancy.</li> </ol>			
<p>Performance Measures</p> <p>Network connectivity maintained if fiber is damaged. Loop completed by 2025</p>			



### Hazard Mitigation Strategy – Pavement Prevention Program

<p>Lead Points of Contact (Title) Andrew Merges; Transportation &amp; Engineering Services Manager</p>	<p>Partner Points of Contact (Title) Franchise Utilities</p>	<p>Hazards Mitigated / Goals Addressed 2, 3, 4</p>	<p>Funding: Transportation Benefit District 1million/year</p>
<p>Strategy Vision/Objective Maintain and preserve the City's roadway surfaces through pavement rehabilitation measures such as overlays/patching, crack sealing and other preventative maintenance measures. Focus on Citywide arterial networks for redundancy and resiliency within the transportation network.</p>			
<p>Mitigation Strategy Maintain current pavement condition index (PCI) levels to ensure current level of service of roadway network.</p>			
<p>2-Year Objectives Annual Paving Contracts</p>	<p>5-Year Objectives Annual Paving Contracts</p>	<p>Long-Term Objectives</p>	
<p>Implementation Plan/Actions Complete annual paving program projects. Coordinate legislative efforts locally, regionally, and statewide for additional resources for paving infrastructure.</p>			
<p>Performance Measures Monitor pavement PCI.</p>			



### Hazard Mitigation Strategy – Redondo Beach Drive – Seawall Pile Corrosion Protection

<p>Lead Points of Contact (Title) Andrew Merges; Transportation &amp; Engineering Services Manager</p>	<p>Partner Points of Contact (Title) Scott Wilkins – Harbormaster</p>	<p>Hazards Mitigated / Goals Addressed 1, 2, 3, 4, 6, 12</p>	<p>Funding: Local 400 thousand</p>
<p>Strategy Vision/Objective Corrosion protection for Sea Wall H piles to ensure long-term serviceability of the principal arterial roadway, Redondo Beach Drive.</p>			
<p>Mitigation Strategy Complete design, permitting, and construction of H pile corrosion protection.</p>			
<p>2-Year Objectives Secure Funding</p>	<p>5-Year Objectives Complete design, permitting, construction</p>	<p>Long-Term Objectives Ensure 40+ year service life of seawall.</p>	
<p>Implementation Plan/Actions Complete design &amp; permitting. Complete construction. Perform on-going inspection and maintenance of facility.</p>			
<p>Performance Measures Complete seawall H pile corrosion protection by 2025.</p>			



### Hazard Mitigation Strategy – Redondo Bulkhead Replacement

<p>Lead Points of Contact (Title) Andrew Merges; Transportation &amp; Engineering Services Manager</p>	<p>Partner Points of Contact (Title) Scott Wilkins Harbormaster</p>	<p>Hazards Mitigated / Goals Addressed 3, 4, 6, 12, 14</p>	<p>Funding: REET and Grants 4 million</p>
<p>Strategy Vision/Objective Replace Redondo bulkhead from MaST facility to boat launch and remove existing timber piles. Replace pedestrian promenade, public restrooms, and fishing pier.</p>			
<p>Mitigation Strategy The bulkhead, restrooms, and fishing pier are now approximately 35 years old and have reached the end of their useful life. The facilities are currently exhibiting moderate degradation.</p>			
<p>2-Year Objectives Complete design and permitting Secure funding</p>	<p>5-Year Objectives Complete construction</p>	<p>Long-Term Objectives</p>	
<p>Implementation Plan/Actions Complete design &amp; permitting Secure funding Complete construction</p>			
<p>Performance Measures Complete construction by 2025.</p>			



## Hazard Mitigation Strategy – Flood Prevention

Lead Points of Contact (Title) Loren Reinhold; Surface Water Management	Partner Points of Contact (Title) Public Works Engineering	Hazards Mitigated / Goals Addressed 4, 6, 14	Funding: Surface Water Utility 2.7 million
<b>Strategy Vision/Objective</b> Replacement of dilapidated or undersized storm drainage systems throughout the City of Des Moines to reduce flooding risk to public and private property during flood events. Complete all projects listed in the 2020-2025 SWM Capital Improvement Plan.			
<b>Mitigation Strategy</b> During major storms, drainage systems may overflow the existing pipe systems due limited capacity or facility deficiencies. These overflows have the potential to flood public and private property. The 2015 Surface Water Comprehensive Plan has identified a number of projects for replacing or additional improvements to mitigate flooding.			
<b>2-Year Objectives</b> See Project Year	<b>5-Year Objectives</b> See Project Year	<b>Long-Term Objectives</b> See Project Year	
<b>Implementation Plan/Actions</b> The following projects are scheduled for implementation between 2020 and 2025: <b>2-Year Objectives</b> <ol style="list-style-type: none"> <li>Barnes Creek/Kent-Des Moines Road Culvert Replacement: Replacement of 100 feet of 24-inch culvert with a 48-inch culvert. 2019/2020.</li> <li>N. Fork McSorley Creek Diversion: Construct a creek diversion pipe on 20<sup>th</sup> Avenue to bypass several properties that are frequently flooded. 2019/2020</li> <li>6<sup>th</sup> Avenue/239<sup>th</sup> Pipe Replacement: Replace existing pipe outfall to Puget Sound with a larger 18-inch HDPE pipe. 2019/2020.</li> <li>Soundview Drive/Redondo Beach Dr. Pipe Replacement: Replace system below Redondo Beach Drive that is restricted by pipe bends and install a new trash rack at the culvert inlet on Soundview Drive. 2019/2020.</li> <li>8<sup>th</sup> Avenue (264<sup>th</sup> to 265<sup>th</sup>) Pipe: Installation of new pipe along the west side of the road to prevent road runoff from impacting a landslide area. 2019/2020</li> <li>10<sup>th</sup> Avenue Pipe Replacement: Install 300 feet of new pipe. 2020</li> <li>DMMD 208<sup>th</sup> to 212<sup>th</sup> Pipe: Replace 1,500 feet of roadside ditch and corrugated metal pipe with new 18-inch pipe. 2020/2021.</li> <li>KDM/16<sup>th</sup> Avenue A Pipe Replacement: Replace existing undersized pipes with 24-inch and 26-inch pipe. 2020/2021.</li> </ol> <b>5-Year Objectives</b> <ol style="list-style-type: none"> <li>24<sup>th</sup> Avenue Pipeline Replacement: Replacement of 1670 feet of undersized pipe with 24-inch and 36-inch pipe. 2020/2023.</li> <li>5<sup>th</sup> Ave/212<sup>th</sup> Street Pipe Upgrade: Replacement of 2,630 feet of corroded metal pipe with new 12-inch and 18-inch pipe. 2021/2022.</li> <li>216<sup>th</sup>/Marine View Drive Pipe Upgrade: Replace existing ditch along MVD with 300 feet of 18-inch pipe and replace the existing road crossing with 24-inch pipe. 2021/2022</li> <li>KDM/16<sup>th</sup> Ave B Pipe Replacement: Replace 2,930 feet of undersized pipe with larger pipe. 2022/2023.</li> <li>232<sup>nd</sup> Street (10<sup>th</sup>-14<sup>th</sup>) Pipe Replacement: Install 2,300 feet of pipe on the north side of 232<sup>nd</sup> Street. 2022/2023.</li> <li>258<sup>th</sup> Street(13<sup>th</sup> Pl. to 16<sup>th</sup> Ave) Pipe: Replace 960 feet of ditch with 18-inch pipe. 2023/2024.</li> </ol>			



- 7. 6<sup>th</sup> Place/287<sup>th</sup> St Pipe Replacement: Replacement of 1,670 feet of corroded metal pipe and installation of flow diversion structures to direct flows away from flood prone areas. 2024/2025
- 8. 14<sup>th</sup> Ave (268<sup>th</sup> – 272<sup>nd</sup>) Pipe Upgrade: Replace 900 feet of undersized pipe with new 36-inch pipe. 2024/2025

**Long Term Objectives**

Projects beyond 2025 are prioritized and listed in the 2015 Surface Water Comprehensive Plan. This Plan is scheduled to be updated in 2020. Projects have been ranked from high/medium/low priority and scored by determined criteria, which includes public safety and flooding reduction.

**Performance Measures**

Elimination/reduction of flooding during major storm events following project construction.



### Hazard Mitigation Strategy – Cyber Security

Lead Points of Contact (Title) Dale Southwick; IT Manager	Partner Points of Contact (Title) Darktrace - Vendor	Hazards Mitigated / Goals Addressed 6,9	Funding: TBD 20 thousand per year
<p>Strategy Vision/Objective Ransomware and viruses are the largest threat to the City’s network infrastructure. A network detection and response (NDR) system would significantly reduce that threat.</p>			
<p>Mitigation Strategy Implement a network detection and response system that would continuously monitor all network devices for unusual behavior, and isolate that device from the rest of the network if infected.</p>			
<p>2-Year Objectives Secure funding and install NDR appliance.</p>	<p>5-Year Objectives NDR Appliance installed and fully functional</p>	<p>Long-Term Objectives Secure Network</p>	
<p>Implementation Plan/Actions</p> <ol style="list-style-type: none"> <li>1) Receive estimate from Darktrace.</li> <li>2) Determine funding source and purchase.</li> <li>3) Work with Darktrace to install, configure, and train IT staff on NDR appliance.</li> </ol>			
<p>Performance Measures If NDR is functioning as intended an infection should be limited to the device initially infected and not spread to other network devices.</p>			



### Hazard Mitigation Strategy – Community Resiliency

Lead Points of Contact (Title) Shannon Kirchberg, Emergency Preparedness Manager	Partner Points of Contact (Title) Sarah Yancey, South King Fire Emergency Manager; Mark Couey, Assistant Chief of Police	Hazards Mitigated / Goals Addressed 6, 10, 14	Funding: General Fun; Grants Costs: TBD
<p>Strategy Vision/Objective</p> <p>The City of Des Moines is committed to preparing its community for the numerous hazards that can happen in our area of the Pacific Northwest. The City of Des Moines wants to ensure all of its community members are prepared for these hazards and are aware of the limitations of government response capabilities and how individuals can prepare, support and help in times of distress.</p>			
<p>Mitigation Strategy</p> <p>Provide emergency preparedness and emergency management training to the Des Moines residence, businesses, schools and employees directly and through local private and public partnerships.</p>			
<p>2-Year Objectives</p> <ol style="list-style-type: none"> <li>1) CERT Train 200 community members</li> <li>2) Distribute Emergency Preparedness and Management material via Social Media and City Facilities at least monthly.</li> </ol>	<p>5-Year Objectives</p> <ol style="list-style-type: none"> <li>1) Host 2 CERT trainings per year</li> <li>2) Conduct 1 joint HAM CERT exercise per year.</li> <li>3) Successfully completed MAP Your Neighborhood in 8 Neighborhoods</li> <li>4) Include local businesses, schools, City in at least 1 functional exercise</li> </ol>	<p>Long-Term Objectives</p> <ol style="list-style-type: none"> <li>1) A prepared community</li> </ol>	
<p>Implementation Plan/Actions</p> <ul style="list-style-type: none"> <li>• Conduct at least 2 Community Emergency Response Team (CERT) trainings each year.</li> <li>• Work with South King Fire to develop a Teen CERT program for the Highline Schools District</li> <li>• Partner with Westley to ensure partnership for their staff and residency to participate in all CERT classes offered.</li> <li>• Conduct at least one of the 3 CERT classes at Highline College for staff and faculty</li> <li>• Promote MAP my Neighborhood through Social Media monthly and City Currents Publications monthly quarterly.</li> <li>• Work with Senior Center to reach seniors in our community and offer preparedness classes for seniors at least 6 per year.</li> <li>• Build and finalize mutual aid agreement with Highline HAM Radio Group.</li> <li>• Facilitate MAP Your Neighborhood meetings in the community to educate emergency preparedness</li> </ul>			
<p>Performance Measures</p> <ul style="list-style-type: none"> <li>• Increase the number of trained community members by 5% annually and develop a database of individuals trained and prepared to volunteer during community events, drills, tabletops and Whole Community plan writing and exercise.</li> </ul>			

**A G E N D A I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: LUA2018-0067; Blueberry Lane III  
Modified Short Subdivision Preliminary Approval  
Concurrence

FOR AGENDA OF: July 16, 2020

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: July 9, 2020

ATTACHMENTS:

1. Preliminary Modified Short Subdivision
2. Project Narrative
3. Site Plan with Aerial Photo
4. Preliminary Approval Letter

CLEARANCES:

- Community Development *Susan M. Gage*
- Marina \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works *R. Blum*

CHIEF OPERATIONS OFFICER: *Neil J. ...*

- Legal /s/ TG
- Finance \_\_\_\_\_
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

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

**Purpose and Recommendation**

The purpose of this agenda item is to obtain City Council concurrence of the administrative decision to preliminarily approve the Blueberry Lane III Modified Short Subdivision. The applicant proposes to modify standards for lot configuration in Des Moines Municipal Code (DMMC) 17.35.050(2) and access in DMMC 17.35.070(3). Council concurrence of administrative approvals of modified short subdivisions is required pursuant to DMMC 17.15.060. The record of decision date was June 23, 2020, and this is the first available regular City Council meeting to review this matter.

**Suggested Motion**

**Motion 1:** "I move to concur with City staff preliminary approval of the Blueberry Lane III Modified Short Subdivision, City File No. LUA2018-0067."

## **Background**

Chapter 17.15 DMMC establishes a mechanism whereby an applicant may propose a modified short subdivision in which the City may consider and approve an innovative or unusual short subdivision that does not comply with one or more of the standard requirements specified in chapter 17.35 DMMC– Layout and Design of Subdivisions and Similar Requirements.

The decision to approve or deny an application for a modified short subdivision is an administrative decision made by City staff. The staff review of the application is based upon the criteria adopted by the Council in DMMC 17.15.070. The Council’s concurrence is a quasi-judicial decision, and the City Council’s review is limited to whether or not the application meets the applicable criteria.

The subject modified short subdivision is located at 198XX Des Moines Memorial Drive South, and is zoned RS-7200, residential single family. The applicant proposes to subdivide an approximately 1.56 acre site into five residential lots. The aspects of this application that do not meet standard subdivision requirements are:

1. Lot 4 would exceed the allowable 2:1 lot width to depth ratio. Per DMMC 17.35.050(2), lots shall be shaped so that reasonable use and development is possible. Where topography, natural features, and the existing development pattern permit, the depth of lots less than 15,000 square feet in area shall be at least equal to, but not more than twice the width of the lot.
2. Access to Lot 5 is provided by an easement across Lot 4. Per DMMC 17.35.070(3), no lot shall have an easement across another lot for vehicular access.

Per DMMC 17.15.060(2), unique design features not ordinarily provided in traditional subdivisions/short subdivisions shall be incorporated into the proposal to offset the modified standards.

## **Discussion**

Requested modifications:

The requested modifications to the layout and design standards in chapter 17.35 DMMC are minor alterations that are in response to an irregularly shaped parcel.

1. Overall site dimensions limit subdivision configuration options. Compliance with the width to depth ratios on all lots is possible, but would result in lot sizes significantly larger than the underlying zoning and likely fewer lots.
2. The configuration of the parcel limits the potential layout and access points. With the irregular ‘T’ shape of the existing parcel, permitting access to proposed Lot 5 with an access easement allows the lot width to depth ratio and buildable area requirements can be met for Lots 4 and 5 (Project Narrative, Attachment 2).

Unique Design Features:

1. To offset the proposed deviation to the lot width to depth ratios on Lot 4, a Type II – Visual Buffer landscaping strip, as defined by DMMC 18.195.400, and fencing will be provided along the northern sides of Lots 4 and 5 for privacy screening for the adjacent lot owners. These

features are conditions of preliminary approval and will be reviewed in conjunction with the civil plan review.

2. To offset the access easement, solid board fencing will be provided between the access easement and buildable lot area on Lot 4 for screening purposes. This feature is a condition of preliminary approval and will be reviewed in conjunction with the civil plan review.
3. Tract A (Drainage/Open Space) will include a play area, as grassed open space, in the proposed storm water tract. This is a design feature that would not have typically been required for this project scale. Per DMMC 18.195.330(1), a Type I planting strip not less than 10 feet in depth will also be provided along all property lines of Tract A abutting a residential zone. Maintenance of the open space would be conducted by the homeowners.

### **Alternatives**

1. The City Council may concur with the City staff approval of the Blueberry Lane III Preliminary Modified Short Subdivision, City File No. LUA2018-0067, as recommended.
2. If the City Council does not concur with the administrative decision, the City Council is required to review the matter further at a future hearing. Findings would need to be adopted that set forth the specifics of how the application does not comply with the applicable criteria. The applicant would be required to redesign the short subdivision to comply with the standard layout and design requirements of chapter 17.35 DMMC.

### **Financial Impact**

No immediate and direct financial impacts are anticipated. Approval of the subdivision and subsequent development has a long term positive impact on overall assessed valuation of property and corresponding taxes collected as well as collection of traffic impact fees. These revenues are largely offset expenditures for future City services related to residential use of the property.

### **Recommendation**

Staff has reviewed the proposed preliminary short plat (Attachment 1) and determined that the modified short subdivision is consistent with the cited local and state statutes. Therefore, staff recommends concurring with the preliminary approval of the plat entitled "Blueberry Lane III."

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**VICINITY MAP**

NTS

**LEGAL DESCRIPTIONS**

(PER FIRST AMERICAN TITLE INSURANCE COMPANY SUBDIVISION GUARANTEE NO. 5003353-2810556 DATED SEPT 25, 2018)

VACATED BLOCKS 1 THROUGH 4, KNIGHT'S SECOND ADDITION TO DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE(S) 3, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED BLOCK 5 OF SAID PLAT LYING WESTERLY OF THE WESTERLY MARGIN OF DES MOINES WAY SOUTH (60 FEET IN WIDTH);

AND TOGETHER WITH VACATED LOTS 1 THROUGH 7, BLOCK 10 OF SAID PLAT;

AND TOGETHER WITH THE WEST HALF OF VACATED ALLEY ADJOINING LOTS 1 THROUGH 7, BLOCK 10 OF SAID PLAT, VACATED PURSUANT TO SAID KING COUNTY ORDINANCE NO. 2681;

AND TOGETHER WITH THAT PORTION OF SOUTH 198 STREET, 11 AVENUE SOUTH, 11 PLACE SOUTH AND THE NORTH HALF OF 11 PLACE SOUTH AND OF SOUTH 199 STREET, THE ALLEYS BETWEEN SAID BLOCKS 1 AND 2 AND BETWEEN SAID BLOCKS 3 AND 4 OF SAID PLAT, ADJOINING, AS VACATED PURSUANT TO ORDER DATED AND FILED IN KING COUNTY SUPERIOR COURT CAUSE NO. 81-2-00387-7 WHICH, UPON VACATION, ATTACHES TO SAID PROPERTY BY OPERATION OF LAW;

AND TOGETHER WITH THAT PORTION OF VACATED 10 STREET SOUTH ADJOINING BLOCKS 1 OF SAID PLAT, WHICH, UPON VACATION, ATTACHED TO SAID PROPERTY BY OPERATION OF LAW

APN: 391740-0130-01

**TITLE EXCEPTIONS**

(PER FIRST AMERICAN TITLE INSURANCE COMPANY SUBDIVISION GUARANTEE NO. 5003353-2810556 DATED SEPT. 25, 2018)

1-3. NOT SURVEY RELATED

4. AN EASEMENT FOR SEWER MAINS AND INCIDENTAL PURPOSES, RECORDED APRIL 1, 1975 AS 7504010559 OF OFFICIAL RECORDS. IN FAVOR OF: DES MOINES SEWER DISTRICT AFFECTS: AS DESCRIBED THEREIN

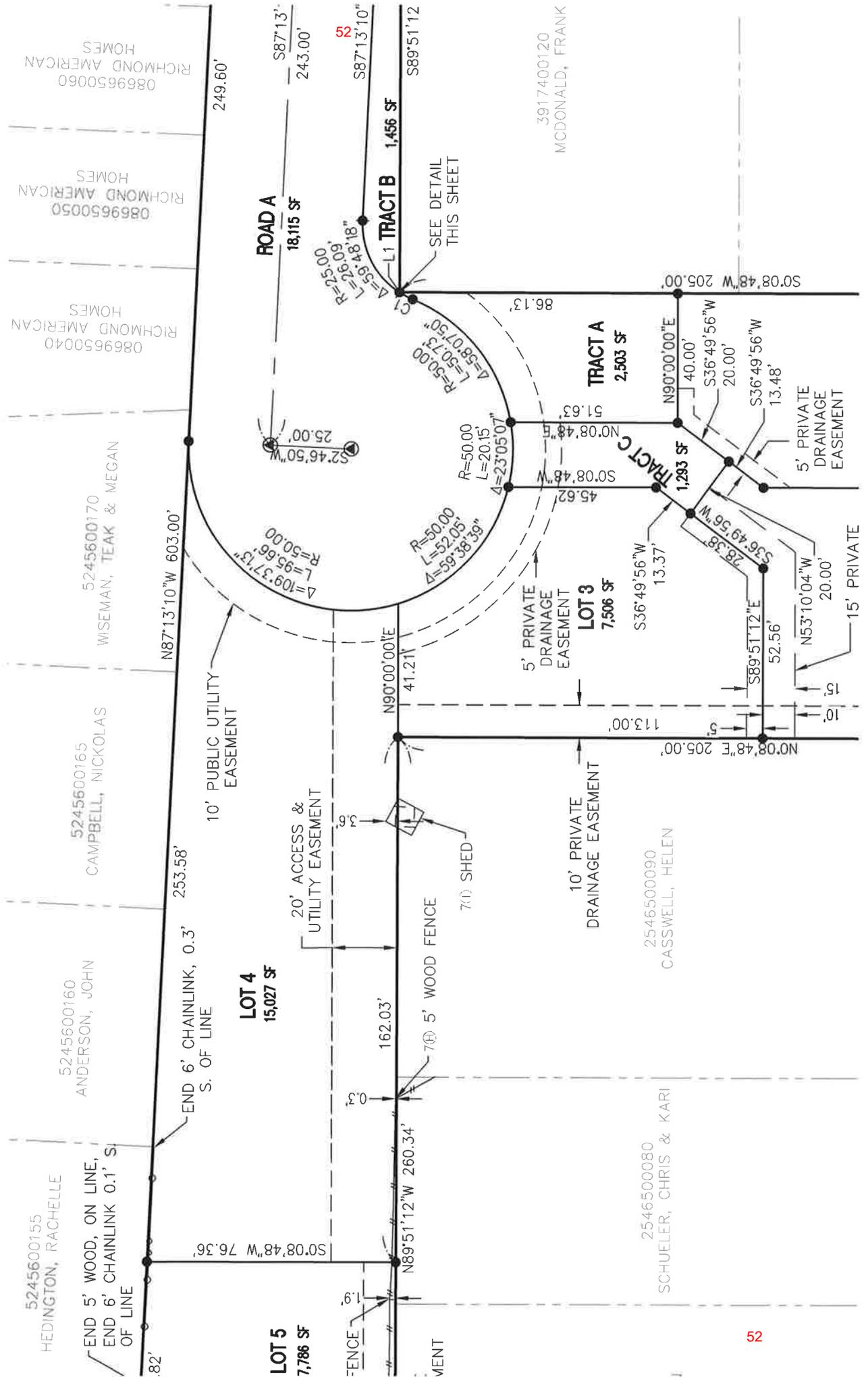
**NOTES, CONDITIONS, AND RESTRICTIONS**

1. TRACTS A, B, AND C ARE CONSIDERED "TRACTS" PURSUANT TO DMMC IS LAND RESERVED FOR SPECIAL USES INCLUDING BUT NOT LIMITED TO OPEN SPACE, WATER RETENTION, UTILITIES, OR ACCESS. TRACTS ARE NEITHER COUNTED NOR CONSIDERED AS BUILDING SITES.
2. TRACT A IS AN OPEN SPACE AND PUBLIC STORM DRAINAGE FACILITY BENEFIT OF THE PUBLIC. TRACT A WILL BE DEEDED TO THE CITY OF DES MOINES SEPARATE INSTRUMENT AFTER RECORDING OF THIS PLAT FOR PUBLIC STORAGE, MAINTENANCE AND REPAIRS.
3. TRACT B IS A LANDSCAPING TRACT AND SHALL BE OWNED AND MAINTAINED BY THE OWNERS OF LOTS 1 THROUGH 5 INCLUSIVE AS EQUAL UNDIVIDED COMMON INTEREST.
4. TRACT C IS AN PRIVATE ACCESS TRACT FOR LOTS 1 AND 2 AND SHALL BE MAINTAINED BY THE OWNERS OF LOTS 1 THROUGH 5 INCLUSIVE AS EQUAL COMMON INTEREST.
5. NO LOT SHALL HAVE DIRECT VEHICULAR ACCESS TO OR FROM DES MOINES DRIVE SOUTH.
6. TRAFFIC IMPACT FEES WILL BE ASSESSED AND DUE AT THE TIME OF BUILDING PERMIT FOR THE SINGLE FAMILY RESIDENCES.
7. THE ROOF DRAIN SYSTEMS WILL BE A PRIVATE SYSTEM OWNED IN COMMON BY THE OWNERS OF LOTS 1 THROUGH 5 INCLUSIVE, WHO WILL SHARE EQUAL RESPONSIBILITY FOR MAINTENANCE, REPAIR AND FUTURE REPLACEMENT OF THE SYSTEM.
8. THE APPLICANT SHALL PAY THE REQUIRED PARK IN LIEU FEE IN THE AMOUNT DETERMINED AT THE TIME OF FINAL SHORT PLAT APPROVAL.
9. THE OWNERS OF LOTS 1 THROUGH 5 SHALL BE RESPONSIBLE FOR THE REPAIR AND REPLACEMENT OF THE PLANTER STRIPS AND STREET TREES PLANTED ALONG THE SIDEWALKS OF THE INTERNAL STREETS.
10. GEOTECHNICAL REPORT WAS PREPARED BY \_\_\_\_\_



# LEGEND

- FOUND MON AS NOTED
- ⊙ MONUMENT SET "LS 38985"
- REBAR/CAP SET "LS 38985"



April 15, 2020

Laura Techico, AICP  
City of Des Moines  
Development Services Division  
21630 11<sup>th</sup> Avenue South, Suite D  
Des Moines, WA 98198

RE: Blueberry Lane III: Modified Short Subdivision Design Justification (LUA2018-0067)  
CES #16068

Dear Laura,

On behalf of our client, Richmond American Homes, we are submitting this request for a Modified Short Subdivision Design for the Blueberry Lane III preliminary short plat. This letter accompanies the formal application for a 5-lot residential short plat as submitted to the City of Des Moines.

The existing 1.56-acre tax parcel (APN 3917400130) is located on the west side of Des Moines Memorial Drive at approximately South 198<sup>th</sup> Street. The parcel is zoned RS-7200 and is currently undeveloped. The site contains no known critical areas. The parcel boundary is irregular, shaped like a 'T' and abuts Des Moines Memorial Drive with approximately fifty-six (56) feet of frontage.

The short plat proposes to subdivide 1.56-acres into five (5) single-family residential lots. Construction will include clearing and grading, utility installation, roadway improvements, and landscaping. Stormwater runoff from the new roadway will be collected and conveyed to Stormfilter for treatment followed by onsite infiltration. The lots will be served by Highline Water and Midway Sewer Districts for water and sewer respectively. The new public roadway will terminate in a cul-de-sac and provide access to the lots directly (Lots 3 and 4), via a shared access tract (for Lots 1 and 2), and via an access easement (across Lot 4 for the benefit of Lot 5).

The developer is requesting relief from the City of Des Moines Street Development Standards, Des Moines Municipal Code (DMMC) 17.35.050 – Lot Standards and 17.35.070 – Access.

As described in DMMC 17.35.050, lot standards as are follows:

*(1) General. All lots within a subdivision shall meet the minimum size and dimension requirements of Title 18 DMMC for the zone classification assigned to the property proposed to be subdivided.*

*(2) Configuration. Lots shall be shaped so that reasonable use and development is possible. Where topography, natural features, and the existing development pattern permit, the depth of lots less than 15,000 square feet in area shall be at least equal to, but not more than, twice the width of the lot.*

*(3) Orientation. Where topography, natural features, and the existing development pattern permit, side lot lines generally shall be at right angles to the street upon which the lot faces, except that on curved streets they shall be at a right angle to the tangent of the curve.*

*(4) Frontage. Every lot shall have a minimum of 20 feet of frontage on a street that is fully improved and approved by the City.*

(5) *Corner Lots.* All corner lots shall be five feet wider than the minimum lot width required by the underlying zone.

(6) *Odd Lots.* Subdivisions having lots with an irregular shape and unable to be classified under Title 18 DMMC shall show setback lines for such lots and provide covenants requiring such setbacks with recording of the final plat.

Access for Lot 5 is proposed within a 20-foot wide access easement through adjacent Lot 4 (see below for the modification request from DMMC 17.35.070). Lot 4 is 15,027 square feet including the area within the access easement and 11,027 square feet excluding the area within the access easement. We are requesting the Lot 4 area include the access easement (15,027 SF) since the area is larger than 15,000 square feet and therefore; the lot depth to width requirements don't apply. If the access easement area is not counted towards lot area, lot depth to width requirements cannot be achieved. To mitigate for the access easement, solid board fencing will be provided between the access easement and buildable lot area on Lot 4 for screening purposes. Landscaping and fencing will be provided along the northern sides of proposed Lots 4 and 5 for privacy screening for the adjacent lot owners. Regardless of lot configuration, the site's "T" shape creates a challenge in meeting the minimum lot square footage and account for the lot depth to lot width ratios.

As described in DMMC 17.35.070, access requirements as are follows:

*All lots shall have direct legal access to either a right-of-way or a private street within a vehicular access tract meeting the requirements of this chapter. Access shall be to a right-of-way unless extension of a right-of-way to a lot is constrained by topography, or the existing development pattern. The City shall determine whether access will be by right-of-way or vehicular access tract on a case-by-case basis; provided, that in no instance shall a vehicular access tract serve more than four lots.*

Access for Lot 5 is proposed within a 20-foot wide access easement through adjacent Lot 4 respectively. With the irregular 'T' shape of the existing development parcel, permitting access to proposed Lot 5 within an access easement allows the lot depth to width and buildable area requirements can be met for Lots 4 and 5. To mitigate for the access easement, solid board fencing will be provided between the access easement and buildable lot area on Lot 4 for screening purposes. Landscaping and fencing will be provided along the northern sides of proposed Lots 4 and 5 for privacy screening for the adjacent lot owners. Regardless of lot configuration, the site's "T" shape creates a challenge to meet the minimum lot square footage and account for the lot depth to lot width ratios.

In summary, with the irregular 'T' shape of the existing parcel, lot access cannot be achieved per Code without the use of an access easement and lot depth to width ratio cannot be achieved per Code without including the access easement within the lot area calculation. Regardless of lot configuration, the site is challenged to meet City Code in these areas based on the existing parcel shape. The requested modifications provide reasonable use of the existing parcel and meet the intent of DMMC as much as practicable. The provided layout creates a harmonious lot configuration to the surrounding lot and neighborhoods.

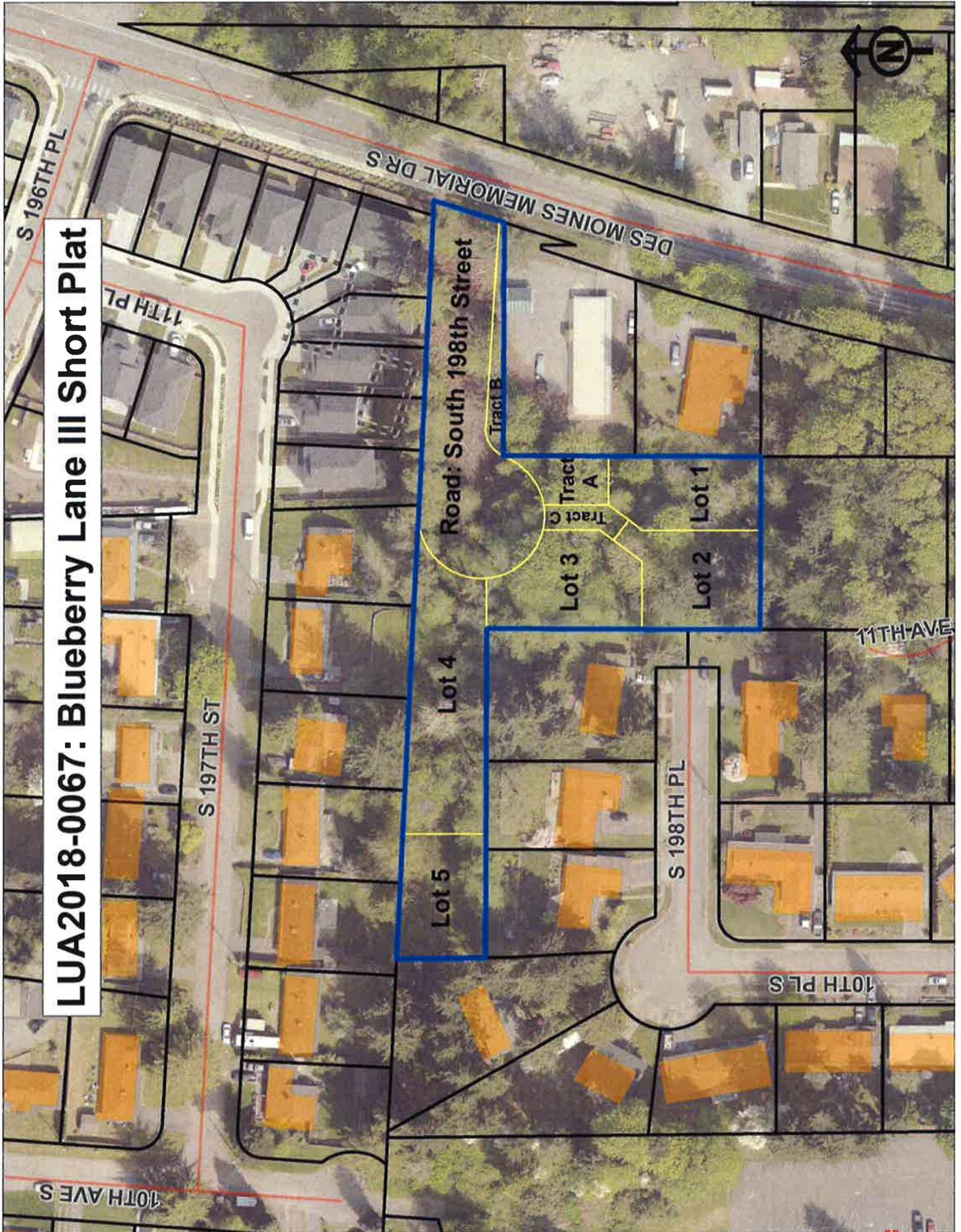
Please review and approve this Modified Short Subdivision Design Justification at your earliest convenience. If you have any questions, please do not hesitate to contact me.

Regards,



Cara Visintainer, P.E.  
Senior Project Manager

Prepared by JC



LUA2018-0067: Blueberry Lane III Short Plat

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PLANNING, BUILDING AND PUBLIC WORKS  
www.desmoineswa.gov  
21630 11TH AVENUE SOUTH, SUITE D  
DES MOINES, WASHINGTON 98198-6398  
(206) 870-7576 FAX (206) 870-6544



June 23, 2020

CES NW, Inc.  
Attn: Jennifer Caldwell  
429 29<sup>th</sup> Street NE, Suite D  
Puyallup, WA 98372

**SENT VIA EMAIL**

Re: Blueberry Lane III Modified Short Plat – LUA2018-0067; Preliminary Plat Approval

Dear Ms. Caldwell,

The purpose of this letter is to provide written notice that City staff has approved, with conditions, the Preliminary Blueberry Lane III Modified Short Subdivision, King County Parcel #3917400130, pending concurrence by the Des Moines City Council.

Per Des Moines Municipal Code (DMMC) 17.20.020(3), the planning official shall provide notice of the modified short subdivision decision and written findings to the city council at a regularly scheduled meeting. The city council shall by motion decide whether to concur with the decision or review further. The decision shall not be considered final until city council action on the matter is complete.

City staff has determined that the preliminary modified short subdivision is consistent with the approval criteria established by DMMC 17.15.070. The approval of a preliminary modified short subdivision by the City constitutes approval only of the general concept and layout of the plat. Preliminary approval does not signify acceptance of all engineering details of the plat. These engineering details remain subject to approval and must be complete before final short plat approval.

The modified short subdivision process provides a mechanism whereby an applicant may propose and the City may consider and approve an innovative or unusual subdivision that does not comply with one or more of the requirements specified in chapter 17.35 DMMC – Layout and Design of Subdivisions and Similar Requirements. The aspects of this application that do not meet standard subdivision requirements are that Lot 4 would exceed the allowable lot width to depth ratio allowed by DMMC 17.35.050(2), and that access to Lot 5 is provided by an easement across Lot 4, which is not permitted by DMMC 17.35.070. Per DMMC 17.15.060(2), unique design features not ordinarily provided in traditional subdivisions/short subdivisions shall be incorporated into the proposal to offset the need for the modified standards. The following conditions of approval shall apply:

- To offset the proposed deviation to the lot width to depth ratios on Lot 4, a Type II – Visual Buffer landscaping strip and fencing shall be provided along the northern sides of Lots 4 and 5 for privacy screening for the adjacent lot owners.

- To offset the access easement, solid board fencing shall be provided between the access easement and buildable lot area on Lot 4 for screening purposes.
- Tract A (Drainage/Open Space) will include a play area, as grassed open space, in the proposed storm water tract. Per DMMC 18.195.330(1), a Type 1 planting strip not less than 10 feet in depth shall be provided along all property lines of Tract A abutting a Residential Zone. Landscaping shall be limited to shrubs and groundcover to be reviewed by Surface Water Management during civil review to ensure that they do not interfere with the functionality of the tract. Any surface improvements will need to be approved by Surface Water Management to ensure that such improvements do not interfere with the maintenance of the underground drainage facilities. A maintenance and operations agreement will be needed for the surface (SWM would not be maintaining the open space, just the drainage facilities).
- DMMC 17.35.180 requires that the applicant requesting a subdivision develops, dedicates, and improves space for use as a public park or provides a payment in lieu of this dedication. The applicant will be required to pay the park in-lieu fee at the time of final plat in order to meet the park requirement pursuant to DMMC 17.35.180.
- Per DMMC 18.235.050, multiple building permit applications by the same applicant or one standing in privity to the applicant for the construction of a series of single-family dwellings in the same subdivision or short subdivision are considered regulated improvements requiring a separate Design Review application.

The applicant shall submit detailed design documents for all required right-of-way, utility, or other improvements to the Planning, Building, and Public Works Department upon approval of the preliminary plat by City Council. See current fee schedule for engineering plan review. These documents shall be reviewed and approved by the City. Once the improvements have been substantially completed, the applicant may apply for final short plat approval.

The following comments shall be incorporated into the civil plan submittal for the proposed project:

TRANSPORTATION:

1. Public roadway cross section shall be consistent with the attached detail DM.A4.1.
  2. Private roadway cross section shall be consistent with attached detail DM.A6.1.
  3. Provide all driveway and curb ramp transition slopes to verify ADA compliance.
  4. Provide landscaping plans within Right-of-Way.
  5. Reference WSDOT Standard Plan F-10.12-03 for cement concrete curb and depressed curb.
  6. Reference WSDOT Standard Plan F-80.10-04 Type 1 for all driveway approaches.
  7. Stop sign and street name signage shall be consistent with attached detail DM.G1.1, DM.G1.2, and DM.G1.3.
  8. Install thermoplastic stop bar at approach to Des Moines Memorial Drive South per attached detail DM.H2.1.
  9. A 5 foot building setback shall be recorded for all access easements.
  10. It appears only two access points will now be within the cul-de-sac. If so, the depressed curb between the driveways is not needed. Provide two separate driveway approaches.
  11. Access by easement may be allowed as a part of the Modified Short Plat process.
- If you have any questions or need additional information, please call Tommy Owen at (206)870-6870.

SOUTH KING FIRE & RESCUE:

For building permits:

1. Water supply: A Certificate of Water Availability including a hydraulic fire flow model\* shall be requested from the water district and provided at the time of building permit application.

\*A hydraulic fire flow model is required for single family residences that exceed 3600 square feet including garages and covered areas.

2. Fire hydrants: The proposed fire hydrant on page C4 of the Utility Plan is acceptable.
3. Emergency access: Fire apparatus access roads shall comply with all requirements of Fire Access Policy 10.006. <http://southkingfire.org/DocumentCenter/Home/View/24>
4. Fire sprinkler system: An NFPA 13D fire sprinkler system may be required in the structure built on Lot 5. Determination of requirements for residential fire sprinklers, if any, are made at the time of building permit application.

PLANNING:

1. For Civil Plan Review submittal:

- a. The applicant shall submit a Grading Permit application in conjunction with the civil plans. Application and fee schedules are available at <http://desmoineswa.gov/184/Permit-Applications-Worksheets>. Engineering Plan Review fees per the current fee schedule will also be due with the civil plan submittal.
- b. The applicant shall submit a Bond Quantity Worksheet for all required right-of-way, utility, or other improvements. <http://desmoineswa.gov/328/Forms-Documents>
- c. A separate Right-of-Way Permit will be required for any work within public rights-of-way.
- d. If the civil improvements associated with the subdivision require the removal/fill of more than 500 cubic yards of material, State Environmental Policy Act (SEPA) review will be required in conjunction with the civil plan review. A copy of the SEPA Checklist and the submittal requirements will be provided upon request.
- e. Per DMMC 17.35.210 – Natural features – Significant vegetation, contains provisions for retention of significant vegetation. The civil submittal shall distinguish the significant trees on site per the definition in DMMC 17.01.050. Civil submittal materials shall address the retention criteria in DMMC 17.35.210 in the identification of significant trees to be retained or removed.

If you have any questions regarding the comments, please contact Laura Techico at [ltechico@desmoineswa.gov](mailto:ltechico@desmoineswa.gov) or 206-870-6595.

DMMC 17.12.180 requires that the applicant submit the final short plat documents, together with required recording fees, to the City for recording with the county auditor within six months from the date of approval. If the final documents are not submitted within six months, the short plat is deemed void and any development rights that have vested in the applicant shall be considered abandoned.

The decision to approve or deny this application is a Type II land use action, which is appealable to the Hearing Examiner as provided in DMMC 18.20.170 and 18.240.170. An appeal must be filed with the City Clerk within ten (10) days from the final decision date.

Sincerely,



Laura Techico, AICP  
Principal Planner

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# AGENDA ITEM

## BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

**SUBJECT:** Barnes Creek/Kent-Des Moines Road  
Culvert Project: Design Agreement  
GCB 2959 with Washington State  
Department of Transportation  
(WSDOT)

**ATTACHMENTS:**

1. Local Agency Agreement GCB2959  
Amendment
2. Exhibit A
3. Original Local Agency Agreement

**AGENDA OF:** July 16, 2020

**DEPT. OF ORIGIN:** Public Works

**DATE SUBMITTED:** July 8, 2020

**CLEARANCES:**

Community Development \_\_\_\_\_

Marina \_\_\_\_\_

Parks, Recreation & Senior Services \_\_\_\_\_

Public Works *R. Blum*

**CHIEF OPERATIONS OFFICER:** *D. J. ...*

Legal /s/ TG

Finance *Colleen W...*

Courts \_\_\_\_\_

Police \_\_\_\_\_

**APPROVED BY CITY MANAGER**

**FOR SUBMITTAL:** *Michael ...*

**Purpose and Recommendation:**

The purpose of this agenda item is to seek City Council approval of a Local Agency Agreement Amendment between Des Moines and Washington State Department of Transportation (WSDOT) for WSDOT to complete the design and permitting of the Barnes Creek/Kent-Des Moines Road Culvert Replacement Project. The Agreement is for a 50/50 cost share of the design and permitting estimated at \$1,150,000. Exhibit A of the Local Agency Agreement (Attachment 2) includes a total cost estimate of the project at \$4,321,912, which excludes Midway Sewer District's utility relocation costs of \$199,334. Staff recommends approving the Local Agency Agreement Amendment.

The following motions will appear on the Consent Calendar:

**Suggested Motion:**

**Motion:** "I move to approve Local Agency Agreement CGB2959 Amendment between the City of Des Moines and the Washington State Department of Transportation for the design and permitting of the Barnes Creek/Kent-Des Moines Road Culvert Replacement Project in the amount of \$575,000, plus a 20% contingency and further authorize the City Manager or his designee to sign said Amendment, substantially in the form as submitted."

**Background:**

The Barnes Creek drainage basin is fairly large at 355 acres in size and is roughly bounded from Highway 99 to 13<sup>th</sup> Avenue and S. 216<sup>th</sup> Street to Kent-Des Moines Road. Barnes Creek is a major tributary of the Massey Creek system with the stream passing below Kent-Des Moines (KDM) Road through a 90-foot long 24-inch diameter vitrified clay culvert with the confluence of Massey Creek located on the south side of KDM. Presently, the upstream end of the KDM culvert is protected with a metal cage to prevent large debris from entering/blocking the culvert entrance. Upstream of the culvert, Barnes Creek is mostly open stream providing a potential of over a mile of fish habitat. A culvert replacement project located upstream at 223<sup>rd</sup> Street was recently made anticipating the eventual culvert replacement at KDM that would allow access to fish (salmon) to the upper reaches of Barnes Creek.

In 2015, the KDM culvert was cleaned and inspected and an assessment made from both its physical condition and fish barrier potential. The video inspection indicated that the pipe is in poor condition with the structural integrity of the pipe given a “critical” classification. Many sections of the pipe are cracked and are no longer circular and several sections are displaced. As there is no structural integrity in the cracked pipe itself, the current backfill around the pipe is maintaining the current shape (oblong). Should a large segment of the broken culvert become dislodged and expose the backfill material, the backfill will likely fall into the pipe and be washed downstream or block the culvert entirely. Depending on the rate of the loss of backfill, a void above the culvert would develop leading to road failure. Potential remaining life span of the culvert is speculative, but the remaining life is likely less than 10 years.

Aside from the obvious fish barrier caused by the upstream debris guard, the fish passage assessment indicated only 33% passability, meaning the culvert is likely a barrier at least 2/3 of the time allowing passage under limited flow conditions when the flows provide sufficient in depth in the pipe but not too high as to create a velocity barrier.

Several studies have been made, including the 1990 Massey Creek Basin Plan and the 1994 Lower Massey Creek Alternative Analysis, that have indicated that the existing 24-inch culvert is insufficient in size and needs to be upsized to a minimum 48-inch diameter pipe. During large storm events, the existing pipe’s capacity is exceeded creating backwater conditions upstream of the pipe and even overtopping of Kent-Des Moines Road. However, given the need to meet current fish passage requirements the replacement of the pipe will need to be substantially larger than 48-inches and likely a large box culvert. The construction of the replacement will also have to accommodate the heavy traffic of KDM Road, the relatively deep burial depth (20-25 feet) of the culvert, as well as support or relocate numerous utilities that cross over the culvert. An open-cut construction technique will most likely be the method used.

**Discussion:**

Preliminary design work had started in 2016 but the project was placed on hold when staff learned that the culvert is included in a list of priority state culvert replacements that is required under a federal court mandate to repair hundreds of fish-blocking culverts under state roads in order to maintain the 1850’s treaty fishing rights of the tribes. The project was placed on hold until a discussion was made with WSDOT regarding the timing of the culvert’s replacement, the concern of the condition of the culvert,

and whether the state would be interested in a partnership with the City for replacing the project within the next five years.

WSDOT is continuing to make progress toward replacing the culverts under the mandate. Unfortunately, the Barnes Creek Culvert is only one of some 800+ culverts that are under state roads that need to be replaced. As such, it could be ten or more years before the state is able to do this project, given that several hundred culverts have been prioritized higher.

However, after reviewing the 2015 culvert condition assessment and meeting with City staff, WSDOT has agreed to partner with the City in order to substantially speed up the timeline for the project. The attached Local Agency Agreement Amendment is for the design and permitting phase of the project to be completed by the end of this year with construction of the project anticipated in the summer of 2021. It is proposed that the City and WSDOT will share 50/50 on the total cost of the project. Once the design and permitting phase is complete, the Agreement will be amended again for the construction phase.

The Local Agency Agreement includes the following tasks:

- Project survey
- Preliminary Hydraulic Design
- Preliminary Right-of-Way Plans
- Utility coordination
- Preliminary Public Outreach
- Environmental Permitting
- Plans, Specifications and Estimate package

#### Amendment

An Agreement Amendment is needed to cover additional design and land acquisition costs on the project. The existing culvert is undersized allowing for flow detainment behind the 25-foot road embankment. Replacement of the existing culvert will increase flows by 30%. Additional survey and analysis was required to ensure that water levels during storm events did not pose a threat to public safety. A stormwater analysis and report was prepared for the project to address the downstream concerns as well as fish passage issues brought up by the Tribes.

Initial scoping assumed that the existing culvert would be replaced with a 16-foot wide 3-sided culvert with the lower portion of the culvert buried. During permit review, the Muckleshoots were concerned that the 3-sided culvert would not operate the same as a preferred bridge structure. Additional efforts were needed to justify the culvert functions over the more expensive bridge option. The bridge option would add \$1.3M to the project cost and 120 days of full road closure vs the planned 9 days. To satisfy the Muckleshoots, the footings of the culvert will be embedded deeper to ensure changes to the streambed grade would allow for fish passage.

Another major design change is the inclusion of a 12-foot wide maintenance access to both ends of the culvert. The effort also included additional permit work to mitigate for more shoulder widening as well as property acquisition needed for the maintenance access areas.

Other additional design work includes water quality enhancements requested by the Tribes such as inclusion of large woody debris for fish habitat creation as well as tree mitigation (nearly 250 2-gallon trees need for mitigation) which exceeds the current capacity of the site. The additional property acquisition will be used as the tree mitigation area.

The Agreement allows for a 20% increase in costs (contingency) above the cost estimate of \$1,150,000 for the project's design and permitting.

**Financial Impact:**

Exhibit A of the Local Agency Agreement Amendment (Attachment 2) includes a cost estimate of the project at \$4,321,912. This is a 50% level cost estimate which may vary significantly depending on refinement of the design and addressing site constraints. A copy of the proposed project budget is provided as Attachment 1, which allocates \$2,160,956 of SWM Utility funds to cover a 50% cost share of the project plus \$430,000 of contingency funds. The 2020 budget assumes that the project would be constructed this year and therefore no budget amendment is needed. However, the 2021-2027 CIP will need to be revised using the City's 50% share of adjusted price shown in Exhibit A.

**Alternatives:**

The City Council could decide not to continue with the project at this time. This is not recommended by staff given the lead time needed to address the project's potentially lengthy permitting process, design issues, potential right-of-way acquisition, as well as the critical state of the culvert.

**Recommendation/Conclusion:**

Staff requests that Council approve the proposed motions.

**Concurrence:**

Legal, Public Works and the Finance Departments concur.



<b>Local Agency Participating Agreement Work by WSDOT — Actual Cost</b>		Local Agency Name & Address	
Agreement Number		Section/Location	
State Route	Control Section Number	Plans, Specifications and Cost Estimates (PS&E) for the Local Agency Work by Local Agency?	Yes    No
Region		PS&E Due Date:	
Advance Payment Required?    Yes    No		Description of Work:	
Advance Payment Amount			
<b>WSDOT</b>		<b>LOCAL AGENCY</b>	
State Agency Representatives:		Local Agency Representatives:	
Name:		Name:	
Title:		Title:	
Address:		Address:	
Email Address:		Email Address:	
Phone:		Phone:	

This Agreement is made and entered into between the Washington State Department of Transportation (WSDOT) and the above named governmental entity (Local Agency), hereinafter collectively referred to as the “Parties” and individually as the “Party.”

**Recitals**

1. WSDOT is planning the construction or improvement of a section of the state route as shown above, and in connection therewith, the Local Agency has requested that WSDOT perform certain work for the Local Agency as described above under Description of Work and/or further described in Exhibit B, (Work).
2. It is deemed to be in the public’s best interest for WSDOT to include the requested Work in WSDOT’s construction contract for the state route improvement.
3. The Local Agency is obligated for the cost of the Work described herein.

Now, Therefore, pursuant to RCW 47.28.140 and/or chapter 39.34 RCW and in consideration of the terms, conditions, and performances contained herein, the recitals as stated above, and the attached Exhibits which are incorporated and made a part hereof,

**It Is Mutually Agreed As Follows:**

**1. Plans, Specifications, and Cost Estimates**

- 1.1 WSDOT, on behalf of the Local Agency, agrees to perform the Work, as further provided herein and pursuant to the attached exhibits. Exhibit A is the Cost Estimate and Exhibit B, if included as an attachment, further defines the Work to be constructed for the Local Agency. The combination of the Local Agency's Work and WSDOT's improvements hereinafter constitute the Project.
- 1.2 If indicated in the above heading, the Local Agency shall provide WSDOT with plans, specifications and cost estimates (PS&E) for the Work.
  - 1.2.1 The PS&E shall be in accordance with the state of Washington Standard Specifications for Road, Bridge and Municipal Construction, and its amendments thereto (Standard Specifications), current at the time of Project advertisement, mutually acceptable design standards, or the Local Agency's standards, if applicable and specified by the Local Agency. Backup calculations for quantities and breakdowns for lump sum items shall be included with the PS&E for the Work.
  - 1.2.2 If the PS&E for the Work, with backup calculations and breakdowns, is not delivered by the above PS&E due date, WSDOT, at its sole discretion, may proceed without the Local Agency Work included with WSDOT's improvements. The Local Agency agrees to reimburse all WSDOT costs incurred up to and as a result of the Local Agency's failure to timely provide the PS&E. This Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6.
- 1.3 WSDOT will incorporate the Local Agency's Work or Work PS&E into WSDOT's PS&E for WSDOT's improvements to produce a combined advertisement (Ad) ready PS&E for the Project. WSDOT will document WSDOT performed engineering design work required to incorporate the Work or Work PS&E into WSDOT's PS&E (Design Documentation). WSDOT shall provide up to two intermediate review sets of the PS&E and Design Documentation at mutually agreeable milestones. WSDOT will provide the Local Agency with one (1) reproducible copy of the stamped final Design Documentation prior to the proposed Ad date.
- 1.4 WSDOT will provide the Local Agency with one (1) reproducible copy of the Ad ready PS&E for the Project a minimum of thirty (30) working days prior to the proposed Ad date. The Local Agency will have fifteen (15) working days to review the Ad ready PS&E for the Project, resolve any concerns, and provide WSDOT with written approval, conditional approval, or rejection of the Ad ready PS&E for the Work portion of the Project. In the event the Work portion of the Ad ready PS&E is conditionally approved or rejected, the Local Agency shall include the reasons for conditional approval or rejection. The Local Agency may request an extension of time in writing, provided that WSDOT receives the written request not later than fifteen (15) working days after the Local Agency has received the Ad ready PS&E. WSDOT shall provide a written response, indicating the number of working days extended, if any.
- 1.5 If WSDOT does not receive the Local Agency's written approval, conditional approval or rejection of the Work portion of the Ad ready PS&E within fifteen (15) working days and any approved extension of time pursuant to Section 1.4, or if WSDOT cannot accept the Local Agency's condition(s) of approval, or if the Local Agency has not acquired all right of way and permits required to construct, maintain, and operate the Work, WSDOT may, at its sole discretion, delete the Work from the Project and advertise WSDOT's improvements. The Local Agency agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with either WSDOT or Local Agency deleting the Work from the Project. This Agreement shall then terminate upon receipt of all reimbursement payments in accordance with Section 6.

## 2. Bid, Award, and Cost Adjustments

- 2.1 WSDOT will advertise the Project for bids. WSDOT will be the Local Agency's representative during the Ad and Project contract award period. When requested by WSDOT, the Local Agency shall timely assist WSDOT in answering bid questions and resolving any design issues that may arise that are associated with the Work. All comments and clarifications must go through WSDOT.
- 2.2 If the Local Agency is responsible for preparing the Work PS&E, the Local Agency agrees to provide WSDOT with any addenda required for the Work during the Ad period, to the Parties' mutual satisfaction.
- 2.3 WSDOT shall provide the Local Agency with written notification of the bid price for the Work. The Local Agency shall have five (5) working days from the date of written notification to provide WSDOT written approval of the bid price for the Work, or request the Work be deleted from the Project. The Local Agency may request an extension of time in writing, provided that WSDOT receives the written request not later than five (5) working days after the Local Agency has received the written notification. WSDOT shall provide a written response indicating the number of working days extended, if any.
- 2.4 The Local Agency acknowledges that if it fails to provide WSDOT with written approval of the bid price for the Work or request that the Work be deleted from the Project within five (5) working days and any approved extension of time pursuant to Section 2.3, WSDOT shall delete the Work from the Project. In this event, the Local Agency agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with deleting the Work from the Project. The Local Agency understands that deleting the Work from the Project may require an equitable adjustment to the Project contract and agrees to reimburse WSDOT for costs associated with the equitable adjustment. This Agreement shall then terminate upon receipt of all reimbursement and equitable adjustment payments in accordance with Section 6.
- 2.5 If the Local Agency approves the bid price for the Work and WSDOT does not award or execute the Project contract, but thereafter re-advertises the Project for bids, WSDOT agrees to pay all WSDOT costs to re-advertise the Project. The Local Agency agrees that WSDOT is not responsible for increased bid prices or delay to the Work or other impacts to the Local Agency resulting from re-advertising the Project.
- 2.6 If the Local Agency approves the bid price for the Work and WSDOT does not award or execute the Project contract and does not re-advertise the Project for bids, this Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6. The Local Agency agrees that WSDOT is not responsible for potential increased costs for the Work, delay to the Work or other impacts to the Local Agency resulting from not awarding the Project.

## 3. Construction

- 3.1 WSDOT will be the Local Agency's representative during construction and will act as owner in the administration of the contract for the Work. WSDOT will designate a WSDOT Project Engineer to provide all services and tools, including but not limited to construction administration, inspection, materials testing, and representation, necessary to administer and manage the contract to ensure that the Work is constructed in accordance with the contract.
- 3.2 The Local Agency may consult with and inquire of WSDOT Project Engineer, attend all meetings, and have access to all documentation concerning the Work. The Local Agency shall not provide direction, directly or indirectly, to WSDOT's contractor. All formal contacts between the Local Agency and the contractor shall be through WSDOT's representative.
- 3.3 When it becomes known that quantities for a unit bid item will exceed plan quantity for the Work by ten (10) percent or result in a cost increase for the Work exceeding the total amount by the percentage listed under Section 6.5, WSDOT shall consult with the Local Agency on possible courses of action within three (3) working days in accordance with Section 4.
- 3.4 The Local Agency may inspect the Work. Any costs for such inspection shall be borne solely by the Local Agency. All contact between said inspector and the contractor shall be only through WSDOT's inspector or WSDOT's representative.

- 3.5 WSDOT will prepare the final construction documentation in general conformance with WSDOT's Construction Manual. WSDOT will maintain one set of plans as the official "as-built" set, then make notations in red ink of all plan revisions typically recorded per standard WSDOT practices, as directed by WSDOT's Construction Manual. Once the Local Agency has accepted the Work per Section 5, WSDOT will provide one reproducible set of as-built plans to the Local Agency within \_\_\_\_\_ (\_\_\_\_\_) working days.

#### **4. Contract Changes**

- 4.1 Changes to the Project contract will be documented by change order in accordance with the Standard Specifications. WSDOT shall process change orders for all changes affecting the Work in the manner set forth in subsection SS 1-04.4, Approval of Changes/Checklist, WSDOT Construction Manual, current edition.
- 4.2 Required changes involve such changes in quantities or alterations to the Work as are necessary to satisfactorily complete the Project. All other changes affecting the Work shall be considered elective changes.
- 4.3 The Local Agency authorizes WSDOT to initiate all required changes affecting the Work and to negotiate, document and execute the associated change orders. The Local Agency agrees to pay for the increases in cost, if any, for the required changes affecting the Work in accordance with Section 6.
- 4.4 WSDOT will advise the Local Agency of any proposed required changes affecting the Work as soon as possible and provide it with an opportunity, if time permits, to review the change before implementation. WSDOT will determine the length of the review time based upon the need to expedite the change to avoid delay to the contractor.
- 4.5 The Local Agency may request additions to the Work through WSDOT in writing. WSDOT will implement the requested changes as elective changes, provided that a change does not negatively impact WSDOT's transportation system and complies with the Standard Specifications, Project permits, state and/or federal law, applicable rules and/or regulations, and/or WSDOT design policies, and does not unreasonably delay critically scheduled Project contract activities.
- 4.6 All elective changes to the Work shall be approved in writing by the Local Agency before WSDOT directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The Local Agency agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 6.
- 4.7 WSDOT will make available to the Local Agency all change order documentation related to the Work.
- 4.8 In the event it is determined that the Local Agency does not have sufficient funds to complete the Work, WSDOT and the Local Agency shall negotiate to determine the future of the Work. If it is determined that the Work cannot proceed, the Work shall be brought to a level that is safe for public use and WSDOT will terminate the remainder of the Work from the Project contract. In the event the Work is terminated, Section 5 shall apply for that portion of the Work completed up to the time of termination. The Local Agency agrees to pay all costs associated with termination, including contractor claims, in accordance with Section 6.

#### **5. Acceptance**

- 5.1 Prior to Work acceptance, WSDOT and Local Agency will perform a joint final inspection. The Local Agency agrees, upon satisfactory completion of the Work and receipt of a Notice of Physical Completion of the Work, as determined by WSDOT, to deliver a letter of acceptance to WSDOT which shall include a release of WSDOT from all future claims or demands of any nature resulting from the performance of the Work and WSDOT administration thereof, outside WSDOT right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of WSDOT in administering the Work.

5.2 If a letter of acceptance is not received by WSDOT within ninety (90) days following delivery of a Notice of Physical Completion of the Work to the Local Agency, the Work and WSDOT administration thereof shall be considered accepted by the Local Agency, and WSDOT shall be released from all future claims and demands of any nature resulting from the performance of the Work and WSDOT's administration thereof, outside WSDOT right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of WSDOT in administering the Work.

5.3 The Local Agency may withhold its acceptance of the Work by submitting written notification to WSDOT within \_\_\_\_\_ Working Calendar (\_\_\_\_) days following delivery of a Notice of Physical Completion of the Work. This notification shall include the reason(s) for withholding acceptance.

**6. Payment**

6.1 The Local Agency, in consideration of the faithful performance of the Work performed by WSDOT and its contractor, agrees to reimburse WSDOT for the actual direct and related indirect costs of the Work, as estimated in Exhibit A.

6.2 WSDOT shall provide detailed invoices to the Local Agency for the Work performed by WSDOT and its contractor or for costs incurred as provided in Sections 1.2.2, 1.5, 2.4, 4.8 or 8.1.4, and the Local Agency agrees to make payment within thirty (30) days from receipt of an invoice. A payment will not constitute agreement as to the appropriateness of any item. At the time of the final invoice, the Parties will resolve any discrepancies.

6.3 The Local Agency agrees that if it does not make payment within ninety (90) days after receipt of an invoice, WSDOT may deduct and expend any monies to which the Local Agency is entitled to receive from the Motor Vehicle Fund.

6.4 Advance Payment: If an advance payment is required, the Local Agency agrees to pay WSDOT the "Advance Payment Amount," shown above, within twenty (20) days after receipt of Project contract award notification. The advance payment represents approximately fifteen percent (15%) of the cost estimate and covers costs incurred by WSDOT in the initial stages of the Work. The advance payment will be carried throughout the life of the Local Agency's cost obligations, with final adjustment made in the final invoice.

6.5 Increase in Cost: In the event unforeseen conditions require an increase in the cost of the Work above the cost estimate (including sales tax, engineering, and contingencies) by more than \_\_\_\_\_ (\_\_\_\_) percent, the Parties agree to modify this Agreement by executing a written amendment to address the increase pursuant to Section 10.1, or implement Section 4.8.

**7. Right of Entry**

7.1 The Local Agency hereby grants to WSDOT and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the Local Agency has an interest for the purpose of constructing the Project.

7.2 Where applicable, the Local Agency hereby grants to WSDOT and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the Local Agency has an interest for WSDOT to construct, operate, maintain and/or reconstruct signal loop detectors and appurtenances for signals belonging to WSDOT, if any, that are constructed within the Local Agency's right of way. The terms of this Section 7.2 shall survive the termination of this Agreement.

**8. Claims**

8.1 Claims for Additional Payment

8.1.1 In the event the contractor makes claims for additional payment associated with the Work, WSDOT will immediately notify the Local Agency of such claims. Such claims shall be made in the manner and form as provided for in the Standard Specifications.

- 8.1.2 The Local Agency shall not be obligated to pay such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of WSDOT in administering the Work.
- 8.1.3 The Local Agency shall have the right to review and comment on any settlement for claims associated with the Work. However, WSDOT shall have the ultimate right to settle such claims. In the event the Local Agency does not agree with the claim settlement as negotiated by WSDOT, the Local Agency shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the Local Agency and WSDOT on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 10.7.
- 8.1.4 If WSDOT agrees, the Local Agency may defend contractor claims associated with the Work at its own cost, and in doing so, the Local Agency agrees to pay any resulting settlement, court judgment or arbitration award. WSDOT will cooperate with the Local Agency in the Local Agency's defense of the claims. The Local Agency agrees to reimburse any WSDOT costs, including attorneys fees, incurred in providing such assistance in accordance with Section 6.
- 8.2 Claims for Damages: After Work acceptance, in the event of claims for damages or loss attributable to bodily injury, sickness, death, or injury to or destruction of property that occurs within the limits of the Work located on the Local Agency's right of way, the Local Agency shall defend such claims and hold harmless WSDOT therefrom, and WSDOT shall not be obligated to pay any claim, judgment or cost of defense. Nothing in this Section, however, shall remove from WSDOT any responsibility defined by the current laws of the state of Washington or from any liability for damages caused by WSDOT's own negligent acts or omissions independent of the Work performed pursuant to this Agreement.
- 9. Ownership, Operation, and Maintenance**
- 9.1 Upon acceptance of the Work as provided in Section 5, the Local Agency shall be the sole owner of that portion of the Work located within the Local Agency's right of way, and the Local Agency shall be solely responsible for ownership and all future operation and maintenance of the Work at its sole cost, without expense, cost, or liability to WSDOT.
- 9.2 WSDOT facilities constructed on Local Agency right of way, if any, as identified in Section 7.2 shall be owned by WSDOT, and WSDOT shall be responsible for the operation and maintenance of such facilities at WSDOT's sole cost, until removed. The terms of this Section shall survive the termination of this Agreement.
- 10. General Provisions**
- 10.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.
- 10.2 Termination: Neither WSDOT nor the Local Agency may terminate this Agreement without the written concurrence of the other Party, except as otherwise provided under Sections 1.2.2, 1.5, 2.4, and 2.6.
- 10.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the Local Agency agrees to reimburse WSDOT for the actual direct and related indirect expenses and costs it has incurred for the Work up to the date of termination, as well as the costs of non-cancelable obligations.
- 10.2.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 10.3 Independent contractor: WSDOT shall be deemed an independent contractor for all purposes, and the employees of WSDOT or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the Local Agency.

- 10.4 Indemnification: The Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) WSDOT, its employees, authorized agents, or contractors and (b) the Local Agency, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party, its employees, authorized agents, and/or contractors.
- 10.5 Acceptance of Liability: The Local Agency agrees and accepts full liability for (1) the PS&E provided for the Work to WSDOT, if any; and (2) for any Work the Local Agency has provided direction to WSDOT to design and/or construct outside WSDOT's right of way and/or WSDOT's jurisdiction that does not meet WSDOT standards.
- 10.6 Survivability: Sections 10.4 and 10.5 shall survive the termination of this Agreement.
- 10.7 Disputes: In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the Local Agency shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.
- 10.8 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in the superior court situated in \_\_\_\_\_ County, Washington unless filing in another county is required under any provision of the Revised Code of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees and costs..
- 10.9 Audits/Records: All Project records for the Work in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years. The Local Agency shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the Local Agency require copies of any records, it agrees to pay the costs thereof. The Parties agree that the Work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or state of Washington and/or the federal government.
- 10.10 Term of Agreement: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall continue until the Work is accepted by the Local Agency pursuant to Section 5, or as otherwise provided herein, and all obligations for payment have been met.
- 10.11 Working Days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

In Witness Whereof, the Parties hereto have executed this Agreement as of the Party's date signed last below.

<b>Local Agency</b>	<b>Washington State Department of Transportation</b>
Signature: _____	Signature: _____
By: _____ Print Name	By: _____ Print Name
Title: _____	Title: _____
Date: _____	Date: _____

	<b>Adjusted Price</b>	<b>GCB 2959</b>	<b>Inflated Utility Cost</b>	<b>Additional Cost</b>
CN	\$3,371,246.00	\$1,919,000.00	\$199,334.00	\$1,452,246.00
ROW	\$100,000.00	\$22,500.00		\$77,500.00
PE	\$1,050,000.00	\$500,000.00		\$550,000.00
			<b>Total</b>	<b>\$2,079,746.00</b>

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**Washington State  
Department of Transportation**

<b>Local Agency Participating Agreement Work by WSDOT — Actual Cost</b>		Local Agency Name & Address City of Des Moines 21650 11th Ave. S Des Moines, WA 98198	
Agreement Number GCB 2959		Section/Location Barnes Creek Fish Passage	
State Route 516	Control Section Number 1763	Plans, Specifications and Cost Estimates (PS&E) for the Local Agency Work by LOCAL AGENCY?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Region Northwest		PS&E Due Date:	
Advance Payment Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Description of Work: Environmental Retrofit - Fish Passage. 50% Cost Share by the City of Des Moines, Preliminary Engineering	
Advance Payment Amount			
<b>WSDOT</b>		<b>LOCAL AGENCY</b>	
State Agency Representatives:		Local Agency Representatives:	
Name: Azim Sheik-Taheri		Name: Brandon Carver, P.E., P.T.O.E.	
Title: ARA - Prg Mgmt & Administrative Services		Title: Public Works Director	
Address: 15700 Dayton Ave. North PO Box 330310 Seattle, WA 98133-9710		Address: City of Des Moines 21650 11th Ave. So. Des Moines, WA 98198	
Email Address: SheikAz@wsdot.wa.gov		Email Address: BCarver@desmoineswa.gov	
Phone: 206.440.4761		Phone: 206.870.6543	

This Agreement is made and entered into between the Washington State Department of Transportation (WSDOT) and the above named governmental entity (LOCAL AGENCY).

WHEREAS, WSDOT is planning the construction or improvement of a section of the state route as shown above, and in connection therewith, the LOCAL AGENCY has requested that WSDOT perform certain work for the LOCAL AGENCY as described above under Description of Work and/or further described in Exhibit B, (Work), and

WHEREAS, it is deemed to be in the public's best interest for WSDOT to include the requested Work in WSDOT's construction contract for the state route improvement, and

WHEREAS, the LOCAL AGENCY is obligated for the cost of the Work described herein,

NOW, THEREFORE, pursuant to RCW 47.28.140 and/or chapter 39.34 RCW and in consideration of the terms, conditions, and performances contained herein, the recitals as stated above, and the attached Exhibits which are incorporated and made a part hereof,

**IT IS MUTUALLY AGREED AS FOLLOWS:**

**1. PLANS, SPECIFICATIONS, AND COST ESTIMATES**

- 1.1 WSDOT, on behalf of the LOCAL AGENCY, agrees to perform the Work, as further provided herein and pursuant to the attached exhibits. Exhibit A is the Cost Estimate and Exhibit B, if included as an attachment, further defines the Work to be constructed for the LOCAL AGENCY. The combination of the LOCAL AGENCY's Work and WSDOT's improvements hereinafter constitute the Project.
- 1.2 If indicated in the above heading, the LOCAL AGENCY shall provide WSDOT with plans, specifications and cost estimates (PS&E) for the Work.
  - 1.2.1 The PS&E shall be in accordance with the state of Washington Standard Specifications for Road, Bridge and Municipal Construction, and its amendments thereto (Standard Specifications), current at the time of Project advertisement, mutually acceptable design standards, or the LOCAL AGENCY's standards, if applicable and specified by the LOCAL AGENCY. Backup calculations for quantities and breakdowns for lump sum items shall be included with the PS&E for the Work.
  - 1.2.2 If the PS&E for the Work, with backup calculations and breakdowns, is not delivered by the above PS&E due date, WSDOT, at its sole discretion, may proceed without the LOCAL AGENCY Work included with WSDOT's improvements. The LOCAL AGENCY agrees to reimburse all WSDOT costs incurred up to and as a result of the LOCAL AGENCY's failure to timely provide the PS&E. This Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6.
- 1.3 WSDOT will incorporate the LOCAL AGENCY's Work or Work PS&E into WSDOT's PS&E for WSDOT's improvements to produce a combined advertisement (Ad) ready PS&E for the Project. WSDOT will document WSDOT performed engineering design work required to incorporate the Work or Work PS&E into WSDOT's PS&E (Design Documentation). WSDOT shall provide up to two intermediate review sets of the PS&E and Design Documentation at mutually agreeable milestones. WSDOT will provide the LOCAL AGENCY with one (1) reproducible copy of the stamped final Design Documentation prior to the proposed Ad date.
- 1.4 WSDOT will provide the LOCAL AGENCY with one (1) reproducible copy of the Ad ready PS&E for the Project a minimum of thirty (30) working days prior to the proposed Ad date. The LOCAL AGENCY will have fifteen (15) working days to review the Ad ready PS&E for the Project, resolve any concerns, and provide WSDOT with written approval, conditional approval, or rejection of the Ad ready PS&E for the Work portion of the Project. In the event the Work portion of the Ad ready PS&E is conditionally approved or rejected, the LOCAL AGENCY shall include the reasons for conditional approval or rejection. The LOCAL AGENCY may request an extension of time in writing, provided that WSDOT receives the written request not later than fifteen (15) working days after the LOCAL AGENCY has received the Ad ready PS&E. WSDOT shall provide a written response, indicating the number of working days extended, if any.
- 1.5 If WSDOT does not receive the LOCAL AGENCY's written approval, conditional approval or rejection of the Work portion of the Ad ready PS&E within fifteen (15) working days and any approved extension of time pursuant to Section 1.4, or if WSDOT cannot accept the LOCAL AGENCY's condition(s) of approval, or if the LOCAL AGENCY has not acquired all right of way and permits required to construct, maintain, and operate the Work, WSDOT may, at its sole discretion, delete the Work from the Project and advertise WSDOT's improvements. The LOCAL AGENCY agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with either WSDOT or LOCAL AGENCY deleting the Work from the Project. This Agreement shall then terminate upon receipt of all reimbursement payments in accordance with Section 6.

## 2. BID, AWARD, AND COST ADJUSTMENTS

- 2.1 WSDOT will advertise the Project for bids. WSDOT will be the LOCAL AGENCY's representative during the Ad and Project contract award period. When requested by WSDOT, the LOCAL AGENCY shall timely assist WSDOT in answering bid questions and resolving any design issues that may arise that are associated with the Work. All comments and clarifications must go through WSDOT.
- 2.2 If the LOCAL AGENCY is responsible for preparing the Work PS&E, the LOCAL AGENCY agrees to provide WSDOT with any addenda required for the Work during the Ad period, to the Parties' mutual satisfaction.
- 2.3 WSDOT shall provide the LOCAL AGENCY with written notification of the bid price for the Work. The LOCAL AGENCY shall have five (5) working days from the date of written notification to provide WSDOT written approval of the bid price for the Work, or request the Work be deleted from the Project. The LOCAL AGENCY may request an extension of time in writing, provided that WSDOT receives the written request not later than five (5) working days after the LOCAL AGENCY has received the written notification. WSDOT shall provide a written response indicating the number of working days extended, if any.
- 2.4 The LOCAL AGENCY acknowledges that if it fails to provide WSDOT with written approval of the bid price for the Work or request that the Work be deleted from the Project within five (5) working days and any approved extension of time pursuant to Section 2.3, WSDOT shall delete the Work from the Project. In this event, the LOCAL AGENCY agrees to reimburse WSDOT for engineering costs and actual direct and related indirect costs incurred by WSDOT associated with deleting the Work from the Project. The LOCAL AGENCY understands that deleting the Work from the Project may require an equitable adjustment to the Project contract and agrees to reimburse WSDOT for costs associated with the equitable adjustment. This Agreement shall then terminate upon receipt of all reimbursement and equitable adjustment payments in accordance with Section 6.
- 2.5 If the LOCAL AGENCY approves the bid price for the Work and WSDOT does not award or execute the Project contract, but thereafter re-advertises the Project for bids, WSDOT agrees to pay all WSDOT costs to re-advertise the Project. The LOCAL AGENCY agrees that WSDOT is not responsible for increased bid prices or delay to the Work or other impacts to the LOCAL AGENCY resulting from re-advertising the Project.
- 2.6 If the LOCAL AGENCY approves the bid price for the Work and WSDOT does not award or execute the Project contract and does not re-advertise the Project for bids, this Agreement shall terminate upon receipt of all reimbursement payments in accordance with Section 6. The LOCAL AGENCY agrees that WSDOT is not responsible for potential increased costs for the Work, delay to the Work or other impacts to the LOCAL AGENCY resulting from not awarding the Project.

## 3. CONSTRUCTION

- 3.1 WSDOT will be the LOCAL AGENCY's representative during construction and will act as owner in the administration of the contract for the Work. WSDOT will designate a WSDOT Project Engineer to provide all services and tools, including but not limited to construction administration, inspection, materials testing, and representation, necessary to administer and manage the contract to ensure that the Work is constructed in accordance with the contract.
- 3.2 The LOCAL AGENCY may consult with and inquire of WSDOT Project Engineer, attend all meetings, and have access to all documentation concerning the Work. The LOCAL AGENCY shall not provide direction, directly or indirectly, to WSDOT's contractor. All formal contacts between the LOCAL AGENCY and the contractor shall be through WSDOT's representative.
- 3.3 When it becomes known that quantities for a unit bid item will exceed plan quantity for the Work by ten (10) percent or result in a cost increase for the Work exceeding the total amount by the percentage listed under Section 6.5, WSDOT shall consult with the LOCAL AGENCY on possible courses of action within three (3) working days in accordance with Section 4.
- 3.4 The LOCAL AGENCY may inspect the Work. Any costs for such inspection shall be borne solely by the LOCAL AGENCY. All contact between said inspector and the contractor shall be only through WSDOT's inspector or WSDOT's representative.

- 3.5 WSDOT will prepare the final construction documentation in general conformance with WSDOT's Construction Manual. WSDOT will maintain one set of plans as the official "as-built" set, then make notations in red ink of all plan revisions typically recorded per standard WSDOT practices, as directed by WSDOT's Construction Manual. Once the LOCAL AGENCY has accepted the Work per Section 5, WSDOT will provide one reproducible set of as-built plans to the LOCAL AGENCY within N/A \_\_\_\_\_ (\_\_\_\_\_) working days.

#### 4. **CONTRACT CHANGES**

- 4.1 Changes to the Project contract will be documented by change order in accordance with the Standard Specifications. WSDOT shall process change orders for all changes affecting the Work in the manner set forth in subsection SS 1-04.4, Approval of Changes/Checklist, WSDOT Construction Manual, current edition.
- 4.2 Required changes involve such changes in quantities or alterations to the Work as are necessary to satisfactorily complete the Project. All other changes affecting the Work shall be considered elective changes.
- 4.3 The LOCAL AGENCY authorizes WSDOT to initiate all required changes affecting the Work and to negotiate, document and execute the associated change orders. The LOCAL AGENCY agrees to pay for the increases in cost, if any, for the required changes affecting the Work in accordance with Section 6.
- 4.4 WSDOT will advise the LOCAL AGENCY of any proposed required changes affecting the Work as soon as possible and provide it with an opportunity, if time permits, to review the change before implementation. WSDOT will determine the length of the review time based upon the need to expedite the change to avoid delay to the contractor.
- 4.5 The LOCAL AGENCY may request additions to the Work through WSDOT in writing. WSDOT will implement the requested changes as elective changes, provided that a change does not negatively impact WSDOT's transportation system and complies with the Standard Specifications, Project permits, state and/or federal law, applicable rules and/or regulations, and/or WSDOT design policies, and does not unreasonably delay critically scheduled Project contract activities.
- 4.6 All elective changes to the Work shall be approved in writing by the LOCAL AGENCY before WSDOT directs the contractor to implement the changes, even if an executed change order is not required by the Project contract. The LOCAL AGENCY agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 6.
- 4.7 WSDOT will make available to the LOCAL AGENCY all change order documentation related to the Work.
- 4.8 In the event it is determined that the LOCAL AGENCY does not have sufficient funds to complete the Work, WSDOT and the LOCAL AGENCY shall negotiate to determine the future of the Work. If it is determined that the Work cannot proceed, the Work shall be brought to a level that is safe for public use and WSDOT will terminate the remainder of the Work from the Project contract. In the event the Work is terminated, Section 5 shall apply for that portion of the Work completed up to the time of termination. The LOCAL AGENCY agrees to pay all costs associated with termination, including contractor claims, in accordance with Section 6.

#### 5. **ACCEPTANCE**

- 5.1 Prior to Work acceptance, WSDOT and LOCAL AGENCY will perform a joint final inspection. The LOCAL AGENCY agrees, upon satisfactory completion of the Work and receipt of a Notice of Physical Completion of the Work, as determined by WSDOT, to deliver a letter of acceptance to WSDOT which shall include a release of WSDOT from all future claims or demands of any nature resulting from the performance of the Work and WSDOT administration thereof, outside WSDOT right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of WSDOT in administering the Work.

- 5.2 If a letter of acceptance is not received by WSDOT within ninety (90) days following delivery of a Notice of Physical Completion of the Work to the LOCAL AGENCY, the Work and WSDOT administration thereof shall be considered accepted by the LOCAL AGENCY, and WSDOT shall be released from all future claims and demands of any nature resulting from the performance of the Work and WSDOT's administration thereof, outside WSDOT right of way, subject to any contractor claims (Section 8) caused by the negligent acts or omissions of WSDOT in administering the Work.
- 5.3 The LOCAL AGENCY may withhold its acceptance of the Work by submitting written notification to WSDOT within N/A  Working  Calendar (\_\_\_\_) days following delivery of a Notice of Physical Completion of the Work. This notification shall include the reason(s) for withholding acceptance.

## 6. PAYMENT

- 6.1 The LOCAL AGENCY, in consideration of the faithful performance of the Work performed by WSDOT and its contractor, agrees to reimburse WSDOT for the actual direct and related indirect costs of the Work, as estimated in Exhibit A.
- 6.2 WSDOT shall provide detailed invoices to the LOCAL AGENCY for the Work performed by WSDOT and its contractor or for costs incurred as provided in Sections 1.2.2, 1.5, 2.4, 4.8 or 8.1.4, and the LOCAL AGENCY agrees to make payment within thirty (30) days from receipt of an invoice. A payment will not constitute agreement as to the appropriateness of any item. At the time of the final invoice, the Parties will resolve any discrepancies.
- 6.3 The LOCAL AGENCY agrees that if it does not make payment within ninety (90) days after receipt of an invoice, WSDOT may deduct and expend any monies to which the LOCAL AGENCY is entitled to receive from the Motor Vehicle Fund.
- 6.4 Advance Payment: If an advance payment is required, the LOCAL AGENCY agrees to pay WSDOT the "Advance Payment Amount," shown above, within twenty (20) days after receipt of Project contract award notification. The advance payment represents approximately fifteen percent (15%) of the cost estimate and covers costs incurred by WSDOT in the initial stages of the Work. The advance payment will be carried throughout the life of the LOCAL AGENCY's cost obligations, with final adjustment made in the final invoice.
- 6.5 Increase in Cost: In the event unforeseen conditions require an increase in the cost of the Work above the cost estimate (including sales tax, engineering, and contingencies) by more than twenty ( 20 ) percent, the Parties agree to modify this Agreement by executing a written amendment to address the increase pursuant to Section 10.1, or implement Section 4.8.

## 7. RIGHT OF ENTRY

- 7.1 The LOCAL AGENCY hereby grants to WSDOT and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the LOCAL AGENCY has an interest for the purpose of constructing the Project.
- 7.2 Where applicable, the LOCAL AGENCY hereby grants to WSDOT and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all land in which the LOCAL AGENCY has an interest for WSDOT to construct, operate, maintain and/or reconstruct signal loop detectors and appurtenances for signals belonging to WSDOT, if any, that are constructed within the LOCAL AGENCY's right of way. The terms of this Section 7.2 shall survive the termination of this Agreement.

## 8. CLAIMS

### 8.1 Claims for Additional Payment

- 8.1.1 In the event the contractor makes claims for additional payment associated with the Work, WSDOT will immediately notify the LOCAL AGENCY of such claims. Such claims shall be made in the manner and form as provided for in the Standard Specifications.

- 8.1.2 The LOCAL AGENCY shall not be obligated to pay such claims or their cost of defense to the extent that the claims are caused by the negligent acts or omissions of WSDOT in administering the Work.
- 8.1.3 The LOCAL AGENCY shall have the right to review and comment on any settlement for claims associated with the Work. However, WSDOT shall have the ultimate right to settle such claims. In the event the LOCAL AGENCY does not agree with the claim settlement as negotiated by WSDOT, the LOCAL AGENCY shall reserve the right to not financially participate in the negotiated claim settlement. If agreement cannot be reached between the LOCAL AGENCY and WSDOT on a claim settlement, the Parties agree to follow the dispute resolution procedure in Section 10.7.
- 8.1.4 If WSDOT agrees, the LOCAL AGENCY may defend contractor claims associated with the Work at its own cost, and in doing so, the LOCAL AGENCY agrees to pay any resulting settlement, court judgment or arbitration award. WSDOT will cooperate with the LOCAL AGENCY in the LOCAL AGENCY's defense of the claims. The LOCAL AGENCY agrees to reimburse any WSDOT costs, including attorneys fees, incurred in providing such assistance in accordance with Section 6.
- 8.2 Claims for Damages: After Work acceptance, in the event of claims for damages or loss attributable to bodily injury, sickness, death, or injury to or destruction of property that occurs within the limits of the Work located on the LOCAL AGENCY's right of way, the LOCAL AGENCY shall defend such claims and hold harmless WSDOT therefrom, and WSDOT shall not be obligated to pay any claim, judgment or cost of defense. Nothing in this Section, however, shall remove from WSDOT any responsibility defined by the current laws of the state of Washington or from any liability for damages caused by WSDOT's own negligent acts or omissions independent of the Work performed pursuant to this Agreement.
- 9. OWNERSHIP, OPERATION, AND MAINTENANCE**
- 9.1 Upon acceptance of the Work as provided in Section 5, the LOCAL AGENCY shall be the sole owner of that portion of the Work located within the LOCAL AGENCY's right of way, and the LOCAL AGENCY shall be solely responsible for ownership and all future operation and maintenance of the Work at its sole cost, without expense, cost, or liability to WSDOT.
- 9.2 WSDOT facilities constructed on LOCAL AGENCY right of way, if any, as identified in Section 7.2 shall be owned by WSDOT, and WSDOT shall be responsible for the operation and maintenance of such facilities at WSDOT's sole cost, until removed. The terms of this Section shall survive the termination of this Agreement.
- 10. GENERAL PROVISIONS**
- 10.1 Amendment: This Agreement may be amended or modified only by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.
- 10.2 Termination: Neither WSDOT nor the LOCAL AGENCY may terminate this Agreement without the written concurrence of the other Party, except as otherwise provided under Sections 1.2.2, 1.5, 2.4, and 2.6.
- 10.2.1 If this Agreement is terminated prior to the fulfillment of the terms stated herein, the LOCAL AGENCY agrees to reimburse WSDOT for the actual direct and related indirect expenses and costs it has incurred for the Work up to the date of termination, as well as the costs of non-cancelable obligations.
- 10.2.2 Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- 10.3 Independent contractor: WSDOT shall be deemed an independent contractor for all purposes, and the employees of WSDOT or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the LOCAL AGENCY.

- 10.4 **Indemnification**: The Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) WSDOT, its employees, authorized agents, or contractors and (b) the LOCAL AGENCY, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party, its employees, authorized agents, and/or contractors.
- 10.5 **Acceptance of Liability**: The LOCAL AGENCY agrees and accepts full liability for (1) the PS&E provided for the Work to WSDOT, if any; and (2) for any Work the LOCAL AGENCY has provided direction to WSDOT to design and/or construct outside WSDOT's right of way and/or WSDOT's jurisdiction that does not meet WSDOT standards.
- 10.6 **Survivability**: Sections 10.4 and 10.5 shall survive the termination of this Agreement.
- 10.7 **Disputes**: In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and the LOCAL AGENCY shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.
- 10.8 **Venue**: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceedings shall be brought in the superior court situated in Thurston County, Washington unless filing in another county is required under any provision of the Revised Code of Washington. Further, the Parties agree that each shall be responsible for its own attorneys' fees and costs..
- 10.9 **Audits/Records**: All Project records for the Work in support of all costs incurred shall be maintained by WSDOT for a period of three (3) years. The LOCAL AGENCY shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the LOCAL AGENCY require copies of any records, it agrees to pay the costs thereof. The Parties agree that the Work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or state of Washington and/or the federal government.
- 10.10 **Term of Agreement**: Unless otherwise provided herein, the term of this Agreement shall commence as of the date this Agreement is fully executed and shall continue until the Work is accepted by the LOCAL AGENCY pursuant to Section 5, or as otherwise provided herein, and all obligations for payment have been met.
- 10.11 **Working Days**: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Party's date signed last below.

LOCAL AGENCY	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Signature:  By: <u></u> Print Name <u>Michael Matthias</u>  Title: <u>City manager</u>  Date: <u>4.16.18</u>	Signature:  By: _____ Print Name  Title: _____  Date: _____

  
APPROVED / STAMPED  
Des Moines City Attorney

**83**  
**SCOPING ESTIMATE - BREAKDOWN BY UNIT BID ITEM**

SR: 516  
 Title: Barnes Creek Fish Passage  
 WIN: A51601A  
 PIN: L51601A

MP: 0.41

Prepared By: Andrea Dahbs  
 Date: 12/18/2017  
 Reviewed By: John Crawford  
 Date: 12/21/2017

<b>INFLATED ESTIMATE</b>			
PE	@	20.0%	\$500,000
R/W			\$22,500
CN	@	22.0%	\$1,919,000
<b>Total</b>			<b>\$2,441,500</b>

M - Environmental Retrofit, Fish Passage				SECTION 1		Project Totals		Cost Summary
Std Item #	Work Item	Price per Unit	Unit	Qty	Cost	Qty	Cost	Cost
<b>Preparation</b>								<b>\$7,758</b>
0025	Clearing and grubbing	\$ 20,000	Acre	0.14	\$2,755	0.14	\$2,755	
0050	Removal of structures and obstructions	\$ 5,000	LS	1	\$5,000	1	\$5,000	
<b>Grading</b>								<b>\$41,814</b>
0310	Roadway excavation incl haul	\$ 100	CY	18	\$1,750	18	\$1,750	
0431	Gravel borrow incl haul	\$ 16	Ton	1,982	\$31,717	1,982	\$31,717	
0470	Embankment compaction	\$ 8	CY	1,043	\$8,347	1,043	\$8,347	
<b>Drainage</b>								<b>\$492,595</b>
1040	Channel excavation incl haul	\$ 18	CY	178	\$3,200	178	\$3,200	
1095	Streambed sediment	\$ 50	CY	350	\$17,511	350	\$17,511	
1086	Quarry spalls	\$ 40	Ton	499	\$19,963	499	\$19,963	
3025	Precast reinf. conc. box culvert no. 1 (16' wide x 10' high x 97' long - wing walls included)	\$ 431,922	LS	1	\$431,922	1	\$431,922	
3075	Temporary stream diversion	\$ 20,000	LS	1	\$20,000	1	\$20,000	
<b>Structure</b>								<b>\$73,980</b>
4006	Structure excavation class A incl haul	\$ 18	CY	1,027	\$18,480	1,027	\$18,480	
4013	Shoring or extra excavation class A	\$ 55,500	LS	1	\$55,500	1	\$55,500	
<b>Surfacing</b>								<b>\$4,727</b>
5100	Crushed surfacing base course	\$ 32	Ton	148	\$4,727	148	\$4,727	
<b>Hot Mix Asphalt</b>								<b>\$48,018</b>
5711	Planing Bituminous Pavement	\$ 30	SY	206	\$6,167	206	\$6,167	
5767	HMA Cl. 1/2 In. PG 64-22	\$ 200	Ton	196	\$39,113	196	\$39,113	
5830	Job mix compliance price adjustment	Calc	Est	3%	\$1,173	3%	\$1,173	
5835	Compaction price adjustment	Calc	Est	2%	\$782	2%	\$782	
5837	Asphalt cost price adjustment	Calc	Est	2%	\$782	2%	\$782	
<b>Erosion Control &amp; Planting</b>								<b>\$70,987</b>
6490	Erosion water pollution control prevention	\$ 50,000	Est	1	\$50,000	1	\$50,000	
6424	TEEC compliance incentive	Calc	Est	5%	\$2,500	5%	\$2,500	
xxxx	Roadside Restoration	\$ 125,000	Acre	0.14	\$17,217	0.14	\$17,217	
6635	High visibility silt fence	\$ 5	LF	234	\$1,170	234	\$1,170	
<b>Traffic</b>								<b>\$139,780</b>
6751	Beam Guardrail Type 1	\$ 30	LF	84	\$2,520	84	\$2,520	
6757	Beam Guardrail type 31	\$ 60	LF	40	\$2,400	40	\$2,400	
6718	Beam Guardrail type 31 non-flared terminal	\$ 3,000	EA	2	\$6,000	2	\$6,000	
6806	Paint line	\$ 3	LF	536	\$1,608	536	\$1,608	
6881	Plastic drainage marking	\$ 50	EA	2	\$100	2	\$100	
6884	Raised pavement marker type 2	\$ 1,200	Hun	0.07	\$80	0	\$80	
6888	Temporary pavement markings	\$ 2	LF	536	\$1,072	536	\$1,072	
6971	Project temporary traffic control (Includes Temp Delour and Construction Signing Class A)	\$ 126,000	LS	1	\$126,000	1	\$126,000	
<b>Other</b>								<b>\$37,963</b>
7003	Type B progress schedule	\$ 5,000	LS	1	\$5,000	1	\$5,000	
7037	Structure surveying	\$ 5,000	LS	1	\$5,000	1	\$5,000	
7038	Roadway surveying	\$ 5,000	LS	1	\$5,000	1	\$5,000	
7480	Roadside Cleanup	\$ 20,000	Est	1	\$20,000	1	\$20,000	
7725	Reimbursement for third party damage	\$ 5	Est	1	\$5	1	\$5	
7728	Minor change	\$ 1	Calc	(1)	(\$1)	-1	(\$1)	
7732	Aggregate compliance price adjustment	\$ 1	Calc	(1)	(\$1)	-1	(\$1)	
7736	SPCC plan	\$ 1,000	LS	1	\$1,000	1	\$1,000	
7554	Construction geotextile for permanent erosion control	\$ 5	SY	392	\$1,960	392	\$1,960	

<b>Subtotal for Percentages</b>			
Bid Item Subtotal:		\$917,519	\$917,519
Miscellaneous	30.0%	\$275,256	\$275,256
Subtotal:		\$1,192,774	\$1,192,774
Mobilization	10.0%	\$119,277	\$119,277
Subtotal:		\$1,312,052	\$1,312,052
Sales Tax	10.0%	\$131,205	\$131,205
Bid Item Total:		\$1,443,257	\$1,443,257
Construction Engineering	22.0%	\$317,517	\$317,517
Contingencies	4.0%	\$57,730	\$57,730
Construction Total:		\$1,818,504	\$1,818,504
Preliminary Engineering	20.0%	\$288,651	\$288,651
Stream design group	5.0%	\$72,163	\$72,163
Geotechnical	575.000	\$75,000	\$75,000
Preliminary Engineering Total:		\$435,814	\$435,814
Right of Way Total:	2 TCE @ \$10K each	\$20,000	\$20,000
<b>Total Project Costs:</b>		<b>\$2,274,318</b>	<b>\$2,274,318</b>

- ASSUMPTIONS:**
- This project will need approximately 25 working days to complete all work.
  - Sales Tax adjusted to 10% per Washington State Department of Revenue website 12/18/17.
  - Preliminary Engineering adjusted to 20% based on similar Fish Passage project PE costs.
  - Construction Engineering adjusted to 22% and Contingencies adjusted to 4% per Plans Preparation Manual dated November 2013.
  - Miscellaneous adjusted to 30% due to limited maturity of project and to capture costs and risks not identified during the scoping phase.
  - Wing walls are incidental to the Precast Reinf. Conc. Box Culvert No. 1, and included in the Lump Sum cost.
  - Culvert estimated at 97 ft in length which is based on matching current conditions (existing culvert = 97 ft long, per WDFW Culvert Assessment Report).
  - There are 7 known utilities (aerial & buried) within the project limits. All known utilities hold permit or franchise with WSDOT and potential impact/relocation costs will be the responsibility of utility.
  - Right of Way costs estimated for two temporary construction easements.
  - Removal of Raised Pavement Markers, Pavement Markings, Plastic Lines, and Paint Lines are incidental to the Planing Bituminous Pavement work. Incidental is defined as "liable to happen as a consequence of."

**Exhibit B**  
**SCOPE OF WORK**  
**SR 516/Barnes Creek – Fish Passage**

This project will remove the existing fish barrier and replace it with a fish passable structure.

This agreement provides for the design of this project including:

- Survey
- Preliminary Hydraulic Design
- Preliminary Right of Way Plans
- Utility Coordination
- Preliminary Public Outreach
- Environmental Permitting
- PS&E Package for Advertisement

# AGENDA ITEM

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: National Parks and Recreation Month  
Proclamation

FOR AGENDA OF: July 16, 2020

DEPT. OF ORIGIN: Parks, Recreation & Senior  
Services

ATTACHMENTS:  
1. Proclamation

DATE SUBMITTED: July 10, 2020

CLEARANCES:

- Community Development \_\_\_\_\_
- Marina \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

CHIEF OPERATIONS OFFICER: \_\_\_\_\_

- Legal \_\_\_\_\_
- Finance \_\_\_\_\_
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: 

**Purpose and Recommendation**

The purpose of this agenda item is to recognize July at Parks and Recreation Month.

**Suggested Motion**

**Motion 1:** “I move to approve the Proclamation recognizing July as Parks and Recreation Month in Des Moines.”

**Background**

Since 1985, America has celebrated July as the nation’s official Parks and Recreation Month. The Nation’s House of Representatives has declared July as Parks and Recreation Month to recognize the great societal value of parks and recreation facilities and their importance in local communities across the United States; recognize and honor the vital contributions of employees and volunteers in park and recreation facilities; and support the designation of a “National Parks and Recreation Month.”

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# City of Des Moines



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



## Proclamation

**WHEREAS** parks, recreation and senior services programs are an integral part of communities throughout this country, including the City of Des Moines; and

**WHEREAS** our parks, recreation and senior services are vitally important to establishing and maintaining the quality of life in Des Moines, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region; and

**WHEREAS** parks, recreation and senior services build healthy, active communities that aids in the prevention of chronic disease, and also improves the mental and emotional health of all citizens; and

**WHEREAS** parks, recreation and senior services increase Des Moines' economic prosperity through increased property values, increased tourism, the attraction and retention of businesses, and crime reduction; and

**WHEREAS** parks and recreation areas are fundamental to the environmental well-being of our community; and

**WHEREAS** Des Moines parks are fundamental to the City's environmental well-being by improving water quality and the quality of the air we breathe, providing vegetative buffers to development, and producing habitat for wildlife; and

**WHEREAS** our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and

**WHEREAS** the U.S. House of Representatives has designated July as Parks and Recreation Month; and

**WHEREAS** the City of Des Moines recognizes the benefits derived from parks, recreation and senior services programs and resources; and

**NOW THEREFORE, THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS**

### ***JULY AS PARKS AND RECREATION MONTH***

And encourages all our citizens to join in this special observance.

**SIGNED** this 16<sup>th</sup> day of July, 2020.

---

Matt Pina, Mayor

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# AGENDA ITEM

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Collective Bargaining Agreement:  
Teamsters Local No. 763

FOR AGENDA OF: July 16, 2020

DEPT. OF ORIGIN: Human Resources

DATE SUBMITTED: July 9, 2020

ATTACHMENTS:

1. Collective Bargaining Agreement by and between City of Des Moines, Washington and Public, Professional & Office-Clerical Employees and Drivers (“Teamsters”) Local No. 763 (Representing the Public Works, Parks and Marina Employees)

CLEARANCES:

- Community Development \_\_\_\_\_
- Marina \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

CHIEF OPERATIONS OFFICER: \_\_\_\_\_

- Legal /s/ TG
- Finance *Botham W. ...*
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

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

**Purpose and Recommendation**

The purpose of this agenda item is to seek City Council approval of the Collective Bargaining Agreement (“Agreement”) between the City of Des Moines and the Teamsters Local 763 for the period January 1, 2020, through December 31, 2022. The following motion will appear on the consent calendar:

**Suggested Motion**

**Motion 1:** “I move to approve the Collective Bargaining Agreement between the City of Des Moines and the Teamsters Local 763 effective January 1, 2020, through December 31, 2022, and to authorize the City Manager to execute and sign a clean copy of this Agreement substantially in the form as attached.”

## **Background**

The City and the Teamsters began negotiations on September 23, 2019, as the Agreement that had been in effect was set to expire on December 31, 2019. The parties met numerous times and reached a tentative agreement on June 30, 2020, culminating in the attached document, which shows revisions in comparison with the 2017-2019 Collective Bargaining Agreement. The Teamsters voted on this Agreement on July 9, 2020, which passed with a vote of 16-1.

## **Discussion**

The Teamsters Agreement does not propose any changes to our current health benefit plans, which allows for greater predictability of medical insurance costs over the life of the contract. Most of our Teamster employees currently have coverage through our significantly lower-cost high deductible plans. The wage increases for 2020, include a 4.35% a cost of living adjustment (COLA) which is consistent with what other bargaining groups received. In addition, due to changes in market conditions which occurred during the previous contract, an additional market adjustment of 1.15% was also applied. Together, these are sustainable labor costs. The Teamster Agreement allows for modifications to the Standby program and elimination to the 457 Sick Leave Rollover programs. The dollars saved from both of these programs will be reallocated to support the wage increases for 2020. Additionally, the Teamster Agreement for 2021 and 2022 allows for wage increases or decreases, depending on the economic conditions, as quantified by the October CPI-U for Seattle-Tacoma-Bellevue for the applicable period. This ensures that the City is able to be responsive to future economic conditions. The Teamsters Agreement recognizes that we are in unprecedented times and as a result, the City must maintain flexibility over the long-term due to the number of unknowns.

## **Alternatives**

The Council could choose not to approve the Agreement and direct the City Manager to continue negotiations with the Teamsters. However, that would likely damage the City's relationship with the Teamsters following a collaborative negotiation process. The administration has sought to continue to improve its relationship with the Teamsters. Previous cycles of contract negotiations have been difficult due to a variety of reasons. The last round of negotiations culminated in a formal PERC arbitration hearing over furloughs in January 2017. Should the Council choose not to approve the Agreement, there is a possibility the Teamsters would file an Unfair Labor Practice complaint with the Public Employment Relations Commission.

## **Financial Impact**

The 2020 budget assumption for the Teamsters was 3.00%. The additional 1.35% (granted to non-represented employees in 2019) is currently unbudgeted for 2020, as well as the 1.15% market increase. The additional increases are necessary for both equity (1.35%) and to ensure that our Maintenance Worker wages remain anchored within at least 98% of the market's average. The City conducted a salary survey and discovered that several of our positions were being compensated below our comparable cities. This is largely in part due to the significant financial restraints the City was under during previous Teamster negotiation. The City will be offsetting some of the unbudgeted costs by reducing the number of stand-by positions and reallocating those budgeted funds to fund the additional increase. The City has also negotiated the elimination of the 457 Sick Leave program for the Teamsters. The savings from the ending of this budgeted program will also be redistributed to assist with funding increases not accounted for in the 2020 budget. It is notable that the 457 Sick Leave Rollover program for Teamsters has been eliminated, as this will also save staff time and reduce payroll errors, as this program is cumbersome to process for payment. The Teamster Agreement does not affect non-represented employee wages and benefits through the equity clause provided in Des Moines Municipal Code 2.12.010. Non-represented employees were already given 1.35% increase last year and the additional 1.15% granted to Teamsters is a market-based increase. The additional 1.35% and the 1.15%

is sustainable (i.e., forecasted ongoing revenues exceed ongoing expenditures) and the ability to assess future wage increases utilizing the October CPI-U for Seattle-Tacoma-Bellevue for wages in 2021 and 2022 grants the City flexibility to adjust future wage increases upward or downward in direct response to economic conditions.

**Recommendation or Conclusion**

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

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# COLLECTIVE BARGAINING AGREEMENT

By and Between

CITY OF DES MOINES, WASHINGTON

and

PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES  
AND DRIVERS  
LOCAL UNION NO. 763  
(Representing the Public Works, Parks and Marina Employees)

January 1, ~~2017-2020~~ - December 31, ~~2019~~2022

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COLLECTIVE BARGAINING AGREEMENT  
by and between  
CITY OF DES MOINES, WASHINGTON  
and  
PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS  
LOCAL UNION NO. 763  
(Representing the Public Works, Parks and Marina Employees)

January 1, ~~2017-2020~~ through December 31, ~~2019-2022~~

THIS COLLECTIVE BARGAINING AGREEMENT, (hereinafter referred to as Agreement) is made and entered into by and between the CITY OF DES MOINES, WASHINGTON, hereinafter referred to as the Employer or the City, and PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS LOCAL UNION NO. 763, affiliated with the International Brotherhood of Teamsters, hereinafter referred to as the Union.

ARTICLE I    RECOGNITION, UNION MEMBERSHIP AND PAYROLL DEDUCTION-(Note: Replaced Article 1 with Janus MOU Language)

1.1            Recognition - The Employer recognizes the Union as the sole and exclusive collective bargaining representative for all regular full-time and regular part-time maintenance and operations employees within the City of Des Moines Public Works Maintenance Division, Park Maintenance Division, and the Marina excluding supervisors, confidential employees, clerical employees, seasonal and temporary employees and all other employees. The Employer recognizes the Union as the sole and exclusive collective bargaining representative for all regular full-time and regular part-time maintenance and operations employees within the City of Des Moines Public Works Maintenance Division, Park Maintenance Division, and the Marina excluding supervisors, confidential employees, clerical employees, seasonal and temporary employees and all other employees.

1.1.1        For the purposes of this Agreement, "temporary employee" or "seasonal employee" shall mean an individual appointed to a position for a period of time less than nine (9) months, absent a declaration by the City of emergency need. Should a temporary or seasonal employee be employed in the same position for more than twelve (12) months, the temporary or seasonal employee shall be considered a regular full-time or regular part-time employee. All benefits normally provided regular employees shall begin as of the date the employee changes status from temporary or seasonal to regular. For the purposes of this Agreement, "temporary employee" or "seasonal employee" shall mean an individual appointed to a position for a period of time less than nine (9) months, absent a declaration by the City of emergency need. Should a temporary or seasonal employee be employed in the same position for more than twelve (12) months, the temporary or seasonal employee shall be considered a regular full-time or regular part-time employee. All benefits normally provided regular employees shall begin as of the date the employee changes status from temporary or seasonal to regular.

1.2            New-Hire Orientation with Union Membership - The Employer shall notify the Union of all new full-time part-time, and seasonal employees hired into the bargaining unit. The Union and shop steward will then be provided thirty (30)

~~minutes during employee's regular working hours for purposes of presenting information about the bargaining unit and Union membership. This shall generally occur within the first two (2) weeks of an employee's date of hire (or, for seasonal/temporary employees, from the date of eligibility into the bargaining unit), but in no instance later than ninety (90) calendar days. Employees have the option to attend or not attend the orientation. It shall be a condition of employment that all employees of the Employer covered by this Agreement shall become members in good standing and those who are not members in good standing on the effective date of this Agreement shall, on the thirty-first (31st) day following the effective date of this Agreement, become and remain members in good standing in the Union or pay a representation service fee to the Union equal to ninety percent (90%) of the dues uniformly levied for Union members or pay an amount of money equivalent to Union dues and initiation fee to a non-religious charity or to another charitable organization agreed upon by the employee and the Union. It shall also be a condition of employment that all employees covered by this Agreement hired on or after its effective date shall, on the thirty-first (31st) day following the beginning of such employment, become and remain members in good standing in the Union or pay a representation service fee to the Union equal to ninety percent (90%) of the dues uniformly levied for Union members or pay an amount of money equivalent to Union dues and initiation fee to a non-religious charity or to another charitable organization agreed upon by the employee and the Union. If the employee and the Union do not reach agreement on such matters, the Public Employment Relations Commission (PERC) shall designate the charitable organization.~~

~~1.2.1 As provided in RCW 41.56.122, the right of non-association of employees based on bona fide religious tenets or teachings of a church or religious body of which an employee is a member shall be recognized. Such employee shall pay an amount of money equivalent to regular Union dues and initiation fee to a non-religious charity or to another charitable organization mutually agreed upon by the employee and the Union. The employee shall furnish written proof each month to the Union that such payment has been made or initiate and maintain a payroll deduction with the Employer. If the employee and the Union do not reach agreement on such matters, the Commission shall designate the charitable organization.~~

~~1.3 Payroll Deduction - The Employer shall deduct from the paycheck of each employee who has so authorized in writing the regular initiation fee and regular monthly dues uniformly required of members of the Union. The amounts deducted shall be transmitted monthly to the Union on behalf of the employees involved. Any employee who wishes to cancel the written authorization for dues deduction, must notify the Employer and Union in writing, at which time the Employer will discontinue the deduction.~~

~~1.3.1 The Union agrees to hold the Employer harmless from any liability whatsoever that might ensue as a result of actions taken to enforce the provisions of this Article. The Union shall defend and hold the Employer harmless against any and all claims,~~

~~demands, suits, or other forms of liability that shall arise out of or by reason of action taken or not taken by the employer for the purpose of complying with any of the provisions of this Article. The Union agrees to hold the Employer harmless from any liability whatsoever that might ensue as a result of actions taken to enforce the provisions of this Article. The Union shall defend and hold the Employer harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken or not taken by the employer for the purpose of complying with any of the provisions of this Article.~~

## 1.4

Union Officials Time-Off - An employee who holds a Union position (Shop Steward and/or member of the Negotiating Committee) may be granted time-off while conducting business vital to the employees in the bargaining unit provided:

They notify the Employer in writing at least forty-eight (48) hours prior to the time-off period;

The Employer is able to properly staff the employee's job duties during the time-off period;

The wage cost to the Employer is no greater than the cost that would have been incurred had the employee not taken time-off; and

Employees shall not transact Union business while working on shift, except up to three designated representatives may participate in contract negotiation meetings with the employer. An employee who holds a Union position (Shop Steward and/or member of the Negotiating Committee) may be granted time-off while conducting business vital to the employees in the bargaining unit provided:

~~They notify the Employer in writing at least forty-eight (48) hours prior to the time-off period;~~

~~The Employer is able to properly staff the employee's job duties during the time-off period;~~

~~The wage cost to the Employer is no greater than the cost that would have been incurred had the employee not taken time-off; and~~

~~Employees shall not transact Union business while working on shift, except up to three designated representatives may participate in contract negotiation meetings with the employer.~~

## 1.4.1

A shop steward shall be granted reasonable time to participate in grievance meetings with the Employer and/or to accompany an employee in an investigatory interview. A shop steward shall be granted reasonable time to participate in grievance meetings with the Employer and/or to accompany an employee in an investigatory interview.

## 1.5

Union Notification - Within thirty (30) days from the date of hire of a new bargaining unit employee, the Employer shall forward to the Union the name, address, and

~~telephone number of the new employee. The Employer shall promptly notify the Union of all bargaining unit employees leaving its employment. Within thirty (30) days from the date of hire of a new bargaining unit employee, the Employer shall forward to the Union the name, address, and telephone number of the new employee. The Employer shall promptly notify the Union of all bargaining unit employees leaving its employment.~~

- 1.6 ~~**Bulletin Boards** - The Employer shall provide suitable space for two (2) bulletin boards, one at the maintenance facility and one at the Marina. Postings by the Union on the bulletin boards shall be confined to official business of the Union; provided such notices shall not be derogatory of the Employer, its elected officials or other personnel. The Employer shall provide suitable space for two (2) bulletin boards, one at the maintenance facility and one at the Marina. Postings by the Union on the bulletin boards shall be confined to official business of the Union; provided such notices shall not be derogatory of the Employer, its elected officials or other personnel.~~
- 1.7 ~~**Union Visitation** - An authorized representative of the Union shall have access to the City's workplace at reasonable times for the purpose of investigation of grievances, adjusting disputes and ascertaining that the Agreement is being adhered to, provided that such visit shall not interfere with the work process or cause undue interruption of the employees' work schedule. An authorized representative of the Union shall have access to the City's workplace at reasonable times for the purpose of investigation of grievances, adjusting disputes and ascertaining that the Agreement is being adhered to, provided that such visit shall not interfere with the work process or cause undue interruption of the employees' work schedule.~~
- 1.8 ~~**DRIVE** - The Employer agrees to deduct from the paycheck of all employees covered by this Agreement who choose to make voluntary contributions to Democrat, Republican, Independent Voter Education (DRIVE). DRIVE shall notify the Employer of the amounts designated by each contributing employee that are to be deducted from the employee's paycheck on a per pay period basis, for all pay periods worked. The phrase "pay periods worked" for purposes of this provision, shall include any pay period in which the employee earned a wage, provided it will not create negative net pay to the employee. The Employer shall transmit to DRIVE National Headquarters on a monthly basis, in one check, the total amount deducted along with the name of each employee on whose behalf a deduction is made. The International Brotherhood of Teamsters shall reimburse the Employer annually for the Employer's actual cost for the expenses incurred in administering the payroll deduction plan. The Union shall indemnify, defend and save the Employer harmless from any claims, suits, judgements, attachments, and from any form of liability as a result of making any deductions pursuant to this provision. The Employer agrees to deduct from the paycheck of all employees covered by this Agreement who choose to make voluntary contributions to Democrat, Republican, Independent Voter Education (DRIVE). DRIVE shall notify the Employer of the amounts designated by each contributing employee that are to be deducted from the employee's paycheck on a per pay period basis, for all pay periods worked. The phrase "pay periods worked" for purposes of this provision, shall include any pay period in which the employee earned a wage, provided it will not create negative net pay to the employee. The Employer shall transmit to DRIVE National Headquarters on a monthly basis, in one check, the total amount deducted along~~

~~with the name of each employee on whose behalf a deduction is made. The International Brotherhood of Teamsters shall reimburse the Employer annually for the Employer's actual cost for the expenses incurred in administering the payroll deduction plan. The Union shall indemnify, defend and save the Employer harmless from any claims, suits, judgements, attachments, and from any form of liability as a result of making any deductions pursuant to this provision.~~

## ARTICLE II    NON-DISCRIMINATION

- 2.1            Neither the Employer, the Union nor any employee shall in any manner whatsoever unlawfully discriminate against any employee or applicant for employment on the basis of race; color; religion; creed; sex; sex/gender; sexual orientation; marital status; national origin; age; military status; sensory, mental or physical disabilities; or any other category protected by applicable federal, state or local law. Nothing shall prevent the City from establishing bona fide occupational qualifications (BFOQ). Any employee complaints of discrimination must be reported in accordance with the Discrimination and Harassment Complaint Procedure set forth in Section 2.C.E of the City's Personnel Manual.
- 2.2            No employee shall be discriminated against because of membership or non-membership or lawful activity in the Union, provided such activity is not carried on so as to interfere with the normal work process.

## ARTICLE III    MANAGEMENT RIGHTS

- 3.1            The Employer retains and reserves all powers and authority to manage its operations in an effective manner with the sole and unquestioned right and prerogative in accordance with applicable laws, regulations, and City ordinances and policies whether or not specifically mentioned in this agreement and whether or not previously exercised, subject only to the limitations expressly stated in this Agreement. Such management rights shall include but not be limited to the following:
- 1)            To plan, direct, control and determine all operations, functions, and policies of the City and to modify such operations, functions and policies as they may affect employees in the Bargaining Unit;
  - 2)            To establish and administer a personnel system that provides for all types of personnel transactions, including determining procedures, standards for hiring, promotion, transfer, assignment, layoff, discipline, and classification of positions.
  - 3)            To determine job descriptions and job content, with the understanding that job descriptions do not and cannot detail each and every minor or incidental duty employees are expected to perform; nevertheless, employees are expected and required to perform all such duties;
  - 4)            To supervise and direct the workforce, to establish the qualifications for employment and to employ and train employees;
  - 5)            To schedule and assign work;

- 6) To establish reasonable work and performance standards and, from time to time, to change those standards. Such standards may be used to determine acceptable performance levels, prepare work schedules, and measure the performance and productivity of employees;
- 7) To assign overtime or not. The City has the right to schedule overtime work as required in a manner most advantageous to the City and consistent with the requirements of municipal employment and the public interest;
- 8) To determine the methods, means, organization and number of personnel by which operations and services shall be made or purchased; to subcontract work with either public or private sector agencies or assign work to other City non-bargaining unit personnel in accordance with Article 18;
- 9) To make and enforce rules and regulations, including but not limited to safety rules, operational policies and procedures, and rules of conduct;
- 10) To discipline or discharge for just cause.
- 11) To lay off employees for lack of work, funds, or the occurrence of conditions beyond the control of the employer or where such condition of work would be wasteful and unproductive;
- 12) To change or eliminate existing methods, equipment or facilities, including past practices;
- 13) To lawfully inspect lockers, other spaces assigned to Employees, and City vehicles without consent provided that the Employee has a right to be present;
- 14) Except as provided by this Article or elsewhere in this Agreement, the Union retains the right to bargain the impacts of management decisions on wages, hours and/or working conditions within the meaning of RCW 41.56. It is not the City's intent to use this language to unilaterally implement furloughs.

3.2 Probationary employment with the City is at will and the City expressly reserves the right to discharge probationary employees with cause or without cause or advanced notice and without compensation except for time actually worked.

3.3 The City's Personnel Manual shall apply to members of this bargaining unit. However, in the event of a conflict between a specific provision of this Agreement and any guideline, regulation, or rule of the City, the provision of this Agreement shall control. In addition, the parties agree that the City has the sole right to amend, modify, adopt, or change any such personnel policies, provided that the Union is given fifteen (15) days advance notice and an opportunity to comment.

3.4 The City has the right at any time to require an employee to provide evidence of a valid Washington State driver's license if the employee has or will at any time drive a City vehicle and CDL endorsement if such is required by the classification. Such requirement may include having the employee sign a release of driving record;

payment of fee is to be paid by the employee. Also, the City from time to time may require evidence of current job-related certifications.

- 3.5 The exercise of any management prerogative, function, or right which is not specifically modified by this Agreement is not subject to any grievance procedure or to bargaining during the term of this Agreement, except where such exercise is in violation of the express written terms of this Agreement.

#### ARTICLE IV HOURS OF WORK

- 4.1 Work Schedule - The normal work schedule for full-time employees shall be five (5) consecutive days of eight (8) hours of work exclusive of the lunch period, Monday through Friday, unless an alternate work schedule is scheduled by the City and fourteen (14) days notice is provided to the employee. Management will discuss with the Union any changes to the regular work schedule longer than thirty (30) days in duration.

- 4.1.1 The Employer shall continue its current practice relative to the work schedule for Marina employees except meal periods shall be unpaid throughout the year.

- 4.2 Shift Change - Each employee shall be assigned to a regular shift starting time which shall not normally be changed without forty-eight (48) hours notice, exclusive of emergencies, e.g., snow, ice, flood, earthquake, etc. In the event an employee's regular shift starting time is changed with less than forty-eight (48) hours notice, the employee shall be paid at the overtime rate up to the first sixteen (16) hours worked outside of the employee's regular shift hours during the remainder of the employee's scheduled work week.

- 4.3 Rest Periods - Employees shall receive a rest period of fifteen (15) minutes on the Employer's time for each four (4) hours of working time and shall be scheduled as near as possible to the midpoint of each four (4) hour work period. No employee shall be required to work more than three (3) hours without a rest period. By mutual agreement between the employee and the Employer, the rest periods may be taken at a time other than stated above.

- 4.4 Meal Periods - Employees shall receive a meal period of thirty (30) minutes which shall be on the employee's own time and which shall commence no less than three (3) nor more than five (5) hours from the beginning of the shift. By mutual agreement between the employee and the employer, the meal period may be taken at a time other than stated above. An employee who works more than three (3) hours longer than his normal workday may, at the option of the employee, receive an additional unpaid meal period before or during their overtime.

#### ARTICLE V OVERTIME, CALLBACK, AND STANDBY

- 5.1 Overtime - All hours worked in excess of the employee's regular schedule in a day, with an eight (8) hour minimum, or forty (40) hours in a week shall constitute overtime. Vacation and holiday time shall be considered hours of work for the purposes of calculating overtime. Overtime shall be paid at the rate of one and one-half (1-1/2) times the employee's regular straight-time hourly rate of pay.

- 5.1.1 Overtime shall be paid for in increments of fifteen (15) minutes with the major portion (eight (8) or more minutes) of each fifteen (15) minute increment being paid

as fifteen (15) minutes. All work related calls to an employee who is off-duty shall be paid at a fifteen minute minimum.

- 5.1.2 Scheduled overtime work shall be offered to qualified employees who have designated the preference to work overtime by rotation when feasible. If an insufficient number of employees sign up to work the scheduled overtime, then employees will be assigned the overtime, by least senior to most senior employee, even if they have indicated they prefer not to work overtime, provided that no employee shall be mandated to work overtime more than one (1) time per quarter. Once an employee has been mandated to work overtime one (1) time per quarter, the next least senior employee shall be assigned overtime when an insufficient number of employees sign up to work overtime.
- 5.1.3 In lieu of overtime pay, compensatory time-off may be accrued upon the request of the employee and the approval of the employer. Scheduling of compensatory time-off shall be subject to the approval of the employee's supervisor. Compensatory time-off shall be taken at the rate of one and one-half ( $1.5\frac{1}{2}$ ) times the hours worked. The maximum number of hours that can be accumulated is forty (40) hours.
- 5.1.4 Employees shall not accrue additional leave (sick leave or vacation), health or other insurance benefits while on overtime.
- 5.2 Callback - An employee who has left work and is called back to work after completion of a regular day's shift, is called in to work before the beginning of the employee's shift or is called in on the employee's day-off shall be paid a minimum of three (3) hours at one and one-half ( $1\frac{1}{2}$ ) times the employee's regular straight-time hourly rate of pay starting at the time the employee is contacted and reports for the assignment; provided however, if the employee's regular shift starts less than three (3) hours from the time the employee started work on the callback, the employee shall receive one and one-half ( $1\frac{1}{2}$ ) times the employee's regular straight-time hourly rate of pay only for such time as occurs prior to the commencement of the employee's regular shift.
- 5.2.1 Employees called back to work, as provided in Section 5.2, shall receive one-half ( $\frac{1}{2}$ ) hour paid travel time to the shop, beginning at the time the call out is made and one-half ( $\frac{1}{2}$ ) hour paid travel time from the city shop upon completion of the job. If the employee completes the call out assignment within the three (3) hours, including travel time, the employee shall receive the three (3) hour minimum at the appropriate overtime rate of pay (i.e., travel time to shop thirty (30) minutes assignment takes one (1) hour forty-five (45) minutes and return travel time thirty (30) minutes equals two (2) hours forty-five (45) minutes, the employee would receive the three (3) hour minimum or if it takes the employee two and one half ( $2.5\frac{1}{2}$ ) hours to complete the call out the employee would then receive three and one half ( $3.5\frac{1}{2}$ ) hours of pay).
- 5.3 Standby - Employees may be placed on "Standby" status when it is anticipated that they may be called back to duty after going off shift. When placed on standby status, employees will remain near a telephone and will leave a number where they can be reached (unless equipped with a pager, cell phone or other communication device, in which case the employee shall remain within communication distance and within one and one-half ( $1.5\frac{1}{2}$ ) hours or ninety (90 minutes) travel time to the City). It is the intent that standby status shall not preclude an employee from using the time for personal pursuits. While on standby duty, it is the employee's

responsibility to be ready and able to work if called (for example: be able to get to work and not be impaired by drugs or alcohol).

- 5.3.1 Employees on Standby and called back to work, as provided in Section 5.2, shall receive one-half (1/2) hour paid travel time to the shop, beginning at the time the call out is made and one-half (1/2) hour paid travel time from the city shop upon completion of the job. If the employee completes the call out assignment within the three (3) hours, including travel time, the employee shall receive the three (3) hour minimum at the appropriate overtime rate of pay (i.e., travel time to shop thirty (30) minutes assignment takes one (1) hour forty-five (45) minutes and return travel time thirty (30) minutes equals two (2) hours forty-five (45) minutes, the employee would receive the three (3) hour minimum or if it takes the employee two and one half (~~2.5-1/2~~) hours to complete the call out the employee would then receive three and one half (~~3.5-1/2~~) hours of pay).

- 5.3.2 Standby Rate - Employees shall be paid ~~as follows for each \$1.70 effective January 1, 2017, \$2.00 in 2018, and \$2.30 in 2019 per~~ non-working hour of standby time.

\$2.30 per hour non-working hour from January 1, 2020 until the number of standby slots is reduced by the City. Thereafter, the standby rate shall be increased \$3.00 per hour.

Employees will receive overtime pay for the number of hours worked if called in to work, subject to the callback provisions of Section 5.2. Standby Duty shall not be counted as hours worked for the purposes of computing overtime or eligibility to receive fringe benefits.

- 5.3.3 Standby Duty shall be rotated amongst those eligible bargaining unit employees who have designated their preference to work Standby Duty. If no one volunteers or if an insufficient number of volunteers sign up for Standby Duty, then it shall be assigned to other employees by rotation starting with the least senior, provided that no employee shall be mandated to be on standby duty more than one (1) time per quarter. Once an employee has been mandated to be on standby duty one (1) time per quarter, the next least senior employee shall be assigned standby duty when an insufficient number of employees sign up to be on standby.

The City retains the right to determine the number of stand-by duty slots required to fulfill operational needs. The City may modify, eliminate the number of these slots with written notice to the Union. Upon receipt of that notice, the Union will be offered an opportunity to provide input prior to the change.

- 5.4 Higher Classification - In the event an employee is assigned by the department director or designee management to work out-of-class in a higher classification within the bargaining unit, then the employee shall be paid at the first step of the higher pay range or may receive a one-step pay increase, whichever is higher, for the period the employee works in a higher classification within the bargaining unit, provided the employee has worked for a period of not less than ~~three-two~~ (~~32~~) consecutive workdays in the higher classification, retroactive to the first day worked in the higher classification.

- 5.5 Pyramiding of Compensation - No pyramiding or double application of Sections and/or Articles is permitted. Compensation shall not be paid more than once for

the same hours under any provision or Section of this Article or Agreement, unless expressly stated in each Section or Article. On-call changes shall be approved in advance by the City so as not to require unnecessary overtime costs. The workdays and work periods specified herein shall not constitute guaranteed hours of work.

## ARTICLE VI SENIORITY, LAYOFF, RECALL and JOB VACANCIES

- 6.1 Seniority - Seniority shall be the amount of continuous service within a regular bargaining unit position. Seniority shall date back to the employee's date of hire, in a regular status in the bargaining unit, but shall not be established until completion of the employee's "probationary period". An employee may be disciplined and/or discharged during his probationary period without recourse to the grievance procedure contained herein.
- 6.1.1 Each calendar year, upon the request of the Union, the Employer shall provide the Union with a seniority list showing the name, present classification, first date of compensated work in the bargaining unit and the employee's initial date of hire for each employee in the bargaining unit.
- 6.2 An employee's seniority shall be broken so that no prior period of employment shall be counted and their seniority shall cease upon:
- 1) Retirement;
  - 2) Voluntary termination or job abandonment;
  - 3) Discharge;
  - 4) Failure of the employee to notify the employer of his willingness to return to work upon recall from a layoff within ten (10) calendar days after mailing a written notice from the employer to the employee's last known address appearing on the employer's records;
  - 5) Failure to return to work promptly after an authorized leave of absence;
  - 6) Layoff exceeding fifteen(15) months; or
  - 7) Unauthorized leave from work beyond three (3) working days.
- 6.2.1 The period of layoff or unpaid leave of absence will not count toward the computation of the amount of "continuous time in service".
- 6.3 Layoff - Layoff shall be by classification. In case of a layoff, employees shall be retained on the basis of job performance. When job performance is relatively equal, the employee with the shortest length of continuous service shall be laid off first. Relative job performance shall be determined on the basis of qualifications, past job performance evaluations and current job evaluations. Qualifications shall be determined by the knowledge, abilities and skills required for the affected position, as stated in the classification descriptions, and the employee's ability to perform the remaining work without further training.
- 6.3.1 The employer shall use no less than the last three (3) job performance evaluations in the determination of which employee is to be laid off. However, if an employee has less than three years of work in any of the classifications (can be cumulative) then those job performance evaluations shall be utilized.

- 6.3.2 Such person designated for layoff may bump an employee in a lower bargaining unit job classification the employee has previously held and/or which the employee is qualified (skills and ability) to hold. The employee to be bumped and laid off from the lower classification shall be selected through the process described in this Article.
- 6.4 Recall - In the case of recall, those employees laid off last shall be recalled first. An employee on layoff shall keep both the Employer and the Union informed of the address and telephone number where he can be contacted. Failure of the employee to notify the Employer of his willingness to return to work upon recall from layoff within ten (10) calendar days after mailing of written notice from the Employer to the employee's last known address appearing on the Employer's records shall cause the Employer's obligation to recall the employee to cease.
- 6.4.1 The Employer shall have no obligation to recall an employee after he has been on continuous layoff for a period of fifteen (15) months.
- 6.4.2 During a period of lay-off recall, no temporary or seasonal employees may be hired until laid off bargaining unit members have been offered the position. The declination or acceptance of a temporary or seasonal position will not affect the recall status of the individual.
- 6.5 Job Vacancies - All job vacancies, whether existing positions or newly created positions, shall be posted on all work site bulletin boards for not less than seven (7) calendar days, during which time employees who desire consideration for such openings shall notify the Employer in writing during the period the notice is posted. Bargaining unit employees who meet the minimum qualifications for the position and have completed their probation period shall be given first consideration for positions in the bargaining unit.
- 6.5.1 Posted job opportunities shall contain a current description of the job duties and the rate of pay. It is the intent of the parties to provide qualified employees with opportunities to help meet the needs of both the employee and the City.
- 6.5.2 Employees who are recalled from layoff shall have their sick leave balances restored to the number of hours that were in their sick leave banks at the time of layoff, less any amounts that were cashed out at separation.

ARTICLE VII SICK LEAVE, SHARED LEAVE, LIGHT DUTY, AND BEREAVEMENT LEAVE  
 (Note: Replaced with MOU)

- 7.1 Sick Leave - ~~All full-time employees accrue sick leave benefits at the rate of eight (8) total hours for each calendar month of continuous employment. Such sick leave shall be separated into two separate accrual banks, "state sick leave" and "city sick leave." Employees shall accrue one-half of their monthly sick leave accrual at the end of the first pay period of the month and the second half at the end of the second pay period. Part-time employees shall accrue sick leave benefits on a pro rata basis according to hours worked. All full-time employees shall accrue sick leave benefits at the rate of eight (8) hours for each calendar month of continuous employment. Employees shall accrue one-half of their monthly sick leave accrual at the end of the first pay period of the month and the second half at the end of the second pay period. Part-time employees shall accrue sick leave benefits on a pro rata basis according to hours worked.~~

- 7.1.1 ~~All employees shall accrue one (1) hour of paid state sick leave for every forty (40) hours worked. Employees are not entitled to accrue state sick leave for hours paid while not working (such as vacation, paid holidays, or while using state sick leave). In addition, regular full-time employees shall accrue city sick leave, which when combined with their state sick leave will total eight (8) hours of sick leave per month (prorated for part-time employees). Sick leave benefits are earned from the date of employment, and may be utilized from date of employment. Employees do not earn sick leave benefits during a leave without pay. Employees do not earn sick leave benefits, and may not use any earned but unused sick leave benefits, during a suspension without pay. Employees continue to earn sick leave and vacation time while on paid sick leave.~~
- 7.1.2 ~~State sick leave benefits accrue from the date of employment and employees are entitled to use their accrued state sick leave beginning on the ninetieth (90<sup>th</sup>) calendar day after the start of their employment. City sick leave benefits are earned from the date of employment, and may be utilized from date of employment. Employees do not earn sick leave benefits during a leave without pay. Employees do not earn city sick leave benefits, and may not use any earned but unused sick leave benefits during a suspension without pay. Employees continue to earn sick leave and vacation time while on paid sick leave. Sick leave benefits not used during the calendar year in which they are earned may be carried over and used during succeeding calendar years. Such benefits may be carried over into successive calendar years so long as the employee remains employed by the City. Employees who transfer to another department retain any accumulated sick leave benefits after transfer to their new position.~~
- 7.1.3 ~~City sick leave benefits not used during the calendar year in which they are earned may be carried over and used during succeeding calendar years. Such benefits may be carried over into successive calendar years so long as the employee remains employed by the City. Employees who transfer to another department retain any accumulated sick leave benefits after transfer to their new position. Sick leave benefits may be used by eligible employees for any absence due to personal injury, bereavement, illness or temporary disability which keeps the employee from performing the employee's regular duties, paternity leave for ten (10) days after the birth or adoption of a child under the age of six, medical and dental appointments, absences of reasonable duration occasioned by the illness or injury of a minor child or spouse, or the need to accompany a minor child to a medical or dental appointment, provide care for a child with a health condition, provide care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency condition, exposure to a contagious disease where on-the-job presence of the employee would jeopardize the health of others, or use of prescription drug which impairs job performance or safety. Sick leave benefits may be used for actual periods of temporary disability associated with pregnancy or childbirth during which the employee is physically unable to perform her duties as certified by a licensed physician. For the purposes of this section, "child" is defined by RCW 49.12.265. "Health condition", "serious health condition", "emergency condition" and "mental or physical disability" are defined by WAC 296-130-020(10-14).~~

- 7.1.3.1 Unused state sick leave balances in excess of forty (40) hours remaining at the end of the calendar year shall be credited to the employee's city sick leave balance the following year. State sick leave balances of forty (40) hours or less must carry over to the following calendar year.
- 7.1.4 Accrued state sick leave must be utilized first, followed by city sick leave once the employee's state sick leave is exhausted. Employees may use their accrued, unused sick leave hours to care for themselves or a family member (as defined below) for:~~In the event an employee exhausts his or her accrued sick leave, the employee has the option to use accrued vacation leave or compensatory time.~~
- a. Mental or physical illnesses, injuries, or health conditions;
  - b. The need for medical diagnosis, care, or treatment of mental or physical illnesses, injuries, or health conditions; or
  - c. The need for preventive medical care.
- 7.1.4.1 For the use of sick leave to care for an employee's family member, "family member" is defined as a child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling. "Child" is defined as a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status). "Parent" is defined as a biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
- 7.1.4.2 Sick leave benefits may also be used by eligible employees for paternity leave for ten (10) days after the birth or adoption of a child under the age of six, and for actual periods of temporary disability associated with pregnancy or childbirth during which the employee is physically unable to perform her duties as certified by a licensed physician. Sick leave may also be used for (a) a child with a health condition that requires treatment or supervision; or (b) a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition. For the purposes of this section, "health condition", "serious health condition", "emergency condition" and "mental or physical disability" are defined by WAC 296-130-020(10-14).
- 7.1.4.3 Employees may use their accrued, unused sick leave when their City building (work site) has been closed by order of a public official for any health-related reason; or when an employee's child's school or place of care has been closed by order of a public official for any health-related reason. See the definition of "child" in the previous section.
- 7.1.4.4 Employees may use their accrued, unused sick leave to seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee and their family members including, but not limited to:
- a. Preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;
  - b. Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking;

- c. Attend health care treatment for a victim who is the employee's family member;
- d. Obtain, or assist the employee's family member(s) in obtaining, services from: A domestic violence shelter; a rape crisis center; or a social services program for relief from domestic violence, sexual assault, or stalking.
- e. Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking.
- f. Participating, for the employee or for the employee's family member(s), in: safety planning; or temporary or permanent relocation; or other actions to increase the safety from future incidents of domestic violence, sexual assault, or stalking.
- g. For purposes of leave related to domestic violence, sexual assault, or stalking, "family member" is defined as any individual whose relationship to the employee can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship.

#### 7.1.5

In the event an employee exhausts his or her accrued sick leave, the employee has the option to use accrued vacation leave or compensatory time. Employees injured on the job shall not simultaneously collect sick, vacation or compensatory leave and Worker's Compensation payments greater than the employee's regular pay. The City provides "Sick Leave Buy Back" to enable employees, off work due to a workplace injury, to receive a paycheck while they wait for the Department of Labor and Industries (L&I) to process their claim and issue time-loss compensation. Employees use sick leave for the absence, but then have much of their sick leave accruals credited back based on the L&I payment. Employees must use their available sick leave bank, and when and if the employee's sick leave is exhausted, compensatory time or accrued vacation leave may be used. It is mandatory for the employee to buy back their sick leave hours with the time loss payment so that the employee receives no more than 100% of their wages during a time loss event. In any event, the Employer shall pay only up to the maximum of the difference between the payment received under Worker's Compensation by such employee and the employee's regular straight-time rate of compensation that the employee would have received from the Employer if able to work. Such payment by the Employer shall be limited to the period of time that such employee has accumulated paid leave credits. The foregoing shall be accomplished by the employee depositing the time loss check from Worker's Compensation and "buying back" the sick leave with a personal check or money order payable to the City of Des Moines. Once the employee has bought back all available sick and vacation leave, the employee shall no longer accrue paid leave benefits and shall not be required to surrender the time loss payments from Worker's Compensation to the Employer.

#### 7.1.6

Employees injured on the job shall not simultaneously collect sick, vacation or compensatory leave and Worker's Compensation payments greater than the employee's regular pay. The City provides "Sick Leave Buy Back" to enable employees, off work due to a workplace injury, to receive a paycheck while they wait for the Department of Labor and Industries (L&I) to process their claim and issue time-loss compensation. Employees use sick leave for the absence, but then have much of their sick leave accruals credited back based on the L&I payment. Employees must use their available sick leave bank, and when and if the employee's sick leave is exhausted, compensatory time or accrued vacation leave

may be used. It is mandatory for the employee to buy back their sick leave hours with the time loss payment so that the employee receives no more than 100% of their wages during a time loss event. In any event, the Employer shall pay only up to the maximum of the difference between the payment received under Worker's Compensation by such employee and the employee's regular straight-time rate of compensation that the employee would have received from the Employer if able to work. Such payment by the Employer shall be limited to the period of time that such employee has accumulated paid leave credits. The foregoing shall be accomplished by the employee depositing the time loss check from Worker's Compensation and "buying back" the sick leave with a personal check or money order payable to the City of Des Moines. Once the employee has bought back all available sick and vacation leave, the employee shall no longer accrue paid leave benefits and shall not be required to surrender the time loss payments from Worker's Compensation to the Employer. Payment of sick leave benefits is conditioned upon the employee notifying the supervisor or Department Director, or designee, of the employee's absence(s) as outlined in Section 4.H Attendance and Tardiness/Absenteeism of the City's Personnel Manual. Failure to give the required notice may result in no payment of sick leave benefits or other compensation for such absence(s).

7.1.7 Payment of sick leave benefits is conditioned upon the employee notifying the supervisor or Department Director, or designee, of the employee's absence(s) as outlined in Section 4.H Attendance and Tardiness/Absenteeism of the City's Personnel Manual. Failure to give the required notice may result in no payment of city sick leave benefits or other compensation for such absence(s). The employee may be required to provide certification of illness from a qualified health care provider whenever absent for two (2) or more days or has established a pattern which appears to indicate abuse and is requested by the employee's immediate supervisor or the Department Director, or designee. Examples of such an established pattern include when employee calls in sick on a day when a vacation request was denied, or absences or tardiness when particular job duties are performed, on a day before or after days off, holidays, scheduled vacation, or weekends. The employee shall be required to provide a written release to return to work from a qualified health care provider whenever requested by the employee's immediate supervisor or the Department Director, or designee. The City may require any employee returning after an absence to be examined by a second qualified health care provider of the City's choice.

7.1.7.1 Employees must provide reasonable notice of an absence from work for the use of sick leave to care for themselves or a family member, or because the employee's child's school or place of care is closed by order of a public official for any health-related reason, as follows.

7.1.7.2 If an employee's absence is foreseeable, the employee must provide notice to their supervisor or designee at least 10 days, or as early as practicable, before the first day sick leave is used. If possible, notification should include the expected duration of the absence.

7.1.7.3 If an employee's absence is unforeseeable, the employee must contact their supervisor or designee as soon as possible before the required start of their shift. If the absence continues beyond the first day, the employee shall notify the supervisor on a daily basis.

- a. If circumstances allow, employees should provide notice as soon as the employee learns of the need for sick leave.
- b. In the event it is not practicable to provide notice of an unforeseeable absence, a person on the employee's behalf may provide such notice.
- c. If possible, this notification should include the expected duration of the absence.

7.1.7.4 For the use of domestic violence, sexual assault, or stalking, if the absence is foreseeable, an employee must give advance oral or written notice to their supervisor or designee as soon as possible. If an employee is unable to give advance notice because of an emergent or unforeseen circumstance related to the employee or family member being a victim of domestic violence, sexual assault, or stalking, the employee or their designee must give oral or written notice no later than the end of the first day that the employee takes such leave.

7.1.8 When an employee has used state sick leave for an authorized use for more than three (3) consecutive days, the employee must provide verification that establishes or confirms that the use of sick leave is for an authorized purpose. "Three (3) consecutive days" means an absence for a full work day or partial work day on each of three consecutive days during which the employee is required to work. For those employees with a regular work schedule, when the employee is "required to work" means the employee's regular schedule. However, an employee who is on a scheduled day off, such as a holiday or scheduled vacation day, cannot use sick leave because the employee is not required to work that day. Acceptable verification for absences exceeding three days are specified as follows. Any employee found to have abused sick leave privileges by falsification or misrepresentation shall be subject to corrective action, including but not limited to repayment to the City of any amounts paid to such employee for such periods of absence, or discipline, up to and including discharge.

7.1.8.1 For care of the employee or the employee's family member, acceptable verification may include:

- a. A written or oral statement from the employee indicating that the use of sick leave is necessary to care for the employee or their family member for an authorized purpose;
- b. A doctor's note or a signed statement by a health care provider indicating that the use of sick leave is for care of the employee or their family member for an authorized purpose; or
- c. Other documentation demonstrating that the employee's use of sick leave is for care of the employee or their family member for an authorized purpose.

7.1.8.2 Verification must be provided to the City within ten (10) calendar days of the first day an employee used sick leave to care for themselves or a family member.

- a. When an employee or the employee's family member has been a victim of domestic violence, sexual assault, or stalking, the employee's choice of documents listed in WAC 296-128-660 satisfies this verification requirement; such verification must be in a timely manner.

b. In the event the employee's child's school or place of care is closed by order of a public official for any health-related reason, acceptable verification may include written notice of closure by order of the public official; such verification must be provided to the City within ten (10) calendar days of the first day the employee used sick leave for such purpose.

7.1.8.3 When an employee has used City sick leave, the employee may be required to provide certification of illness from a qualified health care provider whenever absent for two (2) or more days or has established a pattern which appears to indicate abuse and is requested by the employee's immediate supervisor or the Department Director, or designee. Examples of such an established pattern include when employee calls in sick on a day when a vacation request was denied, or absences or tardiness when particular job duties are performed, on a day before or after days off, holidays, scheduled vacation, or weekends. The employee shall be required to provide a written release to return to work from a qualified health care provider whenever requested by the employee's immediate supervisor or the Department Director, or designee. The City may require any employee returning after an absence to be examined by a second qualified health care provider of the City's choice.

7.1.9 Any employee found to have abused sick leave benefits or privileges by falsification or misrepresentation shall be subject to corrective action, including but not limited to repayment to the City of any amounts paid to such employee for such periods of absence, or discipline, up to and including discharge. Employees who utilize twenty-four (24) hours or less of sick leave in any calendar year shall receive 10 (ten) hours of vacation time. This is calculated per calendar year and is not available for people who work less than a full year. The employees who qualify for this additional vacation time, and the respective Department Director, shall receive a notice of the qualification in January immediately following the completion of the applicable calendar year. The time is immediately available upon notification and the use of this time follows the same guidelines as noted in Section 7.C of the City's Personnel Manual.

7.1.10 Employees with a sick leave balance of over two hundred (200) hours shall have one (1) hour of their monthly sick leave accrual of eight (8) hours cashed and deposited into the ICMA-RC 457 Plan. Employees whose balance is over three hundred (300) hours shall have two (2) hours of their monthly sick leave accrual of eight (8) hours cashed and deposited into the ICMA-RC 457 Plan.

7.1.10.4 Sick Leave Cash Out to HRA VEBA Upon Separation - Upon the separation from service of an employee in good standing with at least ten (10) years of service with the City of Des Moines in a position represented by the Union or upon the death of any employee regardless of years of service, the City will cash out 25% of the employee's sick leave balance or 200 hours, whichever is less. For employees with at least twenty (20) years of service, the City will cash out four hundred (400) hours or 50% of the employee's sick leave balance, whichever is less. As a tax savings to the employee, the City shall pay any sick leave cash out provided under this Section by contributing the entire cash-out value of all unused sick leave hours accrued and available to the employee's HRA VEBA account. Upon the separation from service of an employee in good standing with at least ten (10) years of service with the City of Des Moines in a position represented by the Union or upon the death of any employee regardless of years of service, the City will cash out 25% of

the employee's sick leave balance or 200 hours, whichever is less. For employees with at least twenty (20) years of service, the City will cash out four hundred (400) hours or 50% of the employee's sick leave balance, whichever is less. As a tax savings to the employee, the City shall pay any sick leave cash out provided under this Section by contributing the entire cash-out value of all unused sick leave hours accrued and available to the employee's HRA/VEBA account.

- 7.1.11 Employees who use all their accumulated sick leave and require more time off work due to illness or injury may submit a request to the City Manager for a leave of absence as specified by Section 7.I of the City's Personnel Manual. Employees who use all their accumulated sick leave and require more time off work due to illness or injury may submit a request to the City Manager for a leave of absence as specified by Section 7.I of the City's Personnel Manual.
- 7.1.12 Employees may take sick leave for care of family including spousal equivalent under the Washington Family Care Act, the Family Medical Leave Act (FMLA) and Paid Family Medical Leave (PFML) as currently enacted or as may be amended. Employees may take sick leave for care of family including spousal equivalent under the Washington Family Care Act and the Family Medical Leave Act as currently enacted or as may be amended.
- 7.2 Paid Family Medical Leave (PFML) Premium Splits - Effective January 1, 2020, a paid family and medical leave benefit will be available to eligible employees according to the provisions of RCW 50A and the Employer's pertinent policies and procedures. Effective January 1, 2019, the employee's share of the premiums for paid family and medical leave and any surcharges will be collected through a payroll deduction and remitted to the Employment Security Department of Washington State as provided in RCW 50A. Should the premium share change or be increased the Union has the right to bargain over any said change."
- 7.3 Other Leaves - Medical, maternity, paternity, Family Medical Leave, Paid Family and Medical Leave, military reserve training, and other leaves shall be specified in the City of Des Moines Personnel Manual.
- 7.24 Shared Leave - Employees shall be eligible for shared leave in accordance with the current Employer policy contained in Section 7.J. of the City's Personnel Manual with the provision that employees applying for shared leave benefits may bank a total of forty (40) hours of accumulated sick leave. The Employer reserves the right to change the Shared Leave policy, provided that the Union is offered the opportunity to comment and provide input prior to the change and the change is applied uniformly to all employees covered by Section 7.J. Employees shall be eligible for shared leave in accordance with the current Employer policy contained in Section 7.J. of the City's Personnel Manual with the provision that employees applying for shared leave benefits may bank a total of forty (40) hours of accumulated sick leave. The Employer reserves the right to change the Shared Leave policy, provided that the Union is offered the opportunity to comment and provide input prior to the change and the change is applied uniformly to all employees covered by Section 7.J.
- 7.35 Light Duty - Light duty may be provided per Section 4.L of the City's Personnel Manual. Light duty may be provided per Section 4.L of the City's Personnel Manual.

7.46

~~Bereavement - When a death occurs in an employee's immediate family, the employee may take up to two (2) days of paid bereavement leave which is not counted against any other leave. In addition, the employee may use up to eight (8) hours of sick leave for bereavement leave for in-state deaths and up to twenty-four (24) hours of sick leave for out-of-state deaths. The timing of bereavement leave will be by mutual agreement between the employee and the Department Director, or designee. An employee is not paid for any days off if the employee would not otherwise have been entitled to compensation for that day. Bereavement leave pay shall be that amount the employee would have earned had the employee worked his or her regular work schedule during the leave. An employee may be granted a bereavement leave prior to completion of the trial period. "Immediate family" as used in this section is defined as an employee's spouse, spousal equivalent in a cohabitation relationship, parents, grandparents, children, adopted children, foster children, grandchildren, brothers, sisters, first cousins, nephews, nieces, aunts, or uncles, and/or corresponding in-laws and "step" relations. Additional paid bereavement leave using sick leave or other leaves may be approved by the City Manager on a case-by-case basis.~~

~~When a death occurs in an employee's immediate family, the employee may take up to two (2) days of paid bereavement leave which is not counted against any other leave. In addition, the employee may use up to eight (8) hours of sick leave for bereavement leave for in-state deaths and up to twenty-four (24) hours of sick leave for out-of-state deaths. The timing of bereavement leave will be by mutual agreement between the employee and the Department Director, or designee. An employee is not paid for any days off if the employee would not otherwise have been entitled to compensation for that day. Bereavement leave pay shall be that amount the employee would have earned had the employee worked his or her regular work schedule during the leave. An employee may be granted a bereavement leave prior to completion of the trial period. "Immediate family" as used in this section is defined as an employee's spouse, spousal equivalent in a cohabitation relationship, parents, grandparents, children, adopted children, foster children, grandchildren, brothers, sisters, first cousins, nephews, nieces, aunts, or uncles, and/or corresponding in-laws and "step" relations. Additional paid bereavement leave using sick leave or other leaves may be approved by the City Manager on a case-by-case basis.~~

ARTICLE VIII VACATION AND HOLIDAY

8.1 Vacation - Each regular full-time employee shall accrue vacation leave at the following rates:

<u>Years of Employment</u>	<u>Vacation Hours Earned</u>	<u>Carryover Maximum</u>
0-3 years	8 hours/month	240
4-6 years	10 hours/month	240
7-10 years	12 hours/month	240
11-15 years	14 hours/month	240
16+ years	16 hours/month	240

~~The vacation carryover maximum shall continue to be at two hundred and forty will be reduced to (240) hours. The reduction in the vacation carryover maximum to 240 hours will be implemented in 2017-2019 in accordance with Appendix "B".~~

- 8.1.1 Employees accrue one-half of their monthly vacation accrual at the end of the first pay period of the month and the second half at the end of the second pay period. Employees are eligible to use earned vacation leave after six (6) months of employment. The department director can waive the six-month waiting period. Regular part-time employees earn vacation leave on a pro-rated basis.
- 8.1.2 All vacation must be scheduled with and approved by the department director or designee. Vacations shall be scheduled at such times as the Employer finds most suitable after considering the wishes of the employee and the requirements of the department.
- 8.1.3 Employees are encouraged to use vacation in the year it is earned. The maximum vacation hours that any employee can carryover from one year to the next is according to the schedule listed in Section 8.1. Where City operations make it impractical for an employee to use his/her vacation time, the City Manager may authorize the employee to carryover more hours, provided that the employee submits a request to carryover the additional hours that includes an explanation of why he could not use all the hours over the maximum carryover amount in that year and details a plan to make sure he will not carryover more than the maximum the following year. This request must be endorsed by the department director.
- 8.1.4 Upon separation from employment, employees shall be paid for all accrued but unused vacation time on their final paycheck at their current straight-time rate. Employees who are retiring are encouraged to use unused vacation time prior to the effective date of their retirement. Retiring employees may be paid for that portion of unused vacation time that does not create a retirement financial liability or obligation for the City on their final paycheck.
- 8.2 Holidays - An employee is eligible for a paid holiday if he or she is on paid status during the work day before and after the holiday. Employees shall receive the following holidays off with eight (8) hours of compensation at their regular straight-time hourly rate of pay:

New Year's Day	January 1
Martin Luther King Jr.'s Birthday	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	Day after Thanksgiving
Christmas Day	December 25

Employees shall receive four (4) hours off at their regular straight-time hourly rate of pay the afternoon of Christmas Eve Day, December 24. In addition, employees shall receive ~~sixteen~~ twenty-four (16~~24~~) floating holiday hours as scheduled by the employee and approved by the supervisor. Regular part-time employees shall receive the above paid holidays on a prorated basis.

- 8.2.1 The above holidays shall be observed on those dates set by State law. Any holiday falling on a Sunday shall be observed on the following Monday. Any holiday falling on a Saturday shall be observed on the preceding Friday.

- 8.2.2 If a holiday occurs while an employee is on vacation or sick leave, the holiday shall be utilized rather than charged against the employee's accrued vacation or sick leave.
- 8.2.3 Employees assigned to work Thanksgiving Day, Christmas Day, and Christmas Eve Day after 12:00 p.m. (noon) shall be paid two (2) times their regular rate of hourly pay for all hours actually worked on those days, in addition to their holiday pay. Employees assigned to work on any of the remaining holidays listed in Section 8.2 shall be paid one and one-half ( $1.5\frac{1}{2}$ ) times their regular rate of hourly pay for all hours actually worked on these days, in addition to their holiday pay. For the purposes of this provision, holidays begin and end at midnight, except Christmas Eve Day, which begins at 12:00 p.m. (noon) and ends at midnight. Employees who are assigned to work on any holiday may choose to receive their eight (8) hours of holiday compensation on their next paycheck or, with their supervisor's approval, add eight (8) hours of time to their floating holiday balance. Provided, that employees who are assigned to work the afternoon of Christmas Eve (rather than receive 4 hours off with pay) shall receive their choice of 4 hours of holiday pay or 4 floating holiday hours. These hours must be used in the calendar year they are earned and may not be carried over into the next calendar year.
- 8.2.4 Employees on alternative work schedules must use vacation, compensatory-time or floating holiday hours to account for the difference between the eight (8-) hour holiday and their longer regular shift, using two (2) hours if on a "4-10s" schedule, or one (1) hour if on a "9-80s" schedule. However, when such employees have actual hours worked on a holiday under Section 8.2.3 above, they shall not also use vacation, compensatory-time, or floating holiday hours to supplement the eight (8-) hour holiday.
- 8.2.5 In the event the observation of a holiday falls on an employee's regular day off, the employee may receive their eight (8) hours of holiday compensation on their next paycheck or, with their supervisor's approval, schedule an alternate day off with eight (8) hours of pay.
- 8.2.6 Employees are eligible to use their floating holiday after six (6) months of employment. The department director may waive this six (6) month waiting period. The annual floating holiday does not carryover from one year to the next. It must be used in the calendar year earned or is forfeited. The floating holiday is not compensated in any form upon separation of employment. The City Manager shall have the discretion to designate a particular day during the year as the floating holiday for all eligible employees. The City Manager may take an advisory ballot of all the eligible employees to determine for that year whether the employees wish to leave the floating holiday to individual discretion or to consolidate the floating holiday for one particular citywide day off.

## ARTICLE IX GRIEVANCE PROCEDURE

- 9.1 Grievance Definition - A grievance is a complaint by a regular, full or part-time (non-trial period) employee or group of regular employees alleging a violation of a specific provision of this agreement. A complaint by an eligible employee regarding discipline that does not involve a loss of pay or monetary benefits may only be processed through Step 3 of the grievance procedure herein.

- 9.2 Grievance Procedure Steps - A grievance shall be handled in the following manner:
- 9.2.1 Step 1 - The aggrieved employee or group of employees shall present the grievance orally to the immediate supervisor within five (5) working days of its occurrence (or discovery of occurrence), not including the day of the occurrence. The supervisor shall give an oral reply within five (5) working days of the date of presentation of the grievance, not including the date of the presentation. If the grievance is resolved at Step 1, the supervisor shall prepare a memorandum to the grievant(s) setting forth the terms of the resolution. A copy of this memorandum should be sent to the Department Director and Personnel Director at the time it is sent to the grievant(s).
- 9.2.2 Step 2 - If the grievance is not settled at Step 1 it shall be: (1) reduced to writing, stating the specific section of this agreement that was allegedly violated and describing the remedy, adjustment, or other corrective action sought; (2) dated; (3) signed by the aggrieved employee or group of employees; and (4) presented to the Department Director within five (5) working days after the supervisor's oral reply is given, not including the day the answer is given. The Department Director shall reply in writing to the grievant(s) within five (5) working days of the date of the presentation of the written grievance, not including the day of the presentation. If the grievance is resolved at Step 2, the Department Director shall prepare a memorandum to the grievant(s) setting forth the terms of this resolution. The Personnel Director should be provided with a copy of this memorandum at the time it is sent to the grievant(s).
- 9.2.3 Step 3 - If the grievance is not settled at Step 2, the written grievance shall be presented, along with all pertinent correspondence and information to the City Manager within five working days after the Department Director's response is given, with a copy going to the Department Director. The City Manager may meet with the aggrieved employee or group of employees, the immediate supervisory personnel and the Department Director. The City Manager shall reply to the grievant(s) in writing within ten (10) working days of the date of presentation of the written grievance, not including the day of presentation.
- 9.2.4 Step 4 - If the grievance is not resolved by the City Manager, the grievance may, within fifteen (15) calendar days, be referred to a mediator. The Union or the City Manager shall forward a request to the executive director of the Public Employment Relations Commission (PERC) to assign a mediator from his or her staff. Upon designation of the mediator, the parties will make every attempt to schedule a date for mediation within fifteen (15) days.
- a. Proceedings before the mediator shall be confidential and informal in nature. No transcript or other official record of the mediation conference shall be made.
  - b. The mediator shall attempt to ensure that all necessary facts and considerations are revealed. The mediator shall have the authority to meet jointly and/or separately with the parties and gather such evidence as deemed necessary.

- c. The mediator shall not have the authority to compel resolution of the grievance. If the mediator is successful in obtaining agreement between the parties, he/she shall reduce the grievance settlement to writing. Said settlement shall not constitute a precedent unless both parties so agree.
- d. If mediation fails to settle the dispute, the mediator may not serve as an arbitrator in the same matter nor appear as a witness for either party. Nothing said or done in mediation may be referred to or introduced into evidence at any subsequent arbitration hearing.

9.2.5 Step 5 - Arbitration Procedure. If a grievance concerning a violation of a specific provision of this Agreement which shall not include any disciplinary action is not settled in accordance with the foregoing procedures, the Union or Employer may refer the grievance to arbitration within thirty (30) calendar days after the completion of mediation or in the event mediation is bypassed, within thirty (30) calendar days after completion of Step 3. If the request for arbitration is not filed by the Union staff representative or the Employer within thirty (30) calendar days, the Union or Employer waives its right to pursue the grievance through the arbitration procedure. The City and the Union shall attempt to select a sole arbitrator by mutual agreement. In the event the parties are unable to agree upon an arbitrator, either party may request the Public Employment Relations Commission (PERC) to submit a panel of nine (9) arbitrators. Both the City representative and the Union representative shall have the right to strike four (4) names from the panel. The party striking the first name shall be determined by a flip of a coin. The other party shall then strike the next name and so on. The remaining person shall be the arbitrator. The arbitrator shall be notified of his/her selection by a joint letter from the Employer and the Union requesting that he/she set a time and place subject to the availability of the City and the Union representatives. The arbitrator shall have no right to amend, modify, ignore, add to, or subtract from the provisions of this agreement. He/she shall consider and decide only the specific issue submitted to him/her in writing by the City and the Union, and shall have no authority to make a decision on any other issue not submitted to him/her. The arbitrator shall submit his/her decision in writing within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension thereof. The decision shall be based solely upon his/her interpretation of the meaning or application of the express terms of this Agreement to the facts of the grievance presented. The decision of the arbitrator shall be final and binding.

9.2.6 Step 5 - Arbitration Procedure (Discipline involving loss of pay or monetary benefits). If a grievance concerning discipline involving loss of pay or monetary benefits is not settled in accordance with the foregoing procedures, the Union or Employer may refer the grievance to arbitration within thirty (30) calendar days after the completion of mediation or in the event mediation is bypassed, within thirty (30) calendar days after completion of Step 3. If the request for arbitration is not filed by the Union staff representative or the Employer within thirty (30) calendar days, the Union or Employer waives its right to pursue the grievance through the arbitration procedure.

A panel of three (3) arbitrators determined by the Employer and Union representatives starting with a panel of eleven (11) professionally recognized arbitrators selected by the Employer and the Union. The Employer will then delete four (4) names. The Union will then delete four (4) names. The remaining three (3) arbitrators become the panel from which the Employer shall select an arbitrator if necessary during the term of the Agreement. The arbitrator shall be notified of his/her selection by a joint letter from the Employer and the Union requesting that he/she set a time and place subject to the availability of the City and the Union representatives. The arbitrator's authority is limited to either accepting the position of the Employer or accepting the position of the Union. The arbitrator shall submit his/her decision in writing within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension thereof. The decision shall be based solely upon his/her interpretation of the meaning or application of the express terms of this Agreement to the facts of the grievance presented. The decision of the arbitrator shall be final and binding.

### 9.3

#### Special Provisions

- a. The cost of the arbitration shall be borne equally by the parties including the arbitrator's fees and expenses, room rental and cost of record.
- b. Each party shall bear the cost of the preparation and presentation of its own case, including but not limited to witness fees and attorney fees.
- c. The term "Employee" as used in this article shall mean an individual employee, a group of employees, and/or their Union representative.
- d. An aggrieved party shall be granted time off without loss of pay for the purpose of hearing on a grievance.
- e. A grievance may be entertained in, or advanced to, any step in the grievance procedure if the parties so jointly agree.
- f. The time limits within which action must be taken or a decision made as specified in this procedure may be extended by mutual written consent of the parties involved. A statement of the duration of such extension of time must be signed by both parties.
- g. Any grievance shall be considered settled at the completion of any step if the Employee is satisfied or deemed withdrawn if the matter is not appealed within the prescribed period of time.
- h. Grievance claims involving retroactive compensation shall be limited to one hundred twenty (120) days prior to the written submission of the grievance.

### 9.4

Election of Remedies - It is specifically and expressly understood and agreed that taking a grievance appeal to arbitration constitutes an election of remedies and a waiver of any and all rights by the appealing employee, the Union, and all persons it represents to litigate or otherwise contest the appealed subject matter in any court or other available forum. Likewise, litigation or other contest of the subject matter of the grievance in any court or other available forum shall constitute an election of remedies and a waiver of the right to arbitrate the matter.

- 9.4.1 The Union, the appealing employee, and any other bargaining unit members do not have a right to bypass the arbitration provisions of this Agreement and resort to litigation or any other forum to appeal a grievance based on rights under this Agreement.

ARTICLE X EQUIPMENT, UNIFORMS, AND TRAINING

- 10.1 Equipment - The Employer shall provide each employee safety equipment and protective clothing as required by the Employer for the performance of all essential job functions.
- 10.2 Uniforms - The Employer shall provide each employee a sufficient number of uniforms. The Employer shall also provide laundering services for all uniform items. Following initial uniform issue, replacement of uniform items shall be based on need. The Employer shall have the sole and final authority to determine when items need replacement.
- 10.2.1 Boot Allowance - The Employer, for ~~2014-2020~~ shall provide each employee with a boot allowance of up to ~~one-two~~ hundred ~~twenty eight~~ dollars (\$~~180~~~~220~~) to purchase work boots. The allowance shall increase by one hundred percent (100%) of Seattle CPI-U of June of the previous year for subsequent years. Boots replacement shall be based on need, with the Employer having the sole and final authority to determine when replacement is needed. The boot allowance amount shall apply each time a pair of boots is replaced.
- 10.3 Training - The Employer shall compensate employees to attend employer required training. Employer required training shall be paid at the employee's regular, straight-time hourly rate of pay unless otherwise required by the Fair Labor Standards Act. The Employer shall reimburse costs reasonably related to such training.
- 10.3.1 Reimbursement for training and other related expenses shall be in accordance with the Employer's policy.
- 10.3.2 The Employer shall not be required to compensate an employee for time spent by the employee outside of regular working hours for acquisition or maintenance of certifications required by county, state, or federal law.

ARTICLE XI HEALTH, WELFARE, and RETIREMENT

- 11.1 Medical Insurance - Regular full-time employees and regular part-time employees budgeted for thirty (30) hours or more per week shall be eligible to participate in the City's medical insurance plans. Premiums shall be paid by the City on behalf of all full-time employees and on behalf of all part-time employees budgeted for thirty (30) or more per week on a pro rata basis according to the following schedule:
- 1) The City will pay ninety percent (90%) of the employee's premium and eighty percent (80%) of the spouse and dependents' premiums for the following Association of Washington Cities Health Insurance Plans:

- i. ~~HealthFirst Plan; changing to HealthFirst 250 Plan at the earliest feasible date in 2017~~
    - ii. ~~Group Health Cooperative \$10.00 Copay Plan; changing to Kaiser Permanente \$200 Deductible Plan at the earliest feasible date in 2017~~
- 2) The City will pay one hundred percent (100%) of the eligible employee's premium and ninety percent (90%) of the spouse and dependents' premiums for the Association of Washington Cities High Deductible Health Plans with Regence and Kaiser Permanente.
- i. For employees who select a High Deductible Plan the City will provide a notional Health Reimbursement Arrangement (HRA) of one thousand five hundred dollars (\$1,500) for employee only coverage or three thousand dollars (\$3,000) for any family coverage. The City will fund the notional HRA by preloading a benefits debit card for each employee on an annual basis.
  - ii. Once the deductible has been met, and the employee has paid the coinsurance costs of one thousand five hundred dollars (\$1,500) above any beyond the deductible for employee only coverage, or three thousand dollars (\$3,000) above and beyond the deductible for any family coverage, the City will pay any further coinsurance costs which apply to the employee's annual-out-of-pocket limit.
  - iii. The unused balance in the notional HRA will be rolled over into the ~~employee's~~ HRA VEBA accounts of current employees in April of the following year.
- 3) For those employees who select the HealthFirst 250 Plan or the Kaiser Permanente \$200 Deductible Plan, the City will make the following contributions to the employee's HRA VEBA account:
- i. Employee only: ~~five seven~~ hundred ~~and eighty fifty~~ dollars (~~\$580750~~)
  - ii. Employee plus dependents one thousand ~~one two~~ hundred ~~and thirty fifty~~ dollars (~~\$1,1301,250~~)
- 4) Should the City voluntarily agree to a higher HRA or HSA amount with any other group, the Union members covered by this agreement, shall receive the same amount(s). This provision shall not apply to any HRA or HSA amounts imposed on the Employer as a result of any arbitration or court decision.
- 5) If an employee opts out of the City's medical plans entirely, the employee will receive their choice of cash or Section 457 deferred compensation payments in lieu of the medical benefits. Such payment will be equal to twenty-five percent (25%) of the City's savings, based on the HealthFirst

250 Plan medical premiums plus the HRA-VEBA contributions the City would have paid for the employee and any spouse and/or dependents who are eligible for City medical coverage. To be eligible for such payments, the employee must provide proof of comprehensive group medical coverage through an employer or other entity that covers all individuals in a group. Individual medical insurance purchased on an individual or family basis does not qualify under this option.

- 11.2 Dental Insurance - For regular full-time employees and regular part-time employees whose positions are budgeted for thirty (30) or more hours per week, the City shall pay each month one-hundred percent (100%) of the premium necessary for the purchase of employee coverage and dependent coverage under the Association of Washington Cities (AWC) Washington Dental Service Plan F and Plan II Orthodontia.
- 11.3 Vision Insurance - For regular full-time employees and regular part-time employees whose positions are budgeted for thirty (30) or more hours per week, the City shall pay each month one-hundred percent (100%) of the premium necessary for the purchase of employee coverage and dependent coverage under the Association of Washington Cities (AWC) Vision Service Plan (VSP), Full Family \$25 Deductible.
- 11.4 Long-term Disability (LTD), Term Life, Accidental Death and Dismemberment (AD&D), and Survivor's Income Benefit (SIB) Insurance - As the City of Des Moines has withdrawn from the Social Security System, the Employer will provide a package of benefits that is intended to replicate the benefits that employees would be eligible for under Social Security. For regular full-time employees and regular part-time employees whose positions are budgeted for twenty-one (21) or more hours per week, the Employer shall pay each month one-hundred percent (100%) of the premium necessary for the purchase of employee coverage for LTD, Term Life, AD&D, and SIB coverage. The Employer will pay into the Social Security System for employees not eligible for these benefits.
- i. In addition to the current LTD SIB and Term Life Insurance (\$5,000 and \$10,000 AD&D) coverage the City provides, the City will contribute an additional point three five three percent (0.353%) for each employee, covered by the Teamsters Collective Bargaining Agreement, to their 457(a) account from the savings realized by the City from the LTD and SIB Programs.
  - ii. The City will modify the terms of the 401(a) Social Security Replacement and 457 Deferred Compensation Plans it purchases from ICMA-RC to allow retired employees represented by the Union to annually withdraw, tax free, the maximum amount allowed by law to pay for health insurance premiums, when federal law or regulation is changed to allow such withdrawals.
- 11.5 Payment of Premiums - The Employer will pay premiums for the coverages described in this Article for eligible employees if the employee is on paid status during the first ten (10) working days of the month.

- 11.6 The Employer reserves the right to select other insurance plans and carriers or to self-insure to provide the benefits outlined in Article 11, provided that the benefits are comparable with those currently offered. The Teamsters agree to accept externally imposed benefit changes.
- 11.7 Public Employees Retirement System (PERS) - The Employer and eligible employees shall contribute to the PERS system as required by State law.
- 11.8 Social Security - The City of Des Moines does not participate in the Social Security System. In lieu of the retirement benefit of Social Security, the City has a 401(a) Defined Contribution Plan through the International City/County Management Associations Retirement Corporation (ICMA-RC). For regular full-time employees and regular part-time employees whose positions are budgeted for twenty-one (21) or more hours per week, the Employer shall contribute an amount equal to five percent (5%) of base pay and employees shall contribute an amount equal to six and two-tenths percent (6.2%) of base pay. Vesting of the City's share of the 401(a) plan is as follows: after two years of service - 25%, after three years of service - 50%, after four years of service - 75%, and after five years of service - 100%.
- 11.9 Labor and Industries - The Employer shall pay into the Labor and Industries system as required by law for all employees covered by this agreement.
- 11.10 Section Part 125 Plan - Effective January 1, 2008 ~~through December 31, 2009~~, the City shall allow an employee to participate in a Part Section 125 Plan if he/she so desires.
- 11.11 Western Conference of Teamsters Pension Trust - On November 18, 2015, The Union held an election to determine whether the Public Works and Parks employees wanted to participate in the Western Conference of Teamsters Pension Trust. The Union certifies herein that such an election occurred and that bargaining unit members by majority vote determined that they wished to participate. Effective January 1, 2016, all bargaining unit members as recognized in the Collective Bargaining Agreement shall participate in the Western Conference of Teamsters Pension Trust Fund (the "Trust Fund"). Contributions shall be made for all bargaining unit members as recognized in the Collective Bargaining Agreement, based on the previous month's compensable hours, starting with compensable hours earned in January, 2016, and paid in the February, 2016, pay warrants. Said contributions shall be made by all bargaining unit members through a pre-tax payroll diversion from their monthly earnings for all compensable hours to the Trust Fund's "basic plan" in the manner set forth below. The "basic plan" for purposes of this Agreement means the Trust plan that does not include a Program for Early Retirement (PEER).

Notwithstanding any provision to the contrary that may be contained elsewhere within this Agreement, the Employer shall pay the Teamsters Pension contribution set forth within Section 11.11.2 on behalf of all regular employees performing bargaining unit work; and for purposes of this Section the bargaining unit shall be defined as follows:

All employees hired and/or performing work within the classifications of Appendix "A" shall be included within the scope of the bargaining unit. The scope of the bargaining unit shall exclude all employees of the Employer performing work historically known as "seasonal or summer work".

Specifically excluded from the unit shall be employees working on a seasonal basis that perform "seasonal or summer work" upon the Employer owned property regardless of the method compensated or the location of the work performed.

The scope of this Agreement shall not be expanded by the continuation of the practice of bargaining unit employees performing "seasonal or summer work" so assigned. Provided however the terms of this Agreement shall apply whenever bargaining unit employees perform non-bargaining unit "seasonal or summer work".

No person or third party beneficiary shall interpret this Agreement such that "seasonal or summer work" shall be considered bargaining unit work regardless of the similarity of work, tools, supervision, or other characteristic. The Union specifically and unequivocally disclaims any work performed by "seasonal or summer work" and confirms that such work is not bargaining unit work for the purpose of this section.

11.11.1 The total amount due to the Trust Fund for each monthly payroll period shall be remitted to the Administrator for the Trust Fund in a lump sum by the City on or before the 20th of each month for all compensated hours during the preceding month. The Employer shall abide by rules as may be established by the Trustees of said Trust Fund to facilitate the determination of the reporting and recording of the contribution amounts paid for all bargaining unit employees.

11.11.2 The Employer shall pay one dollar and fifty cents (\$1.50) per hour into the Western Conference of Teamsters Pension Trust on account of each member of the bargaining unit for which each hour for which compensation was paid. The one dollar and fifty cents (\$1.50) per hour contribution will be through a payroll diversion on a pre-tax basis.

11.11.2.1 For the purposes of this Article compensable hours shall include but not be limited to, all hours worked, vacation or sick leave that is used by the employee and all other forms of hourly compensation. Compensable hours shall not include any cash out of vacation or sick leave benefits upon separation of service for any reason.

11.11.3 The pre-tax hourly diversions provided for in Section 11.11.2 may be increased by a majority vote of the affected classification. In the event this occurs the Employer and the Union will execute a Letter of Agreement modifying Section 11.11.2.

## ARTICLE XII LABOR-MANAGEMENT CONFERENCE COMMITTEE

12.1 Labor-Management Conference Committee - The Employer and the Union shall establish a Joint Labor-Management Conference Committee which shall be comprised of participants from both the Employer and the Union. The function of the Committee shall be to meet periodically to discuss issues of general interest

and/or concern, as opposed to individual complaints, for the purpose of establishing a harmonious working relationship between the employees, the Employer and the Union. It is not the purpose of the Committee to reopen collective bargaining negotiations or to change the terms of this Agreement. Either the Employer or the Union may request a meeting of the Committee. The party requesting the meeting shall do so in writing listing the issues they wish to discuss.

### ARTICLE XIII COMPENSATION

- 13.1 Base Wage - The classifications of work and monthly rates of pay for employees covered by this Agreement shall be set forth within Appendix "A" to this Agreement which by this reference shall be incorporated herein as if set forth in full.
- 13.2 Military Paid Leave of Absence - An employee who is a member of the reserves or any branch of the uniformed service, who is ordered to involuntary active duty by the United States government, thus requiring a leave of absence from his or her City position, and who has exhausted annual military leave as provided by RCW 38.40.060 will be granted a paid leave of absence from their City position at their regular base rate of pay less the amount of military pay to which they are entitled.

### ARTICLE XIV PERFORMANCE OF DUTY

- 14.1 Employees shall perform their assigned duties to the best of their abilities. The Union and the Employer agree that there shall be no strikes, walk outs, slow downs, stoppages of work, "sick outs", or any interference with the efficient operation of the departments.

### ARTICLE XV SAVINGS

- 15.1 Should any provision of this Agreement be rendered invalid by reason of any existing or subsequently enacted legislation or by any decree of a court of competent jurisdiction, such invalidation shall not invalidate the remaining portions of this Agreement, and the remaining portions shall remain in full force and effect.

### ARTICLE XVI SAFETY

- 16.1 Safety - The Employer agrees to provide a work environment that complies with all applicable state and federal laws to insure worker safety.
- 16.2 Drug and Alcohol Testing - The parties have agreed to implement the Department of Transportation requirements for CDL drug and alcohol testing and the City's Drug and Alcohol Testing Policy and Procedures.

### ARTICLE XVII EMPLOYEE RIGHTS

- 17.1 The Employer recognizes and agrees that employees covered by this Agreement are entitled to all rights and privileges accorded ordinary citizens under all applicable provisions of the United States and State Constitutions as well as the rights and privileges granted by any and all applicable laws and this Agreement. If a meeting is called for disciplinary action, and employee may request a Union Representative to be present.

- 17.2 Employees shall have the right to review their personnel file on break time, lunchtime, or leave status, and request in writing amendments of any statements in their file. Any Employer's decision regarding a proposed amendment shall be in writing. If amendment is refused, the employee shall be entitled to have a rebuttal statement placed in the file. All performance evaluations shall be reviewed with the employee before being included in their personnel file. Employees shall sign the evaluation as evidence that it has been reviewed with them. An employee's signature does not necessarily indicate agreement.

#### ARTICLE XVIII SUBCONTRACTING

- 18.1 At least ninety (90) days prior to the implementation of contracting out to public or private agencies, the City shall meet with the Union to:
- 1) Provide the City's reasons and goals for contracting out or reassignment of the work,
  - 2) Discuss alternatives to contracting out or reassignment that would meet the City's goals, and
  - 3) If the implementation should result in a reduction of the workforce, bargain the impacts of such contracting out or reassignment.

#### ARTICLE XIX COMPLETE AGREEMENT

- 19.1 All matters not specifically covered in this Agreement shall be deemed to have been raised and disposed of as if specifically covered herein. It is agreed that this document contains the full and complete agreement on all bargainable issues between the parties hereto and for all for whose benefit this Agreement is made, and no party shall be required during the term of this Agreement to negotiate or bargain upon any issue unless mutually agreed otherwise.
- 19.2 Any and all agreements, written and verbal, previously entered into between the parties hereto are mutually canceled and superseded by this Agreement.

#### ARTICLE XX TERM OF AGREEMENT

- 20.1 This Agreement shall be effective January 1, ~~2017~~20, and shall remain in full force and effect through December 31, ~~2019~~22. If a certain Article specified a different date, that date shall take precedent. Either party may upon written notice to the other no later than ninety (90) days prior to the expiration of the Agreement of their intent to meet and negotiate a successor agreement.
- 20.2 Notwithstanding the provisions of Section 20.1, this Agreement and all of its terms and provisions shall continue to remain in full force and effect during the course of negotiations on a new Labor Agreement until such time as the terms of a new Agreement have been reached or an impasse has been reached and declared by the Employer and/or the Union, whichever is the sooner; provided however, in no event shall an impasse be declared earlier than one (1) year following the expiration date of this Agreement.

ARTICLE XXI MISCELLANEOUS

21.1 Tardiness - Deductions shall be made for tardiness in increments of fifteen (15) minutes with the major portion (eight (8) or more minutes) of each fifteen (15) minute increment being deducted as fifteen (15) minutes.

21.2 Inclement Weather - Should the Mayor, City Manager or a Designee close City Hall, due to inclement weather or related conditions and releases non-essential personnel on administrative leave during regular City Hall business hours, then the City shall add an equal amount of time to the vacation balances of each employee covered under this agreement who is assigned to work during the normal City Hall business hours while City Hall is closed.

21.3 Furloughs - The City reserves the right to negotiate furloughs in the event of significant budget shortfall as part of its efforts to preserve essential services and ensure the City's ongoing ability to meet its financial obligations. The City recognizes its obligation to provide notice to the Union and an opportunity to negotiate furloughs. The details of any furlough will be negotiated in good faith by the parties, including whether seniority may apply in a furlough and how furloughs or equivalent concessions are being implemented for other City employees (since it is not the City's intent to single out the Teamsters bargaining unit). Furloughs would only be implemented either by agreement between the parties or upon completion of negotiations and statutory impasse procedures pursuant to RCW 41.56. The concerns of the Union will be given good faith consideration by the City, including concerns as to equity with other City employees.

21.4 Cell Phones - The City may opt to provide a cell phone stipend of \$15.00 per month, for employees who hold the classification of Maintenance Worker I and/or Maintenance Worker II. Employees, who hold the classification of Maintenance Specialist and Maintenance Lead and are required to utilize a cell phone as part of their normal course of business, may opt to use a City provided cell-phone or choose to receive a monthly cell phone stipend amount as established per City policy.

~~IN WITNESS WHEREOF, the parties hereto have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2017.~~

PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS LOCAL UNION NO. 763, affiliated with the International Brotherhood of Teamsters

CITY OF DES MOINES, WASHINGTON

By \_\_\_\_\_  
Scott A. Sullivan  
Secretary-Treasurer

By \_\_\_\_\_  
Michael F. Matthias  
City Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

APPENDIX "A"  
to the  
AGREEMENT  
by and between  
CITY OF DES MOINES, WASHINGTON  
and  
PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS  
LOCAL UNION NO. 763  
(Representing the Public Works, Parks and Marina Employees)

January 01, ~~2017-2020~~ through December 31, ~~2019-2022~~

THIS APPENDIX is supplemental to the AGREEMENT by and between the CITY OF DES MOINES, WASHINGTON, hereinafter referred to as the Employer, and PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS LOCAL UNION NO. 763, affiliated with the International Brotherhood of Teamsters, hereinafter referred to as the Union.

Retroactive pay increases provided under this Appendix, ~~and for standby pay under Article 5.3.2,~~ shall apply to all employees on the payroll at the time of Union ratification.

Effective January 1, 2020, the following classifications have been reclassified from the T-16 pay range to the T-17 pay range:

- Traffic Control Specialist
- Marina Environmental Operations Specialist
- Surface Water Management Specialist
- Parks Maintenance Specialist

Effective January 1, 2020, the following classifications have been reclassified from the T-18 pay range to the T-19 pay range:

- Senior Maintenance Worker-Facilities
- Sr. Maintenance Worker (Lead)-Marina
- Sr. Maintenance Worker (Lead)-Parks
- Sr. Maintenance Worker (Lead)-Streets
- Sr. Maintenance Worker (Lead)-SWM

A.1 Effective January 1, ~~2017-2020~~, the base wage rates in effect December 31, ~~2016-2019~~, shall be increased by ~~one four point three five and seven tenths~~ percent (~~1.74.35~~%), resulting in the following hourly rates:

RANGE	POSITION	<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
T11	<del>Maintenance Worker I</del>	<del>\$21.51</del>	<del>\$22.59</del>	<del>\$23.72</del>	<del>\$24.91</del>	<del>\$26.15</del>
	Harbor Attendant I	<u>\$23.31</u>	<u>\$24.48</u>	<u>\$25.70</u>	<u>\$26.99</u>	<u>\$28.34</u>
	<u>Maintenance Worker I - Parks</u>					
	<u>Maintenance Worker I - Streets</u>					
	<u>Maintenance Worker I - SWM</u>					
	<u>Parks Maintenance Worker I</u>					

T15	<del>Maintenance Worker II</del>	<del>\$25.17</del>	<del>\$26.42</del>	<del>\$27.74</del>	<del>\$29.13</del>	<del>\$30.58</del>
	Harbor Attendant II	<u>\$27.27</u>	<u>\$28.63</u>	<u>\$30.06</u>	<u>\$31.57</u>	<u>\$33.15</u>
	<u>Maintenance Worker II - Parks</u>					
	<u>Maintenance Worker II - Streets</u>					
	<u>Maintenance Worker II - SWM</u>					
	<u>Facilities Maintenance Worker I</u>					
<del>T16</del>	<del>Marina Environmental Operations Specialist</del>	<del>\$26.18</del>	<del>\$27.48</del>	<del>\$28.86</del>	<del>\$30.30</del>	<del>\$31.82</del>
<del>T17</del>	<del>Parks Maintenance Specialist</del>	<del>\$29.50</del>	<del>\$30.98</del>	<del>\$32.52</del>	<del>\$34.15</del>	<del>\$35.86</del>
	<u>SWM Maintenance Specialist</u>					
	<u>Traffic Control Specialist</u>					
	<u>Surface Water Management Specialist</u>					
<del>T17</del>	<del>Facilities Worker</del>	<del>\$27.22</del>	<del>\$28.58</del>	<del>\$30.01</del>	<del>\$31.51</del>	<del>\$33.09</del>
<del>T19</del>	<del>Senior Maintenance Worker-Facilities</del>	<del>\$31.90</del>	<del>\$33.50</del>	<del>\$35.18</del>	<del>\$36.93</del>	<del>\$38.78</del>
	<u>Senior Maintenance Worker/Lead - Marina</u>					
	<u>Senior Maintenance Worker/Lead - Parks</u>					
	<u>Senior Maintenance Worker/Lead - Street</u>					
	<u>Senior Maintenance Worker/Lead - SWM</u>					
<del>T18</del>	<del>Sr. Maintenance Worker (Lead)</del>	<del>\$28.31</del>	<del>\$29.72</del>	<del>\$31.21</del>	<del>\$32.78</del>	<del>\$34.41</del>

~~The entry-level pay range of T11 is added such that new hires will be automatically advanced to the T15 range after meeting the requirements for the position, to include three years of experience.~~

A.21.1 Effective January 1, 2020, the base wage rates in effect December 31, 2019, shall be increased by an additional one point one five percent (1.15%), resulting in the following hourly rates: Effective January 1, 2018, the base wage rates shall be increased by an amount equal to one hundred percent (100%) of the Seattle CPI-U for June 2016 to June 2017, with a minimum increase of one percent (1.0%) and a maximum increase of one and nine-tenths percent (1.9%).

RANGE	POSITION	Step A	Step B	Step C	Step D	Step E
T11	Harbor Attendant I					
	Maintenance Worker I - Parks	<u>\$23.58</u>	<u>\$24.76</u>	<u>\$26.00</u>	<u>\$27.29</u>	<u>\$28.66</u>
	Maintenance Worker I - Streets					
	Maintenance Worker I - SWM					
	Parks Maintenance Worker I					
T15	Harbor Attendant II					
	Maintenance Worker II - Parks	<u>\$27.58</u>	<u>\$28.96</u>	<u>\$30.41</u>	<u>\$31.93</u>	<u>\$33.53</u>
	Maintenance Worker II - Streets					
	Maintenance Worker II - SWM					
	Facilities Maintenance Worker I					

T17	Marina Environmental Operations Specialist Parks Maintenance Specialist SWM Maintenance Specialist Traffic Control Specialist	\$29.83 \$31.33 \$32.90 \$34.54 \$36.27
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T19	Senior Maintenance Worker-Facilities Senior Maintenance Worker/Lead - Marina Senior Maintenance Worker/Lead - Parks Senior Maintenance Worker/Lead - Street Senior Maintenance Worker/Lead - SWM	\$32.27 \$33.88 \$35.58 \$37.36 \$39.23
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The entry-level pay range of T11--Maintenance Worker I entry-level pay range is added such that new hires will be automatically advanced to the T15 range after meeting the requirements for the position, to include three four (4) years of experience for employees hired after date of ratification. This Section shall not apply to the Parks Maintenance I position.

Effective within (30) thirty days of the date the contract is ratified, active full-time and part-time workers as of the date of ratification shall receive a lump sum payment equal to one point three-five percent (1.35%) of their gross wages as of December 31, 2019.

A.32 Effective January 1, 2021, the base wage rates shall reflect the following change: An amount equal to 100% of the Seattle-Tacoma Bellevue CPI-U for October 2019 to October 2020. There shall be no minimum and no maximum applied to such modification. However, if the Seattle-Tacoma Bellevue CPI-U is negative, and a negative across-the-board adjustment is made for General Employees, then adjustments to base wages for this Bargaining Unit will be consistent with the General Employees. Effective January 1, 2019, the base wage rates shall be increased by an amount equal to one hundred percent (100%) of the Seattle CPI-U for June 2017 to June 2018, with a minimum increase of one percent (1.0%) and a maximum increase of one and nine-tenths percent (1.9%).

A.3 Effective January 1, 2022, the base wage rates shall reflect the following change: An amount equal to 100% of the Seattle-Tacoma Bellevue CPI-U for October 2020 to October 2021. There shall be no minimum and no maximum applied to such modification. However, if the Seattle-Tacoma Bellevue CPI-U is negative, and a negative across-the-board adjustment is made for General Employees, then adjustments to base wages for this Bargaining Unit will be consistent with the General Employees.

A.4 The rates of pay provided for in APPENDIX "A" of this Agreement are contract minimums. Nothing herein shall prohibit the Employer from paying an employee in excess of the minimum amounts.

PUBLIC, PROFESSIONAL & OFFICE-  
CLERICAL EMPLOYEES AND DRIVERS  
LOCAL UNION NO. 763, affiliated with the  
International Brotherhood of Teamsters

CITY OF DES MOINES, WASHINGTON

By \_\_\_\_\_  
Scott A. Sullivan  
Secretary-Treasurer

By \_\_\_\_\_  
Michael F. Matthias  
City Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

APPENDIX "B"  
to the  
AGREEMENT  
by and between  
CITY OF DES MOINES, WASHINGTON  
and  
PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS  
LOCAL UNION NO. 763  
(Representing the Public Works, Parks and Marina Employees)

January 01, 2017 through December 31, 2019

~~THIS APPENDIX is supplemental to the AGREEMENT by and between the CITY OF DES MOINES, WASHINGTON, hereinafter referred to as the Employer, and PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS LOCAL UNION NO. 763, affiliated with the International Brotherhood of Teamsters, hereinafter referred to as the Union.~~

- ~~B.1 During the term of this Agreement the parties have agreed in Article 8.1 to reduce the Vacation Carryover Maximums to two hundred and forty (240) hours for all employees. All employees who are in excess of two hundred and forty (240) hours shall make a good faith effort to reduce their vacation bank down to the new maximum of two hundred and forty (240) hours by December 31, 2019.~~
- ~~B.2 Current employees, Richard Stites and Patrick Wolfrom, shall be cashed out of any vacation in excess of two hundred and forty (240) hours on December 31, 2019, should they not make it below the two hundred and forty (240) hour threshold.~~

~~PUBLIC, PROFESSIONAL & OFFICE-CLERICAL EMPLOYEES AND DRIVERS LOCAL UNION NO. 763, affiliated with the International Brotherhood of Teamsters~~

~~CITY OF DES MOINES, WASHINGTON~~

By \_\_\_\_\_  
Scott A. Sullivan  
Secretary-Treasurer

By \_\_\_\_\_  
Michael F. Matthias  
City Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

# AGENDA ITEM

## BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Washington State Department of  
Commerce - Shelter Program Grant

ATTACHMENTS:

1. WA State Dept of Commerce Shelter Grant Program Overview
2. Letter of Support

FOR AGENDA OF: July 16, 2020

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

DATE SUBMITTED: July 9, 2020

CLEARANCES:

Community Development \_\_\_\_\_

Marina \_\_\_\_\_

Parks, Recreation & Senior Services s/s NN

Public Works R. H. C.

CHIEF OPERATIONS OFFICER: [Signature]

Legal /s/ TG

Finance [Signature]

Courts \_\_\_\_\_

Police \_\_\_\_\_

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: [Signature]

### Purpose and Recommendation

The purpose of this agenda item is to request City Council approval to collaboratively apply for a Shelter Program Grant through the Washington State Department of Commerce, along with seven other South King County cities, to fund a shelter to be located in Auburn or Burien.

The Department of Commerce intends for communities to use equitable and creative approaches to develop or expand shelter programs and bring people inside with a goal of exiting participants to permanent housing quickly.

### Suggested Motion

Motion: "I move to approve the City to jointly apply for the Shelter Program Grant through the Department of Commerce and authorize the City Manager to sign the required letter of support from the City."

**Background:**

Funds from the Washington State Department of Commerce will be available under a new “shelter grant program”, slated to begin August 2020, with a goal of “bringing more people inside”. The total amount available state-wide will be \$40 million from the Home Security Account. Projects funded under this opportunity must be open by December 2020, and funds will be awarded for a three year period: August 2020 to June 2023.

Only local governments are eligible to apply. Commerce will designate an amount available for King County, and in order to maximize the amount received, South King County needs to submit a single collaborative application. If any separate applications are submitted, those will only receive 80% of the funds otherwise allotted to King County. In support of bringing in 100% of the funds allotted, King County is planning to work with the seven partnered South King County cities to submit an application on their behalf. These cities include Des Moines, Auburn, Burien, Federal Way, Kent, Renton, and SeaTac.

**Discussion:**

South King County is lacking in supportive housing and shelter for residents in need. This grant seeks to remedy this and by collaborating with other South King County cities, the cities will be eligible to receive the full amount of grant funds available. Based on a number of meetings that have occurred with South King County cities, the proposed shelter site to be funded by this grant would be in Burien or Auburn.

The Shelter program will enact strategies to ensure racially equitable access and racially equitable outcomes at exit. It will provide outreach to unsheltered individuals.

The Shelter program will provide residents with housing stability focused services, including diversion and problem solving. Shelter programs connect shelter residents to mainstream services including behavioral health, chemical dependency, education or workforce training, employment services and permanent supportive housing.

The shelter must be available for occupancy by December 2020. In special circumstances, Commerce will consider approval of later occupancy dates. Commerce intends to recapture and redistribute funds for shelters not available for occupancy by the December deadline.

**Alternatives:**

Reject participation in a joint application. (Not recommended).

**Financial Impact:**

No financial impact to the City. Our residents would benefit from the shelter funding in either Burien or Auburn.

**Recommendation:**

Staff recommends approval of the motion.

# Shelter Program Overview

The Department of Commerce (Commerce) intends for communities to use equitable and creative approaches to develop or expand shelter programs and bring people inside with a goal of exiting participants to permanent housing quickly.

Funds will be awarded for a three-year period: August 2020 to June 2023.

## Program Requirements

1. Shelter program will enact strategies to ensure racially equitable access and racially equitable outcomes at exit.
2. Shelter rules and policies do not include pre-conditions for receiving shelter, and are narrowly focused on maintaining a safe environment for residents and the community and avoiding exits to unsheltered homelessness.
3. Shelter staff are trained on LGBTQ+ competency, racial equity and how to implement trauma informed care.
4. Shelter program provides outreach to unsheltered individuals.
5. Shelter program provides residents with housing stability focused services, including diversion and problem solving. Shelter programs connect shelter residents to mainstream services including behavioral health, chemical dependency, education or workforce training, employment services and permanent supportive housing.
6. Shelter must be available for occupancy by December 2020. In special circumstances, Commerce will consider approval of later occupancy dates. Commerce intends to recapture and redistribute funds for shelters not available for occupancy by the December deadline.
7. Shelter program is consistent with county local homeless housing plans.
8. Direct service providers must enter client data into the Homeless Management Information System.

## Eligible Types of Shelter

For the purpose of this grant, shelter facilities are defined as:

- **Emergency Shelter Facility:** a building locally permitted to provide emergency shelter for people experiencing homelessness. Examples include: re-use of existing buildings and new buildings. This designation requires a certificate of occupancy issued by the local jurisdiction.
- **Temporary Shelter Site:** structure(s) or location locally permitted to provide temporary shelter for people experiencing homelessness. Tents or "tent cities" are an example of a temporary shelter. This designation requires use approval, as required by local jurisdiction. This could be conditional or temporary use permits, or a zoning letter stating approvals required.

Hotels, motels, dormitories and efficiency dwelling units or apartments are allowable types of shelter facilities. If an emergency shelter hotel/motel voucher model is used, programs must be able to ensure access to a set number of hotel/motel beds 365 days a year.

Given the context of COVID-19, traditional models of congregate shelter services may not be appropriate. For not only this reason, sites utilizing temporary shelter structures referred to as "tiny shelters" or "tiny homes" are allowable, in addition to other models that meet minimum standards of safety and dignity.

All shelters must implement applicable COVID-19 Washington State Department of Health recommendations and Centers for Disease Control and Prevention COVID-19 [Guidance](#) for Shared of Congregate Housing. Shelter facilities must obtain approval by the relevant local public health jurisdiction, Public Health Officer, County Medical Director or Department of Public Health Director prior to occupancy of shelter.

## Eligible Costs

Commerce will reimburse for new beds<sup>1</sup> created on and after January 1, 2020.

Commerce will reimburse up to \$56 per day per net additional person sheltered above the baseline of shelter occupancy prior to the award of funding.

Eligible uses of funds include:

- Shelter operations including housing case management, navigation to other services, outreach related to bringing unsheltered individuals inside and efforts to address potential impacts of shelter on surrounding neighborhoods
  - Supporting shelter residents with move-in costs and other flexible funds are allowable costs, if those costs directly help participants exit homelessness and obtain housing. Flexible funds will be reimbursed as part of the \$56 per day reimbursement rate paid for people while in shelter.
- Shelter maintenance
- Capital improvements and construction
- Shelter rent and loan repayment

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<sup>1</sup> Examples of new beds include tents converted to tiny shelters/homes, seasonal or temporary beds converted to permanent beds or nightly drop-in beds converted to 24-hour beds.

Commerce will reimburse up to \$10,000 per shelter bed prior to occupancy for costs associated with creating additional shelter capacity or improving existing shelters to improve occupancy rates and positive outcomes.

Eligible costs prior to occupancy include:

- Acquisition and construction
- Equipment
- Staff costs
- Other costs directly related to creating additional shelter capacity

## Service Provision

### Rules and Policies

Shelter programs must have realistic and clear expectations. Rules and policies must be narrowly focused on maintaining a safe environment for residents and the community and avoiding exits to homelessness. Shelter programs must have flexible intake schedules and require minimal documentation. At the minimum, people must not be screened out based on the following criteria<sup>2</sup>:

- Having little or no income
- Having poor credit or financial history
- Having poor or lack of rental history
- Having involvement with criminal justice system
- Having active or a history of alcohol and/or substance use\*
- Having a history of victimization
- The type or extent of disability-related services or supports that are needed
- Lacking identification or proof of U.S. Residency Status
- Other behaviors that are perceived as indicating a lack of "housing readiness," including resistance to receiving services

Shelters must be oriented toward exiting to people to permanent housing, and may not have stay limits. Residents must not be exited to homelessness solely due to the number of days spent residing at shelter.

Shelter programs must not require participants to pay a share of rent.

Participants must not be terminated from the program for the following reasons:

- Failure to participate in supportive services or treatment programs
- Failure to make progress on a housing stability plan
- Alcohol and/or substance abuse in and of itself is not considered a reason for termination (does not apply to sobriety/recovery focused shelter)\*

\*Each county should provide access to shelter that is realistically accessible to the diversity of people experiencing unsheltered homelessness. For many people, sobriety-based shelter is appropriate as they work to address dependence. Research is clear that some people will not be able to maintain sobriety, even with the threat of becoming unsheltered, and as a result would be ejected into unsheltered homelessness if sobriety-based shelter is the only option. As a condition of receiving this funding, jurisdictions will be required to

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<sup>2</sup> Shelter programs serving minors will follow guidance on shelter rules and policies from the Office of Homeless Youth.

provide shelter options that do not require sobriety as a condition of program enrollment proportionate to the requests for such placements.

### **Housing Stability Focused Services and Case Management**

Housing case management is driven by the needs of the resident, is flexible, uses a strengths-based approach and is focused on obtaining housing.

### **Diversion and Problem-Solving**

Diversion is a creative problem-solving approach to help people resolve their housing crisis, ideally before entering the crisis response system. Diversion uses exploratory conversations to help people identify realistic housing options based on their own resources. Diversion is often accompanied with short-term services including one-time financial assistance.

Diversion approaches will be utilized prior to program entry and throughout a resident's shelter stay.

### **Racially Equitable Access and Outcomes**

Shelter programs must develop and implement strategies to prevent racial inequities in who is served and program outcomes. Strategies must include policies and procedures that promote:

- Hiring and promoting both frontline and management staff who reflect the racial, cultural and language demographics of the population being served
- Implementing inclusive programming by intentionally seeking and utilizing input from the population being served
- Working with HAU staff to develop measures of equitable outcomes and address disparities

### **Program Contact:**

- Megan Kendig
- Email: [megan.kendig@commerce.wa.gov](mailto:megan.kendig@commerce.wa.gov)

## **Program webpage:**

<https://www.commerce.wa.gov/serving-communities/homelessness/office-of-family-and-adult-homelessness/shelter-program/>

# City of Des Moines



21630 11<sup>th</sup> AVENUE S, SUITE A  
DES MOINES, WASHINGTON 98198-6398  
(206) 870-6546 FAX: (206) 870-6540



Tedd Kelleher, Managing Director  
Housing Assistance Unit  
Washington State Department of Commerce  
1011 Plum Street SE  
P.O. Box 42525  
Olympia, WA 98504-2525

July 16, 2020

Dear Mr. Kelleher,

The City of Des Moines is a jurisdiction in King County, Washington with a population greater than 25,000 and is an eligible community applicant for Washington State Department of Commerce Shelter Grant Program funding.

This certifies that we support and are participating in the King County Joint Application being submitted to Commerce under the 2020 Shelter Grant program, with King County Department of Community and Human Services as the Lead Grantee Applicant.

Sincerely,

Michael Matthias  
City Manager, City of Des Moines  
206-870-6554  
[mmatthias@desmoineswa.gov](mailto:mmatthias@desmoineswa.gov)

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## A G E N D A I T E M

### BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Financial Management System  
Software and Implementation Services

FOR AGENDA OF: July 16, 2020

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: July 6, 2020

ATTACHMENTS:

1. Contract Document with Tyler Technologies
2. Munis Pricing
3. Rating Summary

CLEARANCES:

- Community Development \_\_\_\_\_
- Marina \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

CHIEF OPERATIONS OFFICER: \_\_\_\_\_

- Legal /s/ TG
- Finance *Law*
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

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

#### **Purpose and Recommendation**

The purpose of this agenda item is for the City Council to authorize the City Manager to enter into and execute the Tyler Technologies License and Services Agreement for the Munis ERP software application.

#### **Suggested Motion**

**Motion:** "I move to approve the Tyler Technologies License and Services Agreement for the Munis ERP software application, and authorize the City Manager to sign the Agreements substantially in the form as attached."

#### **Background**

The City's current financial system has been in place since 1995. Currently, the City utilizes a software application known as Eden (owned by Tyler Technologies) for accounting, budgeting and financial reporting and utilizes ADP for processing payroll.

Eden is categorized as an Enterprise Resource Planning (ERP) software application. ERP systems gather, store, retrieve, and report information across the entire organization within a single integrated software application using a modular approach. Eden is an older software product owned by Tyler Technologies and the company does not plan to invest in future development and is encouraging customers to migrate to one of their other products under the company's evergreen migration policy.

The current Eden/ADP system does not include modules for human resources, position budgeting, project accounting, accounts receivable or fixed assets and does not meet the City's present-day operational needs. The Finance Department makes extensive use of Microsoft Excel to track and account for personnel budgets and positions, capital projects, fixed assets, and accounts receivable; as well as, using it to provide data and reports to departments and external parties. Excel is a great tool and has tremendous power and benefits; but it is not recommended to use Excel in place of an ERP system.

### **Discussion**

The City has known it has needed to upgrade or replace its current financial management system and has included it as a project in the Capital Improvement Plan since 2018. Replacing and implementing a new Enterprise Resource Planning (ERP) software application is a major endeavor, as well as costly. For these reasons, we decided to issue a Request for Proposal (RFP) for Financial Management System Software & Implementation Services on December 20, 2019, with responses due on February 14, 2020.

In the RFP, the City defined the core system functionality to include:

- Human Resource Information System (HRIS) – to include Human Resources (HR), Payroll, Employee Self-Service and online timekeeping
- Financials – to include Chart of Accounts, General Ledger, Fund Accounting, Budget Control/Accounting, Accounts Payable, Accounts Receivable, Fixed Assets and Project/Grant Accounting

We received five responses to the RFP (Attachment 3 – Rating Summary).

In evaluating the responses to the RFP, the review committee prioritized the top core system functionality needed from a new system, which are:

- A Human Resource Information System (HRIS) - the integration of human resource (HR) activities and information technology. It enables data entry, and tracking and management for human resources, payroll and accounting. The HRIS system would include Employee Self-Service (ESS) and an online timekeeping system
- Position Control/Budgeting
- Project/Grant Accounting with the ability to provide labor and benefit costs for specific projects and activities.

The selection process included reviewing and rating the RFP proposals received, numerous vendor demonstrations, checking vendor references and some additional research. After careful consideration of core functionality requirements, system integration, company's technology and financial strength, user size and total costs, the best choice to meet the City's needs was Tyler Technologies Munis.

### **Alternatives**

Do not authorize the City Manager to enter into and execute the contract with Tyler Technologies for Munis, and continue with current Eden and ADP software systems. The impact by continuing with the current

system makes it very difficult to achieve efficiencies in business processes and difficult to respond to changes and requests from major stakeholders.

### **Financial Impact**

The contract total to implement Munis is \$334,320 in one-time fees and \$63,020 estimated travel costs for a total of \$397,340. Recurring system maintenance fees for Munis will be \$48,762. The City currently pays approximately \$40,530 in system maintenance fees for Eden and ADP. The project budget has \$345,000 set aside for the replacement of the Financial Management System; an additional \$55,000 will need to be assigned to fund the one-time fees and estimated travel costs. This additional funding will be incorporated into the 2021 budget.

### **Recommendation**

Staff recommends the City Council authorize the City Manager to enter into and execute the Tyler Technologies License and Services Agreement for the Munis ERP software application.

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## LICENSE AND SERVICES AGREEMENT

This License and Services Agreement is made between Tyler Technologies, Inc. ("Tyler") and the City of Des Moines, Washington ("Client").

WHEREAS, Client selected Tyler to license the software products and perform the services set forth in the Investment Summary and Tyler desires to perform such actions under the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

### SECTION A – DEFINITIONS

- **"Agreement"** means this License and Services Agreement.
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **"Client"** means City of Des Moines, Washington.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.
- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Effective Date"** means the date by which both your and our authorized representatives have signed the Agreement.
- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Investment Summary"** means the agreed upon cost proposal for the software, products, and services attached as Exhibit A.
- **"Invoicing and Payment Policy"** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as Exhibit B.
- **"Maintenance and Support Agreement"** means the terms and conditions governing the provision of maintenance and support services to all of our customers. A copy of our current Maintenance and Support Agreement is attached as Exhibit C.
- **"Support Call Process"** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as Schedule 1 to Exhibit C.

- **“Third Party Hardware”** means the third party hardware, if any, identified in the Investment Summary.
- **“Third Party Products”** means the Third Party Software and Third Party Hardware.
- **“Third Party Services”** means the third party services, if any, identified in the Investment Summary.
- **“Third Party Software”** means the third party software, if any, identified in the Investment Summary.
- **“Third Party Terms”** means, if any, the end user license agreement(s) or similar terms for the Third Party Software, as applicable and attached as Exhibit D.
- **“Tyler”** means Tyler Technologies, Inc., a Delaware corporation.
- **“Tyler Software”** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **“we”, “us”, “our”** and similar terms mean Tyler.
- **“you”** and similar terms mean Client.

## SECTION B – SOFTWARE LICENSE

### 1. License Grant and Restrictions.

- 1.1 We grant to you a license to use the Tyler Software for your internal business purposes only, in the scope of the internal business purposes disclosed to us as of the Effective Date. You may make copies of the Tyler Software for backup and testing purposes, so long as such copies are not used in production and the testing is for internal use only. Your rights to use the Tyler Software are perpetual but may be revoked if you do not comply with the terms of this Agreement.
- 1.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.
- 1.3 You may not: (a) transfer or assign the Tyler Software to a third party; (b) reverse engineer, decompile, or disassemble the Tyler Software; (c) rent, lease, lend, or provide commercial hosting services with the Tyler Software; or (d) publish or otherwise disclose the Tyler Software or Documentation to third parties.
- 1.4 The license terms in this Agreement apply to updates and enhancements we may provide to you or make available to you through your Maintenance and Support Agreement.
- 1.5 The right to transfer the Tyler Software to a replacement hardware system is included in your license. You will give us advance written notice of any such transfer and will pay us for any required or requested technical assistance from us associated with such transfer.
- 1.6 Where applicable with respect to our applications that take or process card payment data, we are responsible for the security of cardholder data that we possess, including functions relating to storing, processing, and transmitting of the cardholder data and affirm that, as of the Effective Date, we comply with applicable requirements to be considered PCI DSS compliant and have performed the necessary steps to validate compliance with the PCI DSS. We agree to

supply the current status of our PCI DSS compliance program in the form of an official Attestation of Compliance, which can be found at <https://www.tylertech.com/about-us/compliance>, and in the event of any change in our status, will comply with applicable notice requirements.

- 1.7 We reserve all rights not expressly granted to you in this Agreement. The Tyler Software and Documentation are protected by copyright and other intellectual property laws and treaties. We own the title, copyright, and other intellectual property rights in the Tyler Software and the Documentation. **The Tyler Software is licensed, not sold.**
2. License Fees. You agree to pay us the license fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.
  3. Escrow. We maintain an escrow agreement with a third party under which we place the source code for each major release of the Tyler Software. You may be added as a beneficiary to the escrow agreement by completing a standard beneficiary enrollment form and paying the applicable annual beneficiary fee. You will be responsible for maintaining your ongoing status as a beneficiary, including payment of the then-current annual beneficiary fees. Release of source code for the Tyler Software is strictly governed by the terms of the escrow agreement.
  4. Limited Warranty. We warrant that the Tyler Software will be without Defect(s) as long as you have a Maintenance and Support Agreement in effect. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect as set forth in the Maintenance and Support Agreement.

## SECTION C – PROFESSIONAL SERVICES

1. Services. We will provide you the various implementation-related services itemized in the Investment Summary and described in our industry standard implementation plan. We will finalize that documentation with you upon execution of this Agreement.
2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for your implementation. We will bill you the actual fees incurred based on the in-scope services provided to you. Any discrepancies in the total values set forth in the Investment Summary will be resolved by multiplying the applicable hourly rate by the quoted hours.
3. Additional Services. The Investment Summary contains the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.
4. Cancellation. We make all reasonable efforts to schedule our personnel for travel, including arranging travel reservations, at least two (2) weeks in advance of commitments. Therefore, if you

cancel services less than two (2) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) non-refundable expenses incurred by us on your behalf, and (b) daily fees associated with cancelled professional services if we are unable to reassign our personnel. We will make all reasonable efforts to reassign personnel in the event you cancel within two (2) weeks of scheduled commitments.

5. **Services Warranty.** We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.
6. **Site Access and Requirements.** At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us. You further agree to provide a reasonably suitable environment, location, and space for the installation of the Tyler Software and any Third Party Products, including, without limitation, sufficient electrical circuits, cables, and other reasonably necessary items required for the installation and operation of the Tyler Software and any Third Party Products.
7. **Client Assistance.** You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).
8. **Background Checks.** For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies.

#### **SECTION D – MAINTENANCE AND SUPPORT**

This Agreement includes the period of free maintenance and support services identified in the Invoicing and Payment Policy. If you have purchased ongoing maintenance and support services, and continue to make timely payments for them according to our Invoicing and Payment Policy, we will provide you with maintenance and support services for the Tyler Software under the terms of our standard Maintenance and Support Agreement.

If you have opted not to purchase ongoing maintenance and support services for the Tyler Software, the Maintenance and Support Agreement does not apply to you. Instead, you will only receive ongoing maintenance and support on the Tyler Software on a time and materials basis. In addition, you will:

- (i) receive the lowest priority under our Support Call Process;
- (ii) be required to purchase new releases of the Tyler Software, including fixes, enhancements and patches;

- (iii) be charged our then-current rates for support services, or such other rates that we may consider necessary to account for your lack of ongoing training on the Tyler Software;
- (iv) be charged for a minimum of two (2) hours of support services for every support call; and
- (v) not be granted access to the support website for the Tyler Software or the Tyler Community Forum.

## SECTION E – THIRD PARTY PRODUCTS

To the extent there are any Third Party Products set forth in the Investment Summary, the following terms and conditions will apply:

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.
2. Third Party Software. Upon payment in full of the Third Party Software license fees, you will receive a non-transferable license to use the Third Party Software and related documentation for your internal business purposes only. Your license rights to the Third Party Software will be governed by the Third Party Terms.
  - 2.1 We will install onsite the Third Party Software. The installation cost is included in the installation fee in the Investment Summary.
  - 2.2 If the Developer charges a fee for future updates, releases, or other enhancements to the Third Party Software, you will be required to pay such additional future fee.
  - 2.3 The right to transfer the Third Party Software to a replacement hardware system is governed by the Developer. You will give us advance written notice of any such transfer and will pay us for any required or requested technical assistance from us associated with such transfer.
3. Third Party Products Warranties.
  - 3.1 We are authorized by each Developer to grant or transfer the licenses to the Third Party Software.
  - 3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.
  - 3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.
4. Third Party Services. If you have purchased Third Party Services, those services will be provided independent of Tyler by such third-party at the rates set forth in the Investment Summary and in accordance with our Invoicing and Payment Policy.

5. **Maintenance.** If you have a Maintenance and Support Agreement in effect, you may report defects and other issues related to the Third Party Software directly to us, and we will (a) directly address the defect or issue, to the extent it relates to our interface with the Third Party Software; and/or (b) facilitate resolution with the Developer, unless that Developer requires that you have a separate, direct maintenance agreement in effect with that Developer. In all events, if you do not have a Maintenance and Support Agreement in effect with us, you will be responsible for resolving defects and other issues related to the Third Party Software directly with the Developer.

## SECTION F – INVOICING AND PAYMENT; INVOICE DISPUTES

1. **Invoicing and Payment.** We will invoice you for all fees set forth in the Investment Summary per our Invoicing and Payment Policy, subject to Section F(2).
2. **Invoice Disputes.** If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

## SECTION G – TERMINATION

1. **Termination.** This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section F(2).
  - 1.1 **For Cause.** If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section I(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section I(3).
  - 1.2 **Force Majeure.** Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of this Agreement for a period of forty-five (45) days or more.
  - 1.3 **Lack of Appropriations.** If you should not appropriate or otherwise receive funds sufficient to purchase, lease, operate, or maintain the software or services set forth in this Agreement, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid license and other fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.

## SECTION H – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

### 1. Intellectual Property Infringement Indemnification.

- 1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 1.2 Our obligations under this Section H(1) will not apply to the extent the claim or adverse final judgment is based on your: (a) use of a previous version of the Tyler Software and the claim would have been avoided had you installed and used the current version of the Tyler Software, and we provided notice of that requirement to you; (b) combining the Tyler Software with any product or device not provided, contemplated, or approved by us; (c) altering or modifying the Tyler Software, including any modification by third parties at your direction or otherwise permitted by you; (d) use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties; or (e) willful infringement, including use of the Tyler Software after we notify you to discontinue use due to such a claim.
- 1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.
- 1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; (c) replace it with a functional equivalent; or (d) terminate your license and refund the license fees paid for the infringing Tyler Software, as depreciated on a straight-line basis measured over seven (7) years from the Effective Date. We will pursue those options in the order listed herein. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

### 2. General Indemnification.

- 2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of PCI DSS requirements or a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at

our expense.

2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for personal injury or property damage to the extent caused by your negligence or willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement. We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.

3. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
4. **LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) PRIOR TO FORMAL TRANSITION TO MAINTENANCE AND SUPPORT, THE TOTAL ONE-TIME FEES SET FORTH IN THE INVESTMENT SUMMARY; OR (B) AFTER FORMAL TRANSITION TO MAINTENANCE AND SUPPORT, THE THEN-CURRENT ANNUAL MAINTENANCE AND SUPPORT FEE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS H(1) AND H(2).
5. **EXCLUSION OF CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. **Insurance.** During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Automobile Liability of at least \$1,000,000; (c) Professional Liability of at least \$1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least \$5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

## SECTION I – GENERAL TERMS AND CONDITIONS

1. **Additional Products and Services.** You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date, and thereafter

at our then-current list price, by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.

2. **Optional Items.** Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.
3. **Dispute Resolution.** You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, then the parties shall participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved after mediation, then either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.
4. **Taxes.** The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.
5. **Nondiscrimination.** We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.
6. **E-Verify.** We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.
7. **Subcontractors.** We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.
8. **Binding Effect; No Assignment.** This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not

required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.

9. **Force Majeure.** Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.
10. **No Intended Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.
11. **Entire Agreement; Amendment.** This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.
12. **Severability.** If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
13. **No Waiver.** In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.
14. **Independent Contractor.** We are an independent contractor for all purposes under this Agreement.
15. **Notices.** All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.
16. **Client Lists.** You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.

17. **Confidentiality**. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:
- (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
  - (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
  - (c) a party receives from a third party who has a right to disclose it to the receiving party; or
  - (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.
18. **Business License**. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.
19. **Governing Law**. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.
20. **Multiple Originals and Authorized Signatures**. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.
21. **Cooperative Procurement**. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement
22. **License Rights Terminate Upon Migration**. When Tyler makes Tyler Software discounted 100% in the Investment Summary (the "Evergreen Modules") licensed pursuant to this Agreement available to the Client for use in live production, the license to the Tyler software listed in Exhibit A, Schedule 1 (hereafter, "Migration Modules") terminates, as do Tyler's maintenance, support, and/or update obligations for such software.

23. Contract Documents. This Agreement includes the following exhibits:

- Exhibit A Investment Summary  
Schedule 1: Migration Modules
- Exhibit B Invoicing and Payment Policy  
Schedule 1: Business Travel Policy
- Exhibit C Maintenance and Support Agreement  
Schedule 1: Support Call Process
- Exhibit D Third Party Terms
- Exhibit E Disaster Recovery Agreement
- Exhibit F Agreement for Tyler Systems Management

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

City of Des Moines, WA

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address for Notices:

Tyler Technologies, Inc.  
One Tyler Drive  
Yarmouth, ME 04096  
Attention: Chief Legal Officer

Address for Notices:

City of Des Moines  
21630 11<sup>th</sup> Ave. S.  
Des Moines, WA 98198-6338  
Attention: \_\_\_\_\_



## Exhibit A Investment Summary

The following Investment Summary details the software, products, and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

**TO BE INSERTED**

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## Exhibit B Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

**Invoicing:** We will invoice you for the applicable license and services fees in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

### 1. Tyler Software.

1.1 *License Fees:* License fees are invoiced 100% on the date when we make the applicable Tyler Software available to you for downloading (the "Available Download Date").

1.2 *Maintenance and Support Fees:* Year 1 maintenance and support fees are waived through the earlier of (a) availability of the Tyler Software for use in a live production environment; or (b) one (1) year from the Effective Date. Year 2 maintenance and support fees, at our then-current rates, are payable on that earlier-of date, and subsequent maintenance and support fees are invoiced annually in advance of each anniversary thereof. Your fees for each subsequent year will be set at our then-current rates. On the first such anniversary, Client shall no longer be required to pay annual support fees for the Migration Modules.

### 2. Professional Services.

2.1 *Implementation and Other Professional Services (including training):* Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.

2.2 *Consulting Services:* If you have purchased any Business Process Consulting services, if they have been quoted as fixed-fee services, they will be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module. If you have purchased any Business Process Consulting services and they are quoted as an estimate, then we will bill you the actual services delivered on a time and materials basis.

2.3 *Conversions:* Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, we will bill you the actual services delivered on a time and materials basis.

2.4 *Requested Modifications to the Tyler Software:* Requested modifications to the Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the

applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in the Maintenance and Support Agreement.

2.5 *Other Fixed Price Services*: Except as otherwise provided, other fixed price services are invoiced as delivered, at the rates set forth in the Investment Summary. For the avoidance of doubt, where "Project Planning Services" are provided, payment will be due upon delivery of the Implementation Planning document.

3. Other Services and Fees.

3.1 *Disaster Recovery Services*: Disaster Recovery Services are invoiced annually in advance upon our receipt of your data. Disaster Recovery services will be provided in accordance with the terms of our then-current Disaster Recovery Agreement and will renew automatically for additional one (1) year terms at our then-current Disaster Recovery fee, unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term. Our current Disaster Recovery Agreement is attached to this Agreement as Exhibit E.

3.2 *Systems Management*: Systems Management Services are invoiced on the Available Download Date and are provided in accordance with the Agreement for Tyler Systems Management attached to this Agreement as Exhibit F. Systems Management Services will renew automatically for additional one (1) year terms at our then-current Systems Management Services fee, unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term.

4. Third Party Products.

4.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.

4.2 *Third Party Software Maintenance*: The first year maintenance fees for the Third Party Software, if any, is invoiced when we make that Third Party Software available to you for downloading.

4.3 *Third Party Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.

4.4 *Third Party Services*: Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary.

5. Credit for Prepaid Maintenance and Support Fees for Migration Modules. Client will receive a credit for the maintenance and support fees prepaid for the Migration Modules for the time period commencing on the first anniversary of the Effective Date of this Agreement. Migration Modules are listed at Exhibit A, Schedule 1.

6. Expenses. The service rates in the Investment Summary do not include travel expenses. Expenses for Tyler delivered services will be billed as incurred and only in accordance with our

then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B as Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

**Payment.** Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting [AR@tylertech.com](mailto:AR@tylertech.com).



**Exhibit B**  
**Schedule 1**  
**Business Travel Policy**

1. Air Travel

A. Reservations & Tickets

The Travel Management Company (TMC) used by Tyler will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

## 2. Ground Transportation

### A. Private Automobile

Mileage Allowance – Business use of an employee’s private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

### B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a “mid-size” or “intermediate” car. “Full” size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

### C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

### D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

## 3. Lodging

Tyler’s TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler’s work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

“No shows” or cancellation fees are not reimbursable if the employee does not comply with the hotel’s cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem).

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of State and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

\*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

Breakfast	15%
Lunch	25%
Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.\*

\*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

## 5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

## 6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.



## Exhibit C Maintenance and Support Agreement

We will provide you with the following maintenance and support services for the Tyler Software. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

1. **Term.** We provide maintenance and support services on an annual basis. The initial term commences on the Effective Date, and remains in effect for one (1) year. The term will renew automatically for additional one (1) year terms unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term.
2. **Maintenance and Support Fees.** Your year 1 maintenance and support fees for the Tyler Software are listed in the Investment Summary, and your payment obligations are set forth in the Invoicing and Payment Policy. We reserve the right to suspend maintenance and support services if you fail to pay undisputed maintenance and support fees within thirty (30) days of our written notice. We will reinstate maintenance and support services only if you pay all past due maintenance and support fees, including all fees for the periods during which services were suspended.
3. **Maintenance and Support Services.** As long as you are not using the Help Desk as a substitute for our training services on the Tyler Software, and you timely pay your maintenance and support fees, we will, consistent with our then-current Support Call Process:
  - 3.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (subject to any applicable release life cycle policy); provided, however, that if you modify the Tyler Software without our consent, our obligation to provide maintenance and support services on and warrant the Tyler Software will be void;
  - 3.2 provide support during our established support hours;
  - 3.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;
  - 3.4 provide you with a copy of all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and
  - 3.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.
4. **Client Responsibilities.** We will use all reasonable efforts to perform any maintenance and support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet

connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain a VPN for backup connectivity purposes.

5. Hardware and Other Systems. If you are a self-hosted customer and, in the process of diagnosing a software support issue, it is discovered that one of your peripheral systems or other software is the cause of the issue, we will notify you so that you may contact the support agency for that peripheral system. We cannot support or maintain Third Party Products except as expressly set forth in the Agreement.

In order for us to provide the highest level of software support, you bear the following responsibility related to hardware and software:

- (a) All infrastructure executing Tyler Software shall be managed by you;
- (b) You will maintain support contracts for all non-Tyler software associated with Tyler Software (including operating systems and database management systems, but excluding Third-Party Software, if any); and
- (c) You will perform daily database backups and verify that those backups are successful.

6. Other Excluded Services. Maintenance and support fees do not include fees for the following services: (a) initial installation or implementation of the Tyler Software; (b) onsite maintenance and support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (c) application design; (d) other consulting services; (e) maintenance and support of an operating system or hardware, unless you are a hosted customer; (f) support outside our normal business hours as listed in our then-current Support Call Process; or (g) installation, training services, or third party product costs related to a new release. Requested maintenance and support services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.
7. Current Support Call Process. Our current Support Call Process for the Tyler Software is attached to this Exhibit C at Schedule 1.
8. Support of Migration Modules. Upon the first anniversary of the Effective Date and Client's timely payment of annual maintenance and support fees for Tyler Evergreen Modules, Client is entitled to receive, at no additional charge, maintenance and support for the Migration Modules until Tyler makes the Tyler Evergreen Modules available for use in live production.



## Exhibit C Schedule 1 Support Call Process

### Support Channels

Tyler Technologies, Inc. provides the following channels of software support:

- (1) Tyler Community – an on-line resource, Tyler Community provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
- (2) On-line submission (portal) – for less urgent and functionality-based questions, users may create unlimited support incidents through the customer relationship management portal available at the Tyler Technologies website.
- (3) Email – for less urgent situations, users may submit unlimited emails directly to the software support group.
- (4) Telephone – for urgent or complex questions, users receive toll-free, unlimited telephone software support.

### Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

- (1) Tyler Website – [www.tylertech.com](http://www.tylertech.com) – for accessing client tools and other information including support contact information.
- (2) Tyler Community – available through login, Tyler Community provides a venue for clients to support one another and share best practices and resources.
- (3) Knowledgebase – A fully searchable depository of thousands of documents related to procedures, best practices, release information, and job aides.
- (4) Program Updates – where development activity is made available for client consumption

### Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Clients may receive coverage across these time zones. Tyler’s holiday schedule is outlined below. There will be no support coverage on these days.

New Year’s Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day
Labor Day	

## Issue Handling

### *Incident Tracking*

Every support incident is logged into Tyler's Customer Relationship Management System and given a unique incident number. This system tracks the history of each incident. The incident tracking number is used to track and reference open issues when clients contact support. Clients may track incidents, using the incident number, through the portal at Tyler's website or by calling software support directly.

### *Incident Priority*

Each incident is assigned a priority number, which corresponds to the client's needs and deadlines. The client is responsible for reasonably setting the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain "characteristics" may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the client towards clearly understanding and communicating the importance of the issue and to describe generally expected responses and resolutions.

Priority Level	Characteristics of Support Incident	Resolution Targets
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.

Priority Level	Characteristics of Support Incident	Resolution Targets
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days. Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

### *Incident Escalation*

Tyler Technology's software support consists of four levels of personnel:

- (1) Level 1: front-line representatives
- (2) Level 2: more senior in their support role, they assist front-line representatives and take on escalated issues
- (3) Level 3: assist in incident escalations and specialized client issues
- (4) Level 4: responsible for the management of support teams for either a single product or a product group

If a client feels they are not receiving the service needed, they may contact the appropriate Software Support Manager. After receiving the incident tracking number, the manager will follow up on the open issue and determine the necessary action to meet the client's needs.

On occasion, the priority or immediacy of a software support incident may change after initiation. Tyler encourages clients to communicate the level of urgency or priority of software support issues so that we can respond appropriately. A software support incident can be escalated by any of the following methods:

- (1) Telephone – for immediate response, call toll-free to either escalate an incident's priority or to escalate an issue through management channels as described above.
- (2) Email – clients can send an email to software support in order to escalate the priority of an issue
- (3) On-line Support Incident Portal – clients can also escalate the priority of an issue by logging into the client incident portal and referencing the appropriate incident tracking number.

### *Remote Support Tool*

Some support calls require further analysis of the client's database, process or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Support is able to quickly connect to the client's desktop and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.



**Exhibit D**  
**DocOrigin End User License Agreement**

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ATTENTION: THE SOFTWARE PROVIDED UNDER THIS AGREEMENT IS BEING LICENSED TO YOU BY ECLIPSE CORPORATION WSL, INC. (Eclipse Corporation) AND IS NOT BEING SOLD. THIS SOFTWARE IS PROVIDED UNDER THE FOLLOWING AGREEMENT THAT SPECIFIES WHAT YOU MAY DO WITH THE SOFTWARE AND CONTAINS IMPORTANT LIMITATIONS ON REPRESENTATIONS, WARRANTIES, CONDITIONS, REMEDIES, AND LIABILITIES.

DocOrigin

SOFTWARE LICENSE

**IMPORTANT-READ CAREFULLY:** This End-User License Agreement ("Agreement" or "EULA") is a legal agreement between you (either an individual person or a single legal entity, who will be referred to in this EULA as "You") and Eclipse Corporation WSL, Inc. referred to in this EULA as Eclipse Corporation, for the DocOrigin software product that accompanies this EULA, including any associated media, printed materials and electronic documentation (the "Software"). The Software also encompasses any software updates, add-on components, web services and/or supplements that may be provided to you or made available to you after the date you obtain the initial copy of the Software to the extent that such items are not accompanied by a separate license agreement or terms of use. If you receive the Software under separate terms from your distributor, those terms will take precedence over any conflicting terms of this EULA.

By installing, copying, downloading, accessing or otherwise using the Software, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not install, access or use the Software; instead, you should remove the Software from all systems and receive a full refund.

IF YOU ARE AN AGENT OR EMPLOYEE OF ANOTHER ENTITY YOU REPRESENT AND WARRANT THAT (I) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON SUCH ENTITY'S BEHALF AND TO BIND SUCH ENTITY, AND (II) SUCH ENTITY HAS FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER.

**1. LICENSE TERMS**

- 1.1** In this Agreement a "License Key" means any license key, activation code, or similar installation, access or usage control codes, including serial numbers digitally created and or provided by Eclipse Corporation, designed to provide unlocked access to the Software and its functionality.
- 1.2** **Evaluation License.** Subject to all of the terms and conditions of this Agreement, Eclipse Corporation grants You a limited, royalty-free, non-exclusive, non-transferable license to download and install a copy of the Software from [www.docorigin.com](http://www.docorigin.com) on a single machine and use it on a royalty-free basis for no more than 120 days from the date of installation (the "Evaluation Period"). You may use the Software during the Evaluation Period solely for the purpose of testing and evaluating it to determine if You wish to obtain a commercial, production license for the Software. This evaluation license grant will automatically end on expiry of the Evaluation Period and you acknowledge and agree that Eclipse Corporation will be under no obligation to renew or extend the Evaluation Period. If you wish to continue using the Software You may, on payment of the applicable fees, upgrade to a full license (as further described in section 1.3 below) on the terms of this Agreement and will be issued with a License Key for the same. If you do not wish to continue to license the Software after expiry of the Evaluation Period, then You agree to comply with the termination obligations set out in section [7.3] of this Agreement. For greater certainty, any document generated by you under an evaluation license will have a 'spoiler' or watermark on the output document. Documents generated by DocOrigin software that has a valid license key file also installed will not have the 'spoiler' produced. You are not permitted to remove the watermark or 'spoiler' from documents generated using the software under an evaluation license.
- 1.3** **Development and Testing Licenses.** Development and testing licenses are available for purchase through authorized distributors and resellers of Eclipse Corporation only. Subject to all of the terms and conditions of this Agreement, Eclipse Corporation grants You, a perpetual (subject to termination by Eclipse Corporation due to your breach of the terms of this Agreement), non-exclusive, non-transferable, worldwide

non-sub license able license to download and install a copy of the Software from [www.docorigin.com](http://www.docorigin.com) on a single machine and use for development and testing to create collateral deployable to Your production system(s). You are not entitled to use a development and testing license for live production purposes.

- 1.4 Production Licenses.** Production licenses are available for purchase through authorized distributors and resellers of Eclipse Corporation only. Subject to all of the terms and conditions of this Agreement, Eclipse Corporation grants You, a perpetual (subject to termination by Eclipse Corporation due to your breach of the terms of this Agreement), non-exclusive, non-transferable, worldwide non-sub license able license to use the Software in accordance with the license type purchased by you as set out on your purchase order as further described below. For greater certainty, unless otherwise agreed in a purchase order concluded with an approved distributor of the Software, and approved by Eclipse Corporation, the default license to the Software is a per-CPU license as described in A. below:
- A. Per-CPU.** The total number of CPUs on a computer used to operate the Software may not exceed the licensed quantity of CPUs. For purposes of this license metric: (a) CPUs may contain more than one processing core, each group of two (2) processing cores is consider one (1) CPU., and any remaining unpaired processing core, will be deemed a CPU. (b) all CPUs on a computer on which the Software is installed shall be deemed to operate the Software unless You configure that computer (using a reliable and verifiable means of hardware or software partitioning) such that the total number of CPUs that actually operate the Software is less than the total number on that computer. Virtual Machines ("VM's") are considered as a server. Installing and configuring the software on multiple VM's requires one license per VM server. An enterprise license is available upon request. Pricing varies based on the size of the company.
  - B. Per-Document.** This is defined as a fee per document based on the total number of documents generated annually by merging data with a template created by the Software. The combined data and template produce documents of one or more pages. A document may contain 1 or more pages. For instance, a batch of invoices for 250 customers may contain 1,000 pages, this will be counted as 250 documents which should correspond to 250 invoices.
  - C. Per-Surface.** This is defined as a fee per surface based on the total number of surfaces generated annually by merging data with a template created by the Software. The combined data and template produce documents of one or more pages, the pages may be printed one side (one surface) or duplexed (2 surfaces). The documents may be rendered to a computer file (i.e. PDF), each page placed in the file is considered a surface. A document may contain 1 or more surfaces. For instance, a batch of invoices for 250 customers may contain 500 pages duplexed, this will be counted as 1000 surfaces.
- 1.5 Disaster Recovery License.** You may request a Disaster Recovery license of the Software for each production license You have purchased as a failover in the event of loss of use of the production server(s). This license is for disaster recovery purposes only and under no circumstance may the disaster recovery license be used for production simultaneously with a production license with which it is paired.
- 1.6 Backup Copies.** After installation of the Software pursuant to this EULA, you may store a copy of the installation files for the Software solely for backup or archival purposes. Except as expressly provided in this EULA, you may not otherwise make copies of the Software or the printed materials accompanying the Software.
- 1.7 Third-Party Software License Rights.** If a separate license agreement pertaining to an item of third-party software is: delivered to You with the Software, included in the Software download package, or referenced in any material that is provided with the Software, then such separate license agreement shall govern Your use of that item or version of Third-Party Software. Your rights in respect to any third-party software, third-party data, third-party software or other third-party content provided with the Software shall be limited to those rights necessary to operate the Software as permitted by this Agreement. No other rights in the Software or third-party software are granted to You.

## 2. LICENSE RESTRICTIONS

Any copies of the Software shall include all trademarks, copyright notices, restricted rights legends, proprietary markings and the like exactly as they appear on the copy of the Software originally provided to You. You may not remove or alter any copyright, trademark and/or proprietary notices marked on any part of the Software or related documentation and must reproduce all such notices on all authorized copies of the Software and related documentation. You shall not sublicense, distribute or otherwise make the Software available to any third party (including, without limitation, any contractor, franchisee, agent or dealer) without first obtaining the written agreement of (a) Eclipse Corporation to that use, and (b) such third party to comply with this Agreement. You further agree not to (i) rent, lease, sell, sublicense, assign, or otherwise transfer the Software to anyone else; (ii) directly or indirectly use the Software or any information about the Software in the development of any software that is competitive with the Software, or (iii) use the Software to operate or as a part of a time-sharing service, outsourcing service, service bureau, application service provider or managed service provider offering. You further agree not to reverse engineer, decompile, or disassemble the Software.

## 3. UPDATES, MAINTENANCE AND SUPPORT

- 3.1 During the validity period of Your License Key, You will be entitled to download the latest version of the Software from the DocOrigin website [www.docorigin.com](http://www.docorigin.com). Use of any updates provided to You shall be governed by the terms and conditions of this Agreement. Eclipse Corporation reserves the right at any time to not release or to discontinue release of any Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.
- 3.2 On expiry of your maintenance and support contract, you will have the right to continue using the current version(s) of the Software which you downloaded prior to the date of expiry of your License Key. However, you will need to renew maintenance and support in order to receive a new License Key that will unlock the more current version(s) of the Software. For greater certainty, if you attempt to use an expired License Key to download the latest version of the Software, the Software will revert to being a locked, evaluation copy of that version of the Software.

## 4. INTELLECTUAL PROPERTY RIGHTS.

This EULA does not grant you any rights in connection with any trademarks or service marks of Eclipse Corporation or DocOrigin. All title and intellectual property rights in and to the Software, the accompanying printed materials, and any copies of the Software are owned by Eclipse Corporation or its suppliers. All title and intellectual property rights in and to the content that is not contained in the Software, but may be accessed through use of the Software, is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants you no rights to use such content. If this Software contains documentation that is provided only in electronic form, you may print one copy of such electronic documentation.

## 5. DISCLAIMER OF WARRANTIES.

TO THE GREATEST EXTENT PERMITTED BY LAW, THE LICENSED SOFTWARE AND TECHNICAL SUPPORT PROVIDED BY ECLIPSE CORPORATION HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT OR SERVICE PROVIDED UNDER THIS AGREEMENT OR IN CONNECTION WITH THIS AGREEMENT BY ECLIPSE CORPORATION. ECLIPSE CORPORATION DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS OF QUALITY, MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ECLIPSE CORPORATION DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL MEET ANY OR ALL OF YOUR PARTICULAR REQUIREMENTS, THAT THE SOFTWARE WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

In certain jurisdictions, some or all of the provisions in this Section may not be effective or the applicable law may mandate a more extensive warranty in which case the applicable law will prevail over this Agreement.

## 6. INDEMNIFICATION & LIMITATIONS OF LIABILITY.

6.1 Eclipse Corporation shall defend and/or settle at its expense, any claims, actions, allegations or proceedings against You to the extent arising out of or relating to misappropriation or infringement by the Software of any third party's proprietary or intellectual property right ("Claims"), and Eclipse Corporation shall pay all damages finally awarded by a court of competent jurisdiction to such third party against You, or any settlement amounts agreed by Eclipse Corporation; subject to the conditions that, You shall notify Eclipse Corporation promptly of any You Claims, permit Eclipse Corporation to control the defense and settlement of such Claims and assist Eclipse Corporation, at Eclipse Corporation's expense, in defending or settling such Claims. Eclipse Corporation shall not be liable for any settlement amounts entered into by You without Eclipse Corporation's prior written approval. If Eclipse Corporation has reason to believe that it would be subject to an injunction or continuing damages based on the Software, then Eclipse Corporation may (and if Eclipse Corporation or any of its customers or third party software suppliers is subject to an injunction or continuing damages based on the Software), then notwithstanding any other provision in this Agreement, Eclipse Corporation shall be entitled to either modify the Software to make it non-infringing and/or remove the misappropriated material, replace the Software or portion thereof with a service or materials that provide substantially the same functionality or information, or, if neither of the foregoing is commercially practicable, require You to cease using the Software and refund to You (a) a pro rata portion of any one (1) time fees (based on a three (3) year, straight-line depreciation schedule from the date of payment), and (b) any fees that have been pre-paid by You but are unused. The foregoing notwithstanding, Eclipse Corporation shall have no liability for a claim of infringement or misappropriation to the extent caused by (i) the combination of the Software with any other service, software, data or products not provided or approved by Eclipse Corporation; or (ii) the use of any material provided by You or any end users, (iii) any breach by You of this Agreement. **THE FOREGOING IS ECLIPSE CORPORATION'S SOLE AND EXCLUSIVE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.**

**TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ECLIPSE CORPORATION BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, LEGAL EXPENSES, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF REVENUE, LOST OR DAMAGED DATA, LOSS OF COMPUTER TIME, COST OF SUBSTITUTE GOODS OR SERVICES, OR FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ECLIPSE CORPORATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, OR SUCH LOSSES OR DAMAGES ARE FORESEEABLE.**

6.2 **THE ENTIRE LIABILITY OF ECLIPSE CORPORATION AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO THE SOFTWARE AND TECHNICAL SUPPORT AND ANY OTHER PRODUCTS OR SERVICES SUPPLIED BY ECLIPSE CORPORATION IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, WILL BE LIMITED IN THE AGGREGATE TO THE AMOUNTS PAID BY YOU FOR THE SOFTWARE, TECHNICAL SUPPORT OR SERVICES GIVING RISE TO THE CLAIM.**

6.3 **THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS AND LIMITATION OF LIABILITY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT. YOU ACKNOWLEDGE THAT BUT FOR THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS AND LIMITATION OF LIABILITY, NEITHER ECLIPSE CORPORATION NOR ANY OF ITS LICENSORS OR SUPPLIERS WOULD GRANT THE RIGHTS GRANTED IN THIS AGREEMENT.**

## 7. TERM AND TERMINATION

7.1 **The term of this Agreement will begin on download of the Software and, in respect of an Evaluation License, shall continue for the Evaluation Period, and in respect of all other license types defined in Section 1, shall continue for as long as You use the Software, unless earlier terminated sooner under this section 7.**

7.2 **Eclipse Corporation may terminate this Agreement in the event of any breach by You if such breach has not been cured within thirty (30) days of notice to You. No termination of this Agreement will entitle You to a refund of any amounts paid by You to Eclipse Corporation or its applicable distributor or reseller or affect any obligations You may have to pay any outstanding amounts owing to Eclipse Corporation or its distributor.**

7.3 Your rights to use the Software will immediately terminate upon termination or expiration of this Agreement. Within thirty (30) days of termination or expiration of this Agreement, You shall purge all Software and all copies thereof from all computer systems and storage devices on which it was stored, and certify such to Eclipse Corporation.

## 8. GENERAL PROVISIONS

- 8.1 **No Waiver.** No delay or failure in exercising any right under this Agreement, or any partial or single exercise of any right, will constitute a waiver of that right or any other rights under this Agreement. No consent to a breach of any express or implied term set out in this Agreement constitutes consent to any subsequent breach, whether of the same or any other provision.
- 8.2 **Severability.** If any provision of this Agreement is, or becomes, unenforceable, it will be severed from this Agreement and the remainder of this Agreement will remain in full force and effect.
- 8.3 **Assignment.** You may not transfer or assign this Agreement (whether voluntarily, by operation of law, or otherwise) without Eclipse Corporation's prior written consent. Eclipse Corporation may assign this Agreement at any time without notice. This Agreement is binding upon and will inure to the benefit of both parties, and their respective successors and permitted assigns.
- 8.4 **Governing Law and Venue if You are located in the USA.** This Agreement shall be governed by the laws of the State of Texas if You are located in the USA. No choice of laws rules of any jurisdiction shall apply to this Agreement. You consent and agree that the courts of the State of Texas shall have jurisdiction over any legal action or proceeding brought by You arising out of or relating to this Agreement, and You consent to the jurisdiction of such courts for any such action or proceeding.
- 8.5 **Governing Law and Venue if You are not located in the USA.** This Agreement shall be governed by the laws of the Province of Ontario in Canada if You are not located in the USA. No choice of laws rules of any jurisdiction shall apply to this Agreement. You consent and agree that the courts of the Province of Ontario in Canada shall have jurisdiction over any legal action or proceeding brought by You arising out of or relating to this Agreement, and You consent to the jurisdiction of such courts for any such action or proceeding.
- 8.6 **Entire Agreement.** This Agreement is the entire understanding and agreement between You and Eclipse Corporation with respect to the subject matter hereof, and it supersedes all prior negotiations, commitments and understandings, verbal or written, and purchase order issued by You. This Agreement may be amended or otherwise modified by Eclipse Corporation from time to time and the most recent version of the Agreement will be available on the Eclipse Corporation website [www.docorigin.com](http://www.docorigin.com).

Last Updated: July 22, 2017



## Exhibit E Disaster Recovery Agreement

WHEREAS, Client desires to enroll in Tyler’s Disaster Recovery Services (“DR Services”) for the Tyler software products (“Tyler Software Products”) licensed by Client from Tyler, subject to the terms and conditions of this Disaster Recovery Agreement (“DR Agreement”) and the License and Services Agreement (“Agreement”) under which Tyler has licensed Tyler Software Products to Client.

THEREFORE, Tyler and Client agree as follows:

### 1. Definitions:

- Agreement. The License and Services Agreement under which Tyler licenses Tyler Software to the Client.
- Business Days. Monday through Friday, excluding Holidays.
- Business Hours. 8 AM – 6 PM (EST) on Business Days.
- Critical Processes. Mutually defined in the Disaster Recovery Plan.
- Critical Users. Mutually defined in the Disaster Recovery Plan.
- Disaster. An unplanned event that is not within the reasonable control of the Client which results in the failure of the Tyler Software Products licensed by Client to perform Critical Processes. A Disaster is *not* a hardware or network failure that would have been avoided with reasonable diligence and maintenance in accord with the industry standard, a failure otherwise covered by an in-force Agreement Client has with Tyler (e.g., Tyler annual Maintenance and Support Agreement (“Support Agreement”), Technical Services Agreement, or Tyler Systems Management (“TSM”) Agreement, or a failure that can be remedied in less than sixteen (16) business hours.
- Disaster Recovery Plan. Defined at #2 of Exhibit 1 to this DR Agreement.
- Holiday. New Year's Day (January 1), Memorial Day (observed), Independence Day (July 4), Labor Day (observed), Thanksgiving Day, Day after Thanksgiving Day, Christmas Day (December 25).
- Force Majeure. An event beyond the reasonable control of a party, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, restraints affecting shipping or credit, delay of carriers, inadequate supply of suitable materials or any other cause which could not with reasonable diligence be foreseen, controlled or prevented by the party.
- Recovery Point Objective (“RPO”). Amount of time since last successful data transfer. With successful nightly transfer of data, RPO would be no more than twenty-four (24) hours.
- Recovery Time Objective (“RTO”). One (1) business day after receipt Disaster declaration for Client data not exceeding one (1) terabyte in size, for Critical Users using Critical Processes. RTO for Client data one (1) terabyte in size or greater shall be mutually agreed, specified and incorporated into the Disaster Recovery Plan.

2. Term. The initial term shall commence on receipt by Tyler of Client's data and shall terminate one (1) year thereafter ("Initial Term"). This DR Agreement shall renew automatically for additional one (1) year terms unless terminated in writing by either party at least ninety (90) days prior to the end of the then-current term. In the event the Support Agreement for Tyler Software Products is terminated, this DR Agreement shall also then terminate.
3. Disaster Recovery Services. Tyler shall provide the DR Services as described in this DR Agreement, including any Exhibits and associated appendices. All DR Services shall be provided remotely. In the event the Disaster results in damage to Client's server(s) and a re-installation of the Tyler Software Products licensed by Client is required as a result of such damage, Tyler shall re-install the Tyler Software Products free of charge if Client is enrolled in Tyler's TSM service (ERP, Munis, TCM) or Technical Services Support (Incode, Eden, TCM). Otherwise, such re-installation shall be obtained from Tyler at Tyler's then-current installation services rates. Tyler Disaster Recovery staff will contact Client within twelve (12) business hours of any such reinstallation for reinstallation of Disaster Recovery Software.
4. Client Requirements. In order for Tyler to provide DR Services pursuant this DR Agreement, Client shall:
  - a) Provide high speed internet access, including upload bandwidth sufficient for complete nightly data transfers to comply with applicable RPO;
  - b) Comply with then-current minimum hardware and network requirements as specified on Tyler's support website;
  - c) Maintain security and access privileges for Tyler to receive data transfer and reasonably perform activities reasonably necessary for Tyler to provide DR Services;
  - d) Permit installation of software required for provision of DR Services in accord with this DR Agreement as reasonably determined by Tyler;
  - e) Reasonably notify Tyler in advance of any changes in Client's network that impacts Tyler's ability to deliver DR Services; and
  - f) Client shall not install or activate SQL TDE or similar database or file level encryption technologies on servers installed with Tyler Disaster Recovery Software.
5. Disaster shall be declared by Client by calling Tyler at (207) 781-2260 or (800) 772-2260 and clearly stating that CLIENT IS DECLARING A DISASTER.
6. Disaster Recovery. Client's Critical Processes will be accessible by Critical Users in accord with the applicable RTO.
7. Data. Data Transfer shall be handled in accord with Exhibit 1 to this DR Agreement.
8. Release Life Cycle. Tyler shall support prior releases of the Tyler Software Products in accordance with Tyler's Release Life Cycle Policy.
9. Payment & Price

In consideration of the DR Services provided by Tyler herein, Client shall pay to Tyler a year one (1) fee as set forth in the Invoicing and Payment Policy (Exhibit B to the Agreement). Thereafter, the annual fee will be invoiced and paid prior to the commencement of the renewal term. All payments due pursuant this DR Agreement are due within thirty (30) days from receipt of invoice.

10. Exclusions.

- a) Neither party shall be liable for delays in performing its obligations under this DR Agreement to the extent that the delay is caused by Force Majeure.
- b) Tyler's DR Services shall not be used to replace required on-site backups of Client data for Tyler Software Products licensed by Client.
- c) The fee paid for DR Services does not include, and Client is responsible for the costs associated with:
  - i. Hardware and/or software necessary to remotely access Tyler's data center, and any and all on-site services. Client may request and purchase on-site services at Tyler's then-current rates.
  - ii. In the event Client requests Tyler to hand-deliver or courier the critical processes output (such as payroll checks), the cost of such special delivery shall be borne by Client and payable thirty (30) days from receipt of invoice.

11. License Terms. Client's use of the Tyler Software Products included in the DR Services remains subject to limitations on Client's use in the Agreement, including disclaimer of implied warranties.

12. Notices. With the exception of a declaration of a Disaster, notices or communications required or permitted as a part of this DR Agreement will be in writing (unless another verifiable medium is expressly authorized) and will be deemed delivered when:

- a) Actually received,
- b) Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party,
- c) Upon receipt by sender of proof of email delivery, or
- d) If not actually received, ten (10) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in the Agreement or such other address as the party may have designated by notice or amendment to the Agreement.

Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of a new address will be borne by the intended receiving party. The addresses of the parties for notices shall be as set forth in the Agreement.

13. This DR Agreement, along with the Agreement, represent the entire agreement of Client and Tyler with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this DR Agreement it did not rely on any information not explicitly set forth or referenced in this DR Agreement. Any changes to this DR Agreement by Tyler must be communicated at least sixty (60) days in advance and will take effect no earlier than the commencement of the renewal term following notice of the change, unless otherwise mutually agreed.



### Exhibit 1

In addition to those services described elsewhere in this DR Agreement, DR Services are described in the following sections.

#### 1 Data Transfer

The electronic transfer solution provides nightly (between the hours of 8 PM and 6 AM) transfer and archiving of Client's Tyler data and is subject to the following conditions:

- Initial data transfer may require portable disk.
- Data transferred shall include only items essential to provision of service.
- Applications included in the DR Services are listed in Appendix A to this Exhibit 1. Such description shall also indicate database and file detail required for provision of DR Services. Tyler Software Products not listed in Appendix A and any non-Tyler Software Product shall not be included in data transfer or the DR Service.
- Only production databases are backed up.
- Data from the last seven (7) successful data transfers are retained by Tyler.
- Total data storage is limited to 200 gigabytes ("GB"). Storage limit may be increased in 200 GB increments by mutual agreement and at additional cost.
- Data transferred to Tyler as part of DR Services is not available for Client's data retrieval or restoration not associated with the DR Services provided by Tyler. Tyler may provide data transferred by Client on an exception basis, upon request.
- Tyler is not responsible for the integrity of the data provided by Client to Tyler. Tyler will use the most current viable data to restore Client's critical processes.
- Tyler may use select information from the Client database for research and analysis purposes.
- To the extent the database contains confidential information, Tyler shall keep confidential such information in accordance with the confidentiality provisions of the Agreement.
- Tyler Disaster Recovery staff will monitor status of data transfers on Business Days.
- In the event of two (2) consecutive data transfer failures, Tyler will timely provide notice to Client in order to commence troubleshooting.
- Tyler shall have no liability for failure of data transfers not solely caused by Tyler.
- Tyler will provide transfer report related to Client data transfer upon request.

#### 2 Disaster Recovery Plan

The Disaster Recovery Plan is a mutually drafted document which details, in addition to this DR Agreement, the DR Services Tyler shall provide to Client. The parties' responsibilities with respect to the Disaster Recovery Plan are further defined below.

Tyler's Responsibilities:

- Coordinate activities associated with transfer of data to Tyler's data center.

- Document Disaster Recovery strategy for critical processes.
- Review the Disaster Recovery Plan with Client.
- Provide reasonable guidance for Disaster Recovery policies and procedures.
- Identify modules, databases, applications, and files required for DR Services.

#### Client's Responsibilities:

- Provide remote access to Client's Tyler database server for analysis and configuration of data transfer.
- Provide network support if required to enable transfer of data from Client's server to the Tyler data center.
- Provide PCs and high-speed modems for access from Client's alternate processing location, if required.
- Provide technical resources to configure remote access PCs, including Tyler supplied application software, if reasonably required to receive DR Services pursuant the DR Agreement.
- Provide a chain of command document for communication during a disaster.
- Maintain the Disaster Recovery Plan and integrate the Disaster Recovery Plan made with Tyler with Client's comprehensive disaster recovery plan.

#### Shared Responsibilities:

- Identify critical users for DR Services.
- Identify critical processes for DR Services.
- Identify and agree on RTO where Client has more than 1TB of TDRS Protected Data.
- Draft initial Disaster Recovery Plan within ninety (90) days of commencement of Initial Term.
- Define recovery processes for post Disaster operations (mandatory for Odyssey CM clients, optional for all others).

### 3 DR Services during Disaster

- A. Upon declaration of a Disaster, Tyler shall provide DR Services from one of its hosting facilities for the duration of the Disaster, not to exceed thirty (30) consecutive Business Days. Use of Tyler's data center in excess of such period shall require the parties to execute a change order detailing the duration of the extension and the additional cost associated therewith.
- B. Hosting Services During a Disaster.
  - i. Hosting Services during a Disaster will be provided in accord with Tyler's then-current standard availability guarantees from its Service Level Agreement for SaaS clients. Any credits issued to Client will be based on the total Disaster Recover fee paid for the then-current term.
  - ii. Tyler will use best efforts to include interfaces for Tyler Software Products covered under this DR Agreement.
  - iii. Hosting Services shall not include interfaces or interconnects with 3<sup>rd</sup> Party Products unless specifically agreed in the Disaster Recovery Plan.
- C. Processing Assistance During a Disaster includes, as necessary:
  - i. Print Output:
    - a. Payroll Checks
    - b. Retirement Checks

- c. Accounts Payable Checks.
  - ii. In the event print output is required to be sent non-electronically, Client shall bear the cost of shipment.
  - iii. Transfer of Automated Clearing House (“ACH”) Files to bank on Client’s behalf. Transfer may require pre-notification by Client to bank.
- D. Clients receiving DR Services during a Disaster receive priority access to Tyler application support.

#### **4 Annual Disaster Recovery Test**

The parties may review and test the Disaster Recovery service:

- Scheduled by parties at least thirty (30) days in advance,
- Client must provide a list of users who will partake in the test,
- Test shall not exceed 2 weeks,
- Retest within same year available if initial test not agreed by both parties to be successful.

#### **5 Estimated Schedule**

The services provided pursuant the DR Agreement will be performed consistent with the estimated schedule mutually agreed to by Tyler and Client. Tyler and Client agree to promptly perform their respective responsibilities according to such schedule.

#### **6 Tyler’s Other Responsibilities**

Project management services are provided as part of the DR Services. Tyler will designate a Project Manager who will be Tyler’s contact for all communications with Client and will have the authority to act on Tyler’s behalf in matters regarding this Statement of Work. Tyler’s project manager will perform the following tasks:

- Review Statement of Work with Client’s project manager.
- Review current project status.
- Recommend changes or additions to the project as appropriate.
- Administer the change control procedure.
- Review and evaluate the progress of the project with Client’s project manager to resolve any necessary changes.

#### **7 Client’s Other Responsibilities**

Tyler’s performance is predicated upon the following responsibilities being fulfilled by Client:

Prior to the start of the Statement of Work, Client will designate, in writing, a person who will be Client’s Project Manager who will be Client’s contact for all communications with Tyler and who has the authority to act on behalf of Client in all aspects of the Statement of Work. The Project Manager will perform the following activities:

- Interface between Tyler’s Project Manager and Client’s organization.

- Administer project change control with Tyler's project manager.
- Arrange reasonable access to Client's data for project personnel, as reasonably required.
- Conduct any communication through Tyler's Project Manager.
- Help resolve and escalate project issues within Client's organization as required.
- Obtain and provide project requirements, data, decisions and approvals within five (5) business days of request. If such requirements, data, decisions or approvals are delayed beyond the time specified, Client agrees to relieve Tyler of its responsibility for the affected Service until Client performs that obligation.
- Accept responsibility for the data files, selection and implementation of controls for Client's location, and security of the stored data.

Client acknowledge that it is Client's responsibility to identify and make the interpretation of any applicable federal, state and local laws, regulations and statutes.

## **8 Project Change Control Procedure**

When Tyler and Client agree to a change in the Disaster Recovery Plan, Tyler will prepare a written description of the agreed change which both Tyler and Client must sign. The Change Order will describe the change, the rationale for the change, and specify any change in the charges, estimated schedule, or other terms. When charges are necessary in order for Tyler to analyze a change, Tyler will give Client a written estimate and begin the analysis only after Client's written authorization.

**Appendix A****Defined User Maximum.**

The maximum number of named Client users available to use DR Services is 35.

**Covered Applications.**

All products licensed by the Client under the Agreement as of the Effective Date of the DR Agreement.

**Product Specific Conditions.**

None.



**Exhibit F**  
**Agreement For**  
**Tyler Systems Management (“TSM”)**

Invoice to: City of Des Moines, Washington (“CUSTOMER”)      Contact:

---

Address: 21630 11<sup>th</sup> Ave S, Des Moines, WA 98198      Telephone:

---

CUSTOMER agrees to purchase, and Tyler Technologies, Inc. (“TYLER”) agrees to provide, the services listed below in accordance with the following terms and conditions.

**I. Term of Agreement:**

This Tyler Systems Management Agreement (herein “TSM Agreement”) is effective as of the Available Download Date of the License and Services Agreement (“Agreement”) between TYLER and the CUSTOMER and shall remain in force for an initial one (1) year term. Upon expiration of that initial term, the TSM Agreement will automatically renew for additional one year terms, at Tyler’s then-current rates, unless terminated by either party at least thirty (30) days’ in advance of the upcoming renewal date.

The headings used in the TSM Agreement are for reference purposes only and shall not be deemed a part of this TSM Agreement.

**II. Scope of the Agreement:**

Both parties acknowledge that this TSM Agreement covers only the services described below, for the internal business operations of the City of Des Moines, Washington.

**III. Payment:**

1. As set forth in the Invoicing and Payment Policy (Exhibit B to the Agreement), CUSTOMER agrees to pay TYLER the year one fee for the services described below. This payment is due and payable as indicated in Exhibit B. Thereafter, payments for any renewal period will be due annually in advance. Payment terms are net forty-five (45) days from invoice date.
2. Additional Charges. Any systems management services and/or related materials performed or supplied by TYLER for CUSTOMER that are not in-scope, as defined herein, will be invoiced to CUSTOMER on a time and materials basis at TYLER’S then-current rates

**IV. Covered System:**

Window Servers that are required to run the Tyler ERP applications.

**V. Scope of Services:** TYLER will provide the following services for the benefit of CUSTOMER:

- a. TYLER SYSTEMS MANAGEMENT Service is available during TYLER's then-current business hours. TYLER'S current business hours are set forth at <http://www.tylertech.com/client-support>. CUSTOMER may contact a TSM technician using the contact information set forth at <http://www.tylertech.com/client-support>. Calls will be recorded and answered on a first in first out basis, except on reports that declare CUSTOMER's system down, in which case CUSTOMER's call will be moved to the head of the queue
- b. TSM services are restricted to the primary production server(s) that the Tyler Software subject to this TSM Agreement is installed on.
- c. Environments: Database administration services are restricted to three TYLER environments: one live environment, one training environment, and one test environment.
  - (1) In cases where additional databases exist, each additional database will be subject to additional fees, which TYLER will quote to CUSTOMER at TYLER's then-current rates.
- d. Application Software: In-scope TSM services include two complete sets of the Tyler Software subject to this TSM Agreement: one live set and one test/train set.
- e. Required Foundation Software: TSM services include the support and installation of all foundation software TYLER requires CUSTOMER to procure to utilize one live, one train and one test database. Required foundation software is set forth at <https://check.tylertech.com/>. TYLER does not support, and this TSM Agreement does not include support services for, any third party product that is not required foundation software. TYLER will reasonably cooperate with CUSTOMER in investigating issues within the Tyler Software that may be created by a third party product, but it is CUSTOMER's responsibility to pursue support on third party products directly from that vendor or its authorized partners.
- f. TYLER will also perform system administrative tasks on the installed operating system and database administrative tasks on the installed database engine software.
- g. TYLER will also provide a remote installation and configuration of a new or upgraded server, at CUSTOMER'S request, once every two (2) years.

**VI. CUSTOMER Responsibilities:**

- a. CUSTOMER shall provide, at no charge to TYLER, full and free access to the programs covered hereunder, including working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide the specified support and maintenance service.
- b. CUSTOMER shall install and maintain for the duration of this TSM Agreement a stable high speed network connection available for remote connections. CUSTOMER shall pay for installation, maintenance and use of such equipment and associated communication line use charges. TYLER, at its option, shall use this remote interface in connection with error correction.

## VI. General

- a. **Non-Assignability:** CUSTOMER shall not have the right to assign or transfer its rights hereunder to any party.
- b. **Excused Non-Performance:** TYLER shall not be responsible for delays in servicing the products covered by this TSM Agreement caused by strikes, lockouts, riots, epidemic, war, government regulations, fire, power failure, acts of God, or other causes beyond its control.
- c. **Limitation of Liability:** TYLER's liability hereunder shall not exceed CUSTOMER'S actual, direct, damages, not to exceed the TSM services fees paid for the year in which the CUSTOMER'S claim accrues. CUSTOMER SHALL NOT, IN ANY EVENT, BE ENTITLED TO, AND TYLER SHALL NOT BE LIABLE FOR, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE, EVEN IF TYLER TECHNOLOGIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IRRESPECTIVE OF THE NATURE OF CUSTOMER'S CLAIM.
- d. **Governing Law:** This TSM Agreement shall be governed by, and construed in accordance with, the laws of CUSTOMER's state of domicile. The invalidity or unenforceability of any provisions of this agreement shall not affect the validity or enforceability of any other provision.
- e. **Modification of this Contract:** No modifications or amendment of this TSM Agreement shall be effective unless set forth in writing and signed by both CUSTOMER and TYLER.
- f. **Suspension:** Support and services will be suspended whenever CUSTOMER's account is thirty (30) days overdue. Support and services will be reinstated when CUSTOMER's account is made current by paying all past due fees.
- g. **Reservation of Rights:** TYLER reserves all right, title and interest, including but not limited to intellectual property rights, in and to the Tyler Software, the TSM services, and any services or deliverables related thereto, except as expressly set forth in this TSM Agreement.



Quoted By: Jason Cloutier  
 Quote Expiration: 7/1/2020  
 Quote Name: City of Des Moines-ERP-Munis  
 Quote Number: 2020-99932  
 Quote Description: Munis ERP 2020(Updated 6/25/2020)

**Sales Quotation For**

City of Des Moines  
 21630 11th Ave S  
 Des Moines, WA 98198-6338

**Tyler Software and Related Services**

Description	License	Impl. Hours	Impl. Cost	Data Conversion	Module Total	Year One Maintenance
<b>Financials:</b>						
Accounting/GL	\$24,843.00	108	\$17,280.00	\$10,200.00	\$52,323.00	\$4,472.00
Accounts Payable	\$7,817.00	28	\$4,480.00	\$0.00	\$12,297.00	\$1,407.00
Budgeting	\$7,817.00	36	\$5,760.00	\$0.00	\$13,577.00	\$1,407.00
Capital Assets	\$6,641.00	36	\$5,760.00	\$2,000.00	\$14,401.00	\$1,195.00
Cash Management	\$4,328.00	16	\$2,560.00	\$0.00	\$6,888.00	\$779.00
Contract Management	\$2,850.00	16	\$2,560.00	\$0.00	\$5,410.00	\$513.00
Project & Grant Accounting	\$5,161.00	28	\$4,480.00	\$4,000.00	\$13,641.00	\$929.00
Purchasing	\$11,044.00	64	\$10,240.00	\$0.00	\$21,284.00	\$1,988.00
<b>Human Capital Management:</b>						
ExecuTime Advanced Scheduling	\$17,086.00	64	\$10,240.00	\$0.00	\$27,326.00	\$3,417.00
ExecuTime Advanced Scheduling Mobile Access	\$3,975.00	0	\$0.00	\$0.00	\$3,975.00	\$795.00
ExecuTime Time & Attendance Mobile Access	\$5,075.00	0	\$0.00	\$0.00	\$5,075.00	\$1,015.00
ExecuTime Time & Attendance	\$13,473.00	96	\$15,360.00	\$0.00	\$28,833.00	\$2,695.00
Human Resources & Talent Management	\$9,819.00	88	\$14,080.00	\$2,800.00	\$26,699.00	\$1,767.00
Payroll w/ESS	\$11,994.00	168	\$26,880.00	\$11,800.00	\$50,674.00	\$2,159.00
<b>Revenue:</b>						
Accounts Receivable	\$5,753.00	64	\$10,240.00	\$0.00	\$15,993.00	\$1,036.00

**Tyler Software and Related Services**

Description	License	Impl. Hours	Impl. Cost	Data Conversion	Module Total	Year One Maintenance
General Billing	\$3,986.00	28	\$4,480.00	\$6,180.00	\$14,646.00	\$717.00
<b>Productivity:</b>						
Tyler ReadyForms Processing (including Common Form Set)	\$7,500.00	0	\$0.00	\$0.00	\$7,500.00	\$1,500.00
Tyler Content Manager SE	\$12,351.00	32	\$5,120.00	\$0.00	\$17,471.00	\$2,223.00
Munis Analytics & Reporting	\$8,100.00	76	\$12,160.00	\$0.00	\$20,260.00	\$1,458.00
Citizen Self Service	\$5,753.00	36	\$5,760.00	\$0.00	\$11,513.00	\$1,036.00
<b>Additional:</b>						
Tyler Disaster Recovery Service	\$0.00	0	\$0.00	\$0.00	\$0.00	\$8,127.00
Tyler System Management Services Contract	\$0.00	0	\$0.00	\$0.00	\$0.00	\$8,127.00
Sub-Total:	\$175,366.00		\$157,440.00	\$36,980.00	\$369,786.00	\$48,762.00
	<b>Less Discount:</b>		<b>\$0.00</b>	<b>\$18,490.00</b>	<b>\$68,706.00</b>	<b>\$0.00</b>
<b>TOTAL:</b>	<b>\$125,150.00</b>	<b>984</b>	<b>\$157,440.00</b>	<b>\$18,490.00</b>	<b>\$301,080.00</b>	<b>\$48,762.00</b>

**Other Services**

Description	Quantity	Unit Price	Unit Discount	Extended Price
Install Fee - New Server Install-WIN	1	\$7,500.00	\$0.00	\$7,500.00
Munis Executive Insights Implementation	1	\$4,800.00	\$0.00	\$4,800.00
Project Management	120	\$160.00	\$0.00	\$19,200.00
<b>TOTAL:</b>				<b>\$31,500.00</b>

**3rd Party Hardware, Software and Services**

Description	Quantity	Unit Price	Unit Discount	Total Price	Unit Maintenance	Unit Maintenance Discount	Total Year One Maintenance
Tyler Secure Signature System with 2 Keys	1	\$1,650.00	\$0.00	\$1,650.00	\$0.00	\$0.00	\$0.00
3rd Party Hardware Sub-Total:				\$0.00			\$0.00
<b>TOTAL:</b>				<b>\$1,650.00</b>			<b>\$0.00</b>

**Summary**

Total Tyler Software	\$125,150.00	<b>One Time Fees</b>	\$48,762.00	<b>Recurring Fees</b>	\$0.00
Total Tyler Services	\$207,430.00		\$0.00		\$0.00

<b>Summary</b>	<b>One Time Fees</b>	<b>Recurring Fees</b>
Total 3rd Party Hardware, Software and Services	\$1,650.00	\$0.00
<b>Summary Total</b>	<b>\$334,230.00</b>	<b>\$48,762.00</b>
<b>Contract Total (Excluding Estimated Travel Expenses)</b>	<b>\$382,992.00</b>	
<b>Estimated Travel Expenses</b>	<b>\$63,020.00</b>	

**Detailed Breakdown of Conversions (included in Contract Total)**

Description	Unit Price	Unit Discount	Extended Price
Accounting - Actuals up to 3 years	\$1,000.00	\$500.00	\$500.00
Accounting - Budgets up to 3 years	\$1,000.00	\$500.00	\$500.00
Accounting Standard COA	\$2,000.00	\$1,000.00	\$1,000.00
Accounts Payable - Checks up to 5 years	\$2,200.00	\$1,100.00	\$1,100.00
Accounts Payable - Invoice up to 5 years	\$2,800.00	\$1,400.00	\$1,400.00
Accounts Payable Standard Master	\$1,200.00	\$600.00	\$600.00
Capital Assets Std Master	\$2,000.00	\$1,000.00	\$1,000.00
General Billing - Bills up to 5 years	\$3,500.00	\$1,750.00	\$1,750.00
General Billing - Recurring Invoices	\$1,680.00	\$840.00	\$840.00
General Billing Std CID	\$1,000.00	\$500.00	\$500.00
Human Resources - PM Action History up to 5 years	\$1,400.00	\$700.00	\$700.00
Human Resources - Position Control	\$1,400.00	\$700.00	\$700.00
Payroll - Accrual Balances	\$1,500.00	\$750.00	\$750.00
Payroll - Accumulators up to 5 years	\$1,400.00	\$700.00	\$700.00
Payroll - Check History up to 5 years	\$1,200.00	\$600.00	\$600.00
Payroll - Deductions	\$1,800.00	\$900.00	\$900.00
Payroll - Earning/Deduction Hist up to 5 years	\$2,500.00	\$1,250.00	\$1,250.00
Payroll - Standard	\$2,000.00	\$1,000.00	\$1,000.00
Payroll - State Retirement Tables	\$1,400.00	\$700.00	\$700.00
Project Grant Accounting - Actuals up to 3 years	\$1,000.00	\$500.00	\$500.00
Project Grant Accounting - Budgets up to 3 years	\$1,000.00	\$500.00	\$500.00
Project Grant Accounting Standard	\$2,000.00	\$1,000.00	\$1,000.00
<b>TOTAL:</b>			<b>\$18,490.00</b>

**Optional SaaS**

**One Time Fees**

Description	# Years	Annual Fee	Impl. Hours	Impl. Cost	Data Conversion
<b>Additional:</b>					
Tyler Detect	0	\$15,000.00	0	\$0.00	\$0.00

**Optional Tyler Software & Related Services**

Description	License	Impl. Hours	Impl. Cost	Data Conversion	Module Total	Year One Maintenance
<b>Revenue:</b>						
Tyler Cashiering	\$9,501.00	36	\$5,760.00	\$0.00	\$15,261.00	\$1,710.00
<b>Additional:</b>						
Payroll Tax Table Updates	\$0.00	0	\$0.00	\$0.00	\$0.00	\$1,000.00
<b>TOTAL:</b>	<b>\$9,501.00</b>	<b>36</b>	<b>\$5,760.00</b>	<b>\$0.00</b>	<b>\$15,261.00</b>	<b>\$2,710.00</b>

**Optional Other Services**

Description	Quantity	Unit Price	Discount	Extended Price
Install Fee - Tyler Detect	1	\$1,000.00	\$0.00	\$1,000.00
<b>TOTAL:</b>				<b>\$1,000.00</b>

**Optional 3rd Party Hardware, Software and Services**

Description	Quantity	Unit Price	Unit Discount	Total Price	Unit Maintenance	Unit Maintenance Discount	Total Year One Maintenance
BMI AssetTrak ARS V2 Fixed Asset	1	\$2,790.00	\$0.00	\$2,790.00	\$0.00	\$0.00	\$0.00
Mobile Scanning Device Kit							
<i>3rd Party Hardware Sub-Total:</i>							
<b>TOTAL:</b>				<b>\$2,790.00</b>			<b>\$0.00</b>

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held for six (6) months from the Quote date or the Effective Date of the contract, whichever is later.

Customer Approval: \_\_\_\_\_ Date: \_\_\_\_\_  
 Print Name: \_\_\_\_\_ P.O. #: \_\_\_\_\_

 All primary values quoted in US Dollars  
 2020-99932 - Munis ERP 2020(Updated 6/25/2020)

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**Tyler Discount Detail**

Description	License	License Discount	License Net	Maintenance Basis	Year One Maint Discount	Year One Maint Net
<b>Financials:</b>						
Accounting/GL	\$24,843.00	\$24,843.00	\$0.00	\$4,472.00	\$0.00	\$4,472.00
Accounts Payable	\$7,817.00	\$7,817.00	\$0.00	\$1,407.00	\$0.00	\$1,407.00
Budgeting	\$7,817.00	\$7,817.00	\$0.00	\$1,407.00	\$0.00	\$1,407.00
Capital Assets	\$6,641.00	\$0.00	\$6,641.00	\$1,195.00	\$0.00	\$1,195.00
Cash Management	\$4,328.00	\$0.00	\$4,328.00	\$779.00	\$0.00	\$779.00
Contract Management	\$2,850.00	\$0.00	\$2,850.00	\$513.00	\$0.00	\$513.00
Project & Grant Accounting	\$5,161.00	\$0.00	\$5,161.00	\$929.00	\$0.00	\$929.00
Purchasing	\$11,044.00	\$0.00	\$11,044.00	\$1,988.00	\$0.00	\$1,988.00
<b>Payroll/HR:</b>						
Execu Time Advanced Scheduling	\$17,086.00	\$0.00	\$17,086.00	\$3,417.00	\$0.00	\$3,417.00
Execu Time Advanced Scheduling Mobile Access	\$3,975.00	\$0.00	\$3,975.00	\$795.00	\$0.00	\$795.00
Execu Time Time & Attendance Mobile Access	\$5,075.00	\$0.00	\$5,075.00	\$1,015.00	\$0.00	\$1,015.00
Execu Time Time & Attendance	\$13,473.00	\$0.00	\$13,473.00	\$2,695.00	\$0.00	\$2,695.00
Human Resources & Talent Management	\$9,819.00	\$0.00	\$9,819.00	\$1,767.00	\$0.00	\$1,767.00
Payroll w/ESS	\$11,994.00	\$0.00	\$11,994.00	\$2,159.00	\$0.00	\$2,159.00
<b>Revenue:</b>						
Accounts Receivable	\$5,753.00	\$5,753.00	\$0.00	\$1,036.00	\$0.00	\$1,036.00
General Billing	\$3,986.00	\$3,986.00	\$0.00	\$717.00	\$0.00	\$717.00
<b>Productivity:</b>						
Citizen Self Service	\$5,753.00	\$0.00	\$5,753.00	\$1,036.00	\$0.00	\$1,036.00
Munis Analytics & Reporting	\$8,100.00	\$0.00	\$8,100.00	\$1,458.00	\$0.00	\$1,458.00
Tyler Content Manager SE	\$12,351.00	\$0.00	\$12,351.00	\$2,223.00	\$0.00	\$2,223.00
Tyler ReadyForms Processing (including Common Form Set)	\$7,500.00	\$0.00	\$7,500.00	\$1,500.00	\$0.00	\$1,500.00
<b>Additional:</b>						
Tyler Disaster Recovery Service	\$0.00	\$0.00	\$0.00	\$8,127.00	\$0.00	\$8,127.00
Tyler System Management Services Contract	\$0.00	\$0.00	\$0.00	\$8,127.00	\$0.00	\$8,127.00
<b>TOTAL:</b>	<b>\$175,366.00</b>	<b>\$50,216.00</b>	<b>\$125,150.00</b>	<b>\$48,762.00</b>	<b>\$0.00</b>	<b>\$48,762.00</b>

## Comments

Tyler System Management Services is calculated at 25% of the Munis annual maintenance. There is a \$2,500 minimum annual fee.

Tyler's Disaster Recovery Service is calculated at 25% of the Munis annual maintenance. There is a \$5,000 minimum annual fee for Disaster Recovery service. The Disaster Recovery fees are applicable only to one Live Munis database and excludes all test and training databases.

Tyler recommends the use of a 128-bit SSL Security Certificate for any Internet Web Applications, such as the Munis Web Client and the MUNIS Self Service applications if hosted by the Client. This certificate is required to encrypt the highly sensitive payroll and financial information as it travels across the public internet. There are various vendors who sell SSL Certificates, with all ranges of prices.

Conversion prices are based on a single occurrence of the database. If additional databases need to be converted, these will need to be quoted.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the size and scope of your project. The actual amount of services depends on such factors as your level of involvement in the project and the speed of knowledge transfer.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting. Installations are completed remotely, but can be done onsite upon request at an additional cost.

In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

Implementation hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

The Tyler Software Product Tyler ReadyForms Processing must be used in conjunction with a Hewlett Packard printer supported by Tyler for printing checks.

Any forms included in this quote are based on the standard form templates provided. Custom forms, additional forms and any custom programming are subject to additional fees not included in this quote. The additional fees would be quoted at the time of request, generally during the implementation of the forms. Please note that the form solution provided requires the use of approved printers. You may contact Tyler's support team for the most current list of approved printers.

In the event Client acquires from Tyler any edition of Tyler Content Manager software other than Enterprise Edition, the license for Content Manager is restricted to use with Tyler applications only. If Client wishes to use Tyler Content Manager software with non-Tyler applications, Client must purchase or upgrade to Tyler Content Manager Enterprise Edition.

Payroll library includes: 1 PR check, 1 direct deposit, 1 vendor from payroll check, 1 vendor from payroll direct deposit, W2, W2c, ACA 1095B, ACA 1095C and 1099 R.

General Billing library includes: 1 invoice, 1 statement, 1 general billing receipt and 1 miscellaneous receipt.

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**Comments**

Includes digitizing two signatures, additional charges will apply for additional signatures.

Project Management includes project planning, kickoff meeting, status calls, task monitoring, verification and transition to support.

Personnel Actions Forms Library includes: 1 Personnel Action form - New and 1 Personnel Action Form - Change.

Tyler's pricing is based on the scope of proposed products and services being obtained from Tyler. Should portions of the scope of products or services be removed by the Client, Tyler reserves the right to adjust prices for the remaining scope accordingly.

Financial library includes: 1 A/P check, 1 EFT/ACH, 1 Purchase order, 1099M, 1099INT, 1099S, and 1099G.

Development modifications, interfaces and services, where applicable, shall be invoiced to the client in the following manner: 50% of total upon authorized signature to proceed on program specifications and the remaining 50% of total upon delivery of modifications, interface and services.

As a new Tyler client, you are entitled to a 30-day trial of the Tyler Detect cybersecurity service. Please reference <https://www.tylertech.com/services/tyler-detect> for more information on the service and contact [CybersecuritySales@tylertech.com](mailto:CybersecuritySales@tylertech.com) to initiate the trial.

**RATING SUMMARY - REQUEST FOR PROPOSAL FOR FINANCIAL MANAGEMENT SYSTEM SOFTWARE AND IMPLEMENTATION SERVICES**

Criteria	Weight Given	Full ERP System				Best of Breed		
		Sparkrock	Munis	Springbrook	HR/Payroll	NeoGov	OpenGov	Budget Prep/Integration
Responsiveness of the written proposal to the purpose and scope of service.	5%	5%	5%	4%	5%	5%	3%	
Software Quality and Features: Ability of the vendor to meet the Section 5 – Vendor and System Requirements.	25%	18%	25%	13%	18%	11%	11%	
Vendor’s Experience and Technical Support: Experience in successful software conversion, implementation and maintenance, as well as dedicated resources and technical support during and after implementation.	25%	10%	23%	20%	25%	17%	17%	
Vendor’s ability to meet the City’s project timeline.	10%	8%	8%	8%	8%	6%	6%	
Cost: Amount of proposed cost of system installation, conversion, licensing, annual software maintenance, training, travel costs, and applicable Washington State sales tax.	35%	18%	25%	30%	22%	17%	17%	
	100%	59%	87%	75%	78%	54%	54%	

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# A G E N D A I T E M

## BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Pay and Display Parking system for the Marina and Beach Park.

ATTACHMENTS:

1. Goods and Service Contract
2. Photo
3. Alternative equipment quotes.

FOR AGENDA OF: 7/16/2020

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: 7/09/2020

CLEARANCES:

- Community Development \_\_\_\_\_
- Marina /s/ SW
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

CHIEF OPERATIONS OFFICER: 

Legal /s/ TG

Finance 

Courts \_\_\_\_\_

Police \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

### Purpose and Recommendation

The purpose of this agenda item is for the City Council to approve a Goods and Services Contract to enhance the current parking system equipment and operations throughout the Marina and Beach Park. A number of issues have developed with the current equipment, which has direct impacts on overall system performance, negative customer service impacts to users and operational costs. Staff is proposing to replace the existing Pay-at-Exit system with a Pay-and-Display parking system. The new system would be the same system that has been functioning flawlessly at the Redondo parking facility for many years now.

### Suggested Motion

**Motion 1:** "I move to approve the contract with Northwest Parking Equipment for the purchase of Pay and Display Parking equipment in the amount of \$84,923.30 and authorize the City Manager to sign said contract substantially in the form as submitted."

## **Background**

In 2017 the City installed paid parking throughout the Marina and Beach Park. This was done to help offset the financial impact of rebuilding the deteriorating seawall (Bulkhead Repair), along with adding a benefit for safety and security to the Marina's tenants/facility and ensuring the structural integrity of the marina necessary for emergency operations. The City has made a number of adjustments over the last couple of years to improve overall operations and to enhance the customers experience at the pay stations.

As the Beta test has proven, the City and the Marina are in a better and safer position since controlled parking was installed. Positive enhancements of Pay Parking at the Marina and Beach Park identified by residents include:

- Reduced calls for service:
- Redeployment of Public Safety Officers:
- Reduction in vandalism:
- Reduced noise:
- Reduction in illicit behavior
- Reduction in staff time in operations and maintenance.

As you will recall, the first year of paid parking we were able to identify that over 440,000 vehicles entered the marina, which equates to approximately one million visitors.

## **Discussion**

As staff continues to enhance operations of the pay parking system at the Marina and Beach Park, a few issues still need to be addressed, and both have to do with the current equipment.

### **Equipment Failure and Replacement Parts**

The existing Pay-on-Exit equipment has had ongoing problems. Most of these problems are associated with poor craftsmanship of the equipment, lack of local technical support, and exposure to the harsh outdoor coastal environment. As the equipment fails, replacement parts are becoming more difficult to acquire, and becoming cost prohibitive.

### **Poor Customer Experience**

Staff interactions with user groups have proven that the equipment is non-user friendly, unfamiliar, and extremely cumbersome to navigate through the payment process resulting in frustrated customers, long exit lines and overtime calls for service.

Installation of a pay and display system is intended to remove these remaining operational issues. The new machines are very easy to use, and we have had these machines in use at the Redondo parking lot for many years. Upon arrival to the parking lot, the customer will go up to the Pay Station to purchase their parking voucher. They will simply select the amount of time their stay, insert cash, credit/debit, or coin, and then return to their vehicle and place the ticket visible on the dash. This is a common system that most people largely familiar with and utilized throughout urban areas.

We will continue to use the current gate equipment to control access for special events, tenant parking, and for night security.

**Potential Impacts of a Pay-and-Display System**

Staff understands the value derived from paid parking and we will continue to strive to improve customer service. With a Pay-and-Display system, comes the understanding that there will be a new learning curve for visitors. Marina staff will help support the change as we implement the new equipment. In conjunction with access to the parking lots being open during hours of operation, there is an increased potential for gatherings of groups, cruising, and other illicit behavior. There is also a potential for people not paying to park. For these reasons staff will continue to monitor parking lots to ensure the safety, security and enjoyment of the Marina and Beach Park for all. Added to this, the City will be conducting more frequent enforcement from our City's Police Department. We have already begun the process to create a limited commission traffic and parking enforcement officer position to address this concern.

**Financial Impact**

To purchase the new pay and display equipment would be a onetime cost of \$84,923.30.

**Alternatives**

Council could direct staff to make the necessary repairs and needed upgrades to the current pay parking system. However, the \$25,000 cost associated with the necessary upgrades to the current equipment will not ensure the functionality of that system over time. Staff recommends that these funds be allocated to the purchase of a new, more user friendly and reliable system. Staff also feels that a significant savings in overtime costs will help support this change.

Council could direct staff to purchase new equipment that is similar to the current Pay-on-exit equipment. This alternative is substantially more expensive, and there would be continue queuing issues upon exiting. The costs for other alternatives are included in Attachment 3.

**Recommendation**

Staff recommends the proposed motion.

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## **GOODS & SERVICES CONTRACT between the City of Des Moines and Northwest Parking Equipment Company**

THIS CONTRACT is made by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Northwest Parking Equipment Company organized under the laws of the State of Washington, located and doing business at 13500 Lake City Way NE Suite 208, Seattle, WA. 98125, (206) 363-5265, Roy Whipple (hereinafter the "Vendor").

### **CONTRACT**

#### **I DESCRIPTION OF WORK.**

Vendor shall provide the following goods, materials and services to the City of Des Moines.

Northwest Parking Equipment shall provide 6 Pay and Display Parking machines, support equipment, installation service, training, spare parts, programming, and set up as listed in the vendor's proposal. Please refer to attachment #1 for a detailed scope of equipment and services.

2

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

**II. TIME OF COMPLETION.** Upon the effective date of this Contract, Vendor shall provide all goods, materials, and services on or before August 21<sup>st</sup> 2020.

**III. COMPENSATION.** The City shall pay the Vendor an amount not to exceed \$84,923.30, including applicable Washington State Sales Tax, for the goods, materials, and services contemplated in this Contract. The City shall pay the Vendor the following amounts according to the following schedule:

The Vendor is requiring no deposit with order. Both parties agree vendor to be paid in full within 30 days of delivery of goods and services in the amount of \$84,923.30

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

- A. Defective or Unauthorized Work. The City reserves its right to withhold payment from Vendor for any defective or unauthorized goods, materials or services. If Vendor is unable, for any reason, to complete any part of this Contract, the City may obtain the goods, materials or services from other sources, and Vendor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct these additional costs incurred to complete this Contract with other sources, from any and all amounts due or to become due the Vendor.
- B. Final Payment: Waiver of Claims. VENDOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY VENDOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

**IV. PREVAILING WAGES.** Vendor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Contract work and an Affidavit of prevailing wages paid after completion of the work. The Statement of Intent to Pay Prevailing Wages," shall include Vendor's registration certificate number and the prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020, and the estimated number of workers in each classification. Vendor shall pay prevailing wages in effect on the date the bid is accepted or executed by Vendor, and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries must be submitted to the City by Vendor. It shall be the

responsibility of Vendor to require all subcontractors to comply with Chapter 39.12 RCW and this section of the Contract.

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

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

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

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

**VIII. CLAIMS.** If the Vendor disagrees with anything required by an amendment, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Vendor may file a claim as provided in this section. The Vendor shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Vendor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Vendor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

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

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

A. Notice of Claim. Provide a signed written notice of claim that provides the following information:

1. The date of the Vendor's claim;
2. The nature and circumstances that caused the claim;
3. The provisions in this Contract that support the claim;
4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
5. An analysis of the progress schedule showing the schedule change or disruption if the Vendor is asserting a schedule change or disruption.

B. Records. The Vendor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Vendor's records needed for evaluating the protest. The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

C. Vendor's Duty to Complete Protested Work. In spite of any claim, the Vendor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.

D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Vendor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Vendor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

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

**X. WARRANTY.** This Contract is subject to all warranty provisions established under the Uniform Commercial Code, Title 62A, Revised Code of Washington. Vendor warrants goods are merchantable, are fit for the particular purpose for which they were obtained, and will perform in accordance with their specifications and Vendor's representations to City. The Vendor shall correct all defects in workmanship and materials within one (1) year from the date of the City's

acceptance of the Contract work. In the event any part of the goods are repaired, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Vendor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Vendor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Vendor shall pay all costs incurred by the City in order to accomplish the correction.

**XI. DISCRIMINATION.** In the hiring of employees for the performance of work under this Contract or any sub-contract, the Vendor, its sub-contractors, or any person acting on behalf of the Vendor or sub-contractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

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

**XIII. INSURANCE.** The Vendor shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with products and materials supplied to the City. Vendor shall obtain insurance of the type described below:

**No Limitation.** Vendor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Vendor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**A. Minimum Scope of Insurance**

Vendor shall obtain insurance of the type described below:

Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. The City shall be named as an insured under the Vendor's Commercial General Liability insurance policy using ISO Additional Insured-Vendors Endorsement CG 20 15 or a substitute endorsement providing equivalent coverage.

**B. Minimum Amounts of Insurance**

Vendor shall maintain the following insurance limits:

Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$1,000,000 general aggregate and a \$2,000,000 products liability aggregate limit.

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

**D. Acceptability of Insurers**

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

**E. Verification of Coverage**

Vendor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Vendor before goods, materials or supplies will be accepted by the City.

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

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

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

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

**XVI. MISCELLANEOUS PROVISIONS.**

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

B. Resolution of Disputes and Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Washington, If the parties are unable to

settle any dispute, difference or claim arising from the parties' performance of this Contract, then the following shall be the means for resolving the dispute:

1. **Alternative Dispute Resolution.** If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written Contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.
  
2. **Applicable Law and Jurisdiction.** This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XII of this Contract.

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

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

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

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

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

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

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

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

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

<p><b>VENDOR:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: _____</p> <p>Its _____  <i>(Title)</i></p> <p>DATE: _____</p>	<p><b>CITY OF DES MOINES:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: <u>Michael Matthias</u></p> <p>Its <u>City Manager</u>  <i>(Title)</i></p> <p>DATE: _____</p> <p style="text-align: right;">Approved as to form:          _____          City Attorney</p> <p style="text-align: right;">DATE: _____</p>
<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>VENDOR:</b></p> <p>Roy Whipple          Northwest Parking Equipment Co.          13500 Lake City Way NE Suite 208          Seattle WA. 98125</p> <p>(206) 362-5265 (telephone)  <a href="mailto:roynwp1@aol.com">roynwp1@aol.com</a> (e-mail)</p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF DES MOINES:</b></p> <p>Scott Wilkins          City of Des Moines          22307 Dock Ave So          Des Moines, WA. 98198</p> <p>(206) 824-5700 (telephone)  <a href="mailto:swilkins@desmoineswa.gov">swilkins@desmoineswa.gov</a> (e-mail)</p>

ATTACHMENT  
# 1

Northwest Parking Equipment Company  
13500 Lake City Way NE  
Suite 208  
Seattle, Washington 98125  
(bus) (206) 363-5265  
(fax) (206) 367-6578

**PROPOSAL**

Submitted to: 

Mr. Scott Wilkins	Date: June 25, 2020
City of Des Moines Marina	
22307 Dock Avenue South	
Des Moines, WA 98198-4627	

Customer P.O. No. 

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Delivery Site: 

Same as above unless specified.
Is a forklift available? If not, a lift gate truck will add a delivery fee onto below freight cost.

QUANTITY	DESCRIPTION OF ITEM	AMOUNT
3	PND/Pay By License ALL PAY venSTATIONS-ac powered with battery backup inclusive of bill acceptance, coin acceptance, and credit/debit card acceptance with AT&T or Verizon Online 4G wireless kits discounted to \$10,500.00 each	31,500.00
3	PND/Pay By License ALL PAY venSTATIONS-solar powered with bill acceptance, coin acceptance, and credit/debit card acceptance with AT&T or Verizon Online 4G wireless kits discounted to \$11,400.00 each	34,200.00
6	Optional Pay By License keypads at \$675.00 each	4,050.00
6	Optional Medeco high security "hockey puck" locks as cash is a payment option at \$480.00 each	2,880.00
1	On site setup of components, programming & customization of rates, ticket formats, and staff training.	995.00
6	6" Pedestal mounts with bolts at \$389.00 each	2,334.00
6	Tilt angle LCD displays	Inc.
6	Dual hybrid credit/debit card readers	Inc.
1	Spare 12v 40amp solar battery with quick disconnect cabling	225.00
1	Office spare solar battery charger	139.00
	**Online venVUE fees apply for each additional Automated Fee Machine in network. New AFMs will receive the discounted venLITE suite of products for only \$95.00 per month per AFM.	
	**Quote Vaild For 60 Days.	
	FREIGHT:(Approximate)	880.00
	WSSST: 10.0%	7,720.30
	<b>TOTAL:</b>	<b>\$ 84,923.30</b>

**OTHERS TO SUPPLY:** Installation of AFMs to concrete surface with ac power connections. Merchant Account information required also.  
**WARRANTY:** (18) Months on site parts & labor.

In the event that legal action must be taken to collect any and/or all of the contract price, Northwest Parking Equipment Company shall be entitled to reasonable attorneys' fees, court costs and preparation time. Preparation time will be calculated at Northwest Parking Equipment Company's shop rate and is in addition to attorneys' fees and late charges. Unless otherwise stated on invoices, all invoices will be payable, in full, thirty (30) days from invoice date. In addition, a 1.5% late charge per month will be assessed on all past due accounts. Northwest Parking Equipment Company's performance under this agreement is contingent upon strikes, accidents, delays of carriers and other delays unavoidable or beyond the reasonable control of Northwest Parking Equipment Company.

ACCEPTANCE

**PAYMENT TERMS:** Zero deposit with order.  
\$84,923.30 due within 30 days of shipment.

The above prices, descriptions, and conditions are satisfactory and are hereby accepted. You are authorized to proceed with the items specified by this proposal in accordance with the terms herein.

ACCEPTED:  
  
\_\_\_\_\_  
{Company Name}  
By: \_\_\_\_\_  
  
\_\_\_\_\_  
Date

NORTHWEST PARKING EQUIPMENT COMPANY  
*Roy Whipple, Jr.*  
\_\_\_\_\_  
Roy Whipple, Jr.  
President  
*June 25, 2020*  
\_\_\_\_\_  
Date

# venSTATION

Innovation and excellence

**Pay & Display** ○ **Pay by Space**  
**Pay by Plate** ○ **Pay on Foot** ○ **Pay in Lane**



**RELIABLE**



**REAL-TIME**



**SECURE**



**VERSATILE**

- **PCI Compliant Card Processing**
- **PCI-DSS Level 1 & PA-DSS Certifications**
- **Real Time Authorization & Automated Settlement**
- **Relational System Database**
- **Supports all major credit cards & EMV Ready**
- **Customer-controlled value cards & coupon codes**
- **Supports all forms of internet connectivity**

- **USA Based Central Communications Facility**
- **10 Gauge steel with 1/4" steel reinforcement**
- **Audible & remote alarm capability**
- **Sealed and locked cash system**
- **Complete Audit & Transaction History**
- **Approximately 25'W x 58'H x 15'D**
- **Full ADA with max keypad height of 54"**

- **Solar Power, 110v A/C w/ Battery Backup**
- **Hybrid Solar System with A/C Backup**
- **US, Canadian & International Currency**
- **Optional change giving in coins or bills**
- **Backlit LCD display w/ 22pt Font**
- **ATM-style menu driven interface**
- **Custom graphics & colors available**

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# Entrance Controls

702 Industry Drive  
 Tukwila, WA 98188  
 Phone: (206) 622-0452  
 Fax: (206) 622-8727  
 Ken Johnson

City of Des Moines Marina  
 22307 Dock Ave S  
 Des Moines, WA 98198  
 Scott Wilkins  
 P h o n e :  
 F a x :

Date: 8/19/2019  
 Quotation No.: 84948  
 Client No.: 23094

*Quote Valid 30 days*

*Special Terms listed below*

## Des Moines Marina Designa parking system installation

Mr Scott Wilkins

Please see below for the the budgetary proposal to repace the existing Parking Boxx system with a Designa EMV compliant parking system located at 22307 Dock Ave South Des Moines WA 98198.

- Entrance Controls to provide and install 5 entry gate arms with 5 ticket issuing machines at designated locations
- Entrance Controls to provide and install 5 exit gate arms with 5 credit card or cash payment machines at designated locations.
- Entrance Controls to install 1 exit gate arm with credit card only payment machine at designated location
- Entrance Controls to provide and install 3 ticket validation machines. Two will be located a the Anothony's restaurant onsite and one at the Harbormaster's office.
- Entrance Controls to provide and install parking and ticketing system server and software package
- Entrance Controls to provide and install needed PoE switches to make Designa system PCI compliant.
- Entrance Controls to provide and install fire response sensors and strobes.
- Entrance controls to provide access control integration either through existing Indala readers or new HID readers provided with units.
- Customer to provide IP configuration and network drops as needed
- Proposal is budgetary in nature which includes a plus or minus 5% needed for final project estimation

Qty.	Part#	Description	Manufacturer	Unit Price	Total Price
11	2720400573	12' Straight Aluminum Barrier Arm	Designa	120.00	1,320.00
11	Miscellaneous	Gate-P1300 UL Parking Barrier RH	Designa	2,160.00	23,760.00
5	Miscellaneous	5550000271 BlueEdition IN+ UL- Base	Designa	8,010.00	40,050.00
6	Miscellaneous	Upgrade kit - HID 6005B	Designa	228.00	1,368.00
6	Miscellaneous	Upgrade kit - VoiP client in+out	Designa	150.00	900.00
1	Miscellaneous	BlueEdition Out+UL base unit	Designa	9,330.00	9,330.00

**Entrance Controls**

Page 2 of 3

Qty.	Part#	Description	Manufacturer	Unit Price	Total Price
1	Miscellaneous	WC (PX) Credit Card reader	Designa	2,040.00	2,040.00
5	Miscellaneous	PAY Coinless BlueEdition UL-Base	Designa	27,480.00	137,400.00
5	Miscellaneous	Upgrade kit - HID 6005B for PAY	Designa	288.00	1,440.00
5	Miscellaneous	Upgrade kit - VoIP client for PAY	Designa	180.00	900.00
5	Miscellaneous	WC (PX) CC reader SCR200E-VM	Designa	2,040.00	10,200.00
5	Miscellaneous	PIL Upgrade kit SW and Cabling	Designa	240.00	1,200.00
3	Miscellaneous	TCU120-3-MOT discount unit	Designa	1,410.00	4,230.00
1	Miscellaneous	VoIP Central server medium up 20	Designa	1,080.00	1,080.00
1	Miscellaneous	VoIP main phone point	Designa	180.00	180.00
1	Miscellaneous	System dongle PM ABACUS base	Designa	4,200.00	4,200.00
1	Miscellaneous	ABACUS DBS compact up to 12	Designa	1,800.00	1,800.00
1	Miscellaneous	License WinOperate Basic	Designa	1,080.00	1,080.00
1	Miscellaneous	License Smartcard/ RFID processing	Designa	600.00	600.00
11	Miscellaneous	License per TCC	Designa	120.00	1,320.00
1	Miscellaneous	21.5" LED monitor	Designa	180.00	180.00
1	Miscellaneous	Set function cards- MC 120 magnetic	Designa	60.00	60.00
1	Miscellaneous	holder for function cards	Designa	12.00	12.00
1	Miscellaneous	Startup kit cleaning material	Designa	18.00	18.00
1	1134	ASSOCIATED PROJECT ITEMS		7,425.00	7,425.00

Consists of:

Permits, Fees, Affidavits	4,100.00
Shipping and Handling	1,000.00
switches, sensors, strobes, cable, etc	2,325.00

**Equipment Sub Total:** **252,093.00**

**Labor:**

<b>Installation</b>	<b>34,615.00</b>
<b>Engineering</b>	<b>1,120.00</b>
<b>Programming</b>	<b>1,920.00</b>
<b>System Testing</b>	<b>1,840.00</b>
<b>Training</b>	<b>920.00</b>
<b>Project Management/Coordination</b>	<b>960.00</b>

**Labor Sub Total:** **41,375.00**

**Labor & Equipment Total:** **293,468.00**

**Total value \$ 293,468.00**  
**plus Tax**



**City of Des Moines Marina Parking Proposal  
Replace Existing PARC's System**

8/8/19

606 120<sup>th</sup> Avenue NE, Suite # D201  
Bellevue, WA. 98005  
(800) 997-8463  
[www.timeequipment.com](http://www.timeequipment.com)



**Software**

qty	Item	Description	Unit	Extended
<b>Core Software Package</b>				
1	SB-0806-1035	SmartPark - Standard Edition - Includes one workstation	\$11,200.00	\$11,200.00
<b>Credit Card Processing</b>				
1	SB-0806-1043	EMV Connect - Standard Edition	\$4,150.00	\$4,150.00
1	SB-0806-1094	Payment Express - Site Setup Fee	\$3,750.00	\$3,750.00

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**Additional Items**

qty	Item	Description	Unit	Extended
5	IB-0408-1036	Ticket Rolls - 8 - Approx 18,000 Tickets	\$350.00	\$1,750.00
3	IB-0408-1039	Receipt Rolls - 18 - Approx 33,000 Receipts	\$195.00	\$585.00
1	IB-0408-1012	SmartSticker Stock	\$55.00	\$55.00

**Total Investment**

Hardware	\$301,135.00
Software	\$19,100.00
Additional Items	\$2,390.00
Subtotal	\$322,625.00
Estimated Freight	\$3,310.00
Estimated Electrical/Low Voltage Work	\$72,466.67
Programming, Configuration, and Installation	\$18,080.00
Subtotal	\$416,481.67
City of Des Moines Package Discount	(\$48,393.75)
Subtotal	\$368,087.92
Sales Tax	\$37,176.88

**Grand Total \$405,264.80**

Payment Terms: 50% with approved proposal, 40% upon shipment from TIBA warehouse, balance upon substantial completion of project.

\_\_\_\_\_ Please Initial

1	ASA	Annual Hardware Service Agreement - Year 3	\$24,090.80
1	SA	Software Assurance - First Year	\$2,865.00
1	SA	Software Assurance - Year 2 and beyond	\$3,438.00

**NOTES:**

Delivery and installation is typically 5 to 7 weeks after receipt of Down Payment  
 Electrical and Civil Work are estimated and may change based on physical conditions unknown until work has started  
 Servers and other items require Ethernet connection to commercial-grade high-speed dedicated internet connection  
 Please review attached Roles and Responsibilities  
 Proposal is subject to attached Terms & Conditions  
 Receipt of deposit constitutes acceptance of order and associated terms and conditions  
 All prices quoted are valid for 90 days from above date

We hereby order the above listed materials and/or services

Submitted by:  
 Time Equipment Company

APPROVED  
 City of Des Moines Marina  
 CUSTOMER NAME  
 Scott Wilkins  
 ENDORSED BY TITLE

Biff B. Nelson

DATE

## Bonnie Wilkins

---

**From:** noreply@civicplus.com  
**Sent:** Thursday, July 16, 2020 3:20 PM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council / Public Meeting Comments

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

### Council / Public Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

---

First Name	James
Last Name	Anderson
Address 1	<i>Field not completed.</i>
City	Des Moines
State	WA
Zip	98198
Phone	<i>Field not completed.</i>
Email	james.anderson.98198@gmail.com
Subject	Wally's Chowder House and the EATS program
Comment	<p>Good evening, my name is James Anderson, and I'm writing to address concerns I've seen in the community regarding Wally's Chowder House being part of the EATS program.</p> <p>I wouldn't say that I personally know Mike Nordean, the owner of Wally's, but we have friends in common and they alerted me to the Wally's website where I read Mike Nodean's statement. To be clear, I am an advocate for Black Lives Matters, women's rights, LGBTQ+ rights, and I believe that the Proud Boys are a hateful and despicable group. However, I am concerned about the vitreol being spread about Wally's, specifically in a Facebook group called "Des Moines Community Group", that has the potential to harm this particular restaurant and their diverse staff. The statements I've read that have influenced the</p>

---

conversation around Wally's being on the EATS program include saying that a certain "Haily Adams" of Patriot Prayer is a daughter of the Nordean family, that the Proud Boys regularly hold or held meetings at the restaurant, and that Mike is a racist. None of these claims are backed up with proof or even first-hand accounts. From my observations, there are 5-6 people as the driving force behind these narratives in the Des Moines Community Group, including encouragement from Councilperson Anthony Martinelli. They have yet to state their objectives. As someone who has helped organize multiple protests and boycotts, I know that a legitimate movement has to have clearly defined actionable goals, otherwise it is simply bullying because you disagree with someone. What further changes are they fighting for? The owner has fired Ethan, banned him from the restaurants, and publicly denounced Ethan's actions and his association to the Proud Boys... so why are these few people continue to blindly push forward in their quest to attack Wally's? This is damaging to the community as a whole, and especially for Wally's staff. It would be disappointing to see the city council take the side of cyberbullies and join in the harassment of a restaurant with a diverse staff that has been in the community for over 25 years - simply because Facebook told them to over a barrage of sensationalized rumors.

Please consider the facts and continue to make sound decisions.

Thank you for your time,  
James Anderson

---

Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?

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No

Email not displaying correctly? [View it in your browser.](#)

## Bonnie Wilkins

---

**From:** Bobbi <missbobbib@comcast.net>  
**Sent:** Monday, July 13, 2020 5:53 PM  
**To:** \_CityCouncil  
**Subject:** Marina parking

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

Keep the gated at the marina. They made it a nice family place instead of pot smoking hang out. I buy the pass every year. \$1 keeps all the troubles away. Keep paid parking.

Thanks  
Bobbi barkley

Sent from my iPhone

**Bonnie Wilkins**

---

**From:** bbrobb1@juno.com  
**Sent:** Wednesday, July 15, 2020 8:08 AM  
**To:** \_CityCouncil  
**Subject:** DesMoines marina parking

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

Please do not approve the parking fees on the DesMoines Marina parking .

Betty L. Robb  
22315 6th Ave S Unite A207  
Des Moines, WA 98198

## Bonnie Wilkins

---

**From:** noreply@civicplus.com  
**Sent:** Tuesday, June 30, 2020 8:44 PM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council Meeting Comments

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

### Council Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

First Name	B
Last Name	L
Address 1	1618 Kent Des Moines road
City	Des moines
State	<i>Field not completed.</i>
Zip	<i>Field not completed.</i>
Phone	<i>Field not completed.</i>
Email	<i>Field not completed.</i>
Subject	Wallys eats program
Comment	I've lived in Des Moines for over 10 years. I think wallys is a great restaurant who has a diverse workforce and should stay on the EATS program. I think a lot of people hear rumors and don't actually have facts to back up the rumors it's always well I heard from someone. I believe that the beliefs of a child don't represent the beliefs of parents. The parents shouldn't be guilty for the actions of the child and neither should a workforce who needs an income.
Do you wish to be contacted by the City Clerk's Office with instructions on how to	No

participate in the City  
Council Zoom meeting?

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## Bonnie Wilkins

---

**From:** noreply@civicplus.com  
**Sent:** Wednesday, July 1, 2020 10:07 AM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council Meeting Comments

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

### Council Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

First Name	Sandy
Last Name	Butler
Address 1	PO BOX 98534
City	Des Moines
State	Wa
Zip	98198
Phone	000-000-0000
Email	Mybutler@q.com
Subject	Wally's
Comment	So so so happy Wallys is in the eats program! Love their restaurant and love their great service and love that they are a supporting business of the Des Moines community! I hear they are second on the list and that's awesome! They should be because they are so yummy!
Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?	Yes

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**Bonnie Wilkins**

---

**From:** noreply@civicplus.com  
**Sent:** Wednesday, July 1, 2020 9:31 AM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council Meeting Comments

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Council Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

First Name	Amanda
Last Name	Cox
Address 1	24327 21st Ave S
City	Des Moines
State	Washington
Zip	98198
Phone	<i>Field not completed.</i>
Email	mandyheeg@gmail.com
Subject	Remove Wally's from the EATS program
Comment	<p>We cannot make room in our city for racism. None of us can feel safe in a city that allows such rampant hate to be profitable. When racists feel safe, nobody else does.</p> <p>Please remove Wally's from the EATS program as a small, tiny step towards systemic change. It is our duty to make our city a better place. We cannot be complacent and sit idly by while Proud Boys run rampant on our streets. They need to know they, and those who would support them, are not welcome here. They cannot be allowed to profit off of city funds, as a bare minimum.</p>
Do you wish to be contacted by the City	Yes

Clerk's Office with  
instructions on how to  
participate in the City  
Council Zoom meeting?

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## Bonnie Wilkins

---

**From:** Tad Doviak <taddoviak@gmail.com>  
**Sent:** Friday, July 3, 2020 3:42 PM  
**To:** \_CityCouncil  
**Subject:** Martinelli's proposed required minimum wage increase

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

Mr. Martinelli's proposal to raise the minimum wage for businesses with over 50 employees is short sighted and full of unintended consequences. First off, the artificial wage increase will increase the income gap in the city. Big businesses will be able to attract and hire more skilled and/or experienced employees because they are paying more. Smaller businesses will either be at a competitive disadvantage or be forced to pay a higher wage, perhaps a business cannot afford either option and will be forced out of business by Mr. Martinelli's plan which I assume is borne of compassion for the worker.

What he does not understand is that artificially inflating wages reduces the number of jobs available for entry level workers. Minimum wage is not meant to be an amount that you earn for your career. It is entry level so an employer can train you to be more valuable to the company and then increase your wages accordingly. For example, I started working at Burger King for \$3.35 an hour. I made fries. After a month or so, I could make burgers. I got a raise to \$3.45 an hour. A few months later, I could make salads and train other people how to make burgers and fries. I was making \$3.75 an hour. That's more than a 10% raise in just a few months, because I was worth more to my employer.

In short, attempting to manipulate the economy without a really extensive study of the ripple effects is short sighted and foolhardy. His proposal does not have my support and I hope the council will withhold support from it at this time as well.

Tad Doviak

**Bonnie Wilkins**

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**From:** noreply@civicplus.com  
**Sent:** Sunday, July 5, 2020 8:04 AM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council Meeting Comments

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

### Council Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

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First Name	Katie
Last Name	Farrar
Address 1	602 S 240th
City	Des Moines
State	WA
Zip	98198
Phone	2068902352
Email	Katiemfarrar@gmail.com
Subject	Please remove Wallys from the EATS program
Comment	My family has owned our Des Moines home for over 30 years and we love to support local restaurants and businesses. We also all vote in every election, including for council members. Since finding out about the Wally's owners hateful and discriminatory public opinions, we will no longer be supporting them, and I encourage the city council to do the same by discontinuing the EATS program at Wallys. It is extremely easy to find exclusive, racist, and bigot comments put out by the owner by doing a quick google search. I understand there was a statement put out against their sons horrendous choices, but that isn't enough. The problems at this establishment run deep and they need encouragement to make changes to support all members of our community. This isn't what Des Moines represents and we cannot stand for this! This is your time to

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make a change, hold businesses accountable for their public comments, and show Des Moines that you are serious about Racism being a public health crisis.

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Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?

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Yes

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## Bonnie Wilkins

---

**From:** noreply@civicplus.com  
**Sent:** Thursday, July 16, 2020 11:48 AM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council / Public Meeting Comments

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

### Council / Public Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

First Name	Rick
Last Name	Johnson
Address 1	28624 Redondo Beach Dr S
City	Des Moines
State	WA
Zip	98198
Phone	2532793310
Email	redondorick@comcast.net
Subject	"Redondo Speed Board Sign"
Comment	I want to take the time to thank the city for the "Speed Board Sign" installed at the South end of Redondo. Maybe it will remind those that its a 25 MPH zone. I would like to see one on the Southbound direction too. I'd also like to see speed bumps installed at 285th and Redondo Beach Dr S. And the crosswalk at the 288th street crosswalk. Unfortunately, times are here with the kids and their loud cars speeding up and down Beach Dr. Something needs to be done to slow traffic and noise on Beach Dr. As for the paid parking at Des Moines Marina, going to an "Honor System" like Redondo is not working, never has, never will. without gates or paid attendant on duty. To many don't pay to park in Redondo. Kids are taking most of the upper section to park. Taking up truck and trailer spaces. Doing Brodie's in the parking lot. Lots of problems in Redondo over

parking issues. I've asked that "Noise Ordinance" signs be posted on Beach Dr. With the fine clearly posted.

Thank You,  
Rick Johnson

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Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?

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No

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## Bonnie Wilkins

---

**From:** L MICHAEL PRICE Owner <Imp98198@centurylink.net>  
**Sent:** Wednesday, July 15, 2020 11:49 AM  
**To:** Bonnie Wilkins  
**Subject:** Council meeting 16 Jul marina parking

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

Please pass to council members or whatever procedural channel so as to express a citizen opinion. I understand that the continuance of the marina pay parking operation will be under consideration. I would suggest that the pay parking operation be continued. I can observe activity in the marina parking lot, and since establishment of the pay parking plan, late evening police activity seems to have declined to a significant degree.

Thank you,  
L Michael Price  
22315 6th Ave S  
Des Moines

**Bonnie Wilkins**

---

**From:** noreply@civicplus.com  
**Sent:** Friday, July 3, 2020 5:01 PM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council Meeting Comments

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### Council Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

First Name	Andrea
Last Name	Sandhawalia
Address 1	<i>Field not completed.</i>
City	<i>Field not completed.</i>
State	<i>Field not completed.</i>
Zip	<i>Field not completed.</i>
Phone	<i>Field not completed.</i>
Email	alengebo@gmail.com
Subject	NO TAX MONEY FOR HATE GROUP SUPPORTERS
Comment	I am writing as a very concerned community member. I DO NOT want my tax dollars to go towards supporting Wally's restaurant via the EATS program, a restaurant with ties to known hate groups. I have already chosen to not patronize this restaurant because of their racist values and I do not want my money going towards this business in the form of my tax dollars. This is not something to glaze over or not consider, the values of this restaurant negatively affects your constituents and perpetuates racism in this country. Please remove Wally's as being eligible for this program.
Do you wish to be contacted by the City Clerk's Office with	<i>Field not completed.</i>

instructions on how to  
participate in the City  
Council Zoom meeting?

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## Bonnie Wilkins

---

**From:** noreply@civicplus.com  
**Sent:** Wednesday, July 1, 2020 10:09 AM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council Meeting Comments

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### Council Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

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First Name	Cecelia
Last Name	Sandvik
Address 1	25011 13th Place South
City	Des Moines
State	Wa
Zip	98198
Phone	206-595-6751
Email	Jim_cecelia@msn.com
Subject	Wally's and the EATS program
Comment	Please dump Wally's from the EATS program! Stop sweeping the issues with this place under the carpet, Mr. Mayor! Ignoring it speaks volumes about you and most of the City Council.
Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?	No

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## Bonnie Wilkins

---

**From:** William Schadt <wcschadt@gmail.com>  
**Sent:** Monday, July 13, 2020 9:30 PM  
**To:** \_CityCouncil  
**Subject:** changes to marina parking system

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

To the Des Moines city council:

I am writing in regards to the proposed changes in the parking system at the Des Moines marina. I am strongly opposed to the proposed changes that I have read about on Facebook. I live near the marina in one of the condominium buildings that overlook it. The current parking system we have now has resulted in a marked improvement in the quality of life near our building and the marina in general. There is noticeably less traffic and noise. Public safety has improved for people walking and bicycling through the marina, which I do often. I can now enjoy sitting out on my deck and viewing the evening sunset without cruising cars and motorcycles parading noisily through the marina.

I have used the paid parking system now in place at the marina. While it is not the most user friendly I have encountered, I have had no great problems with it and have used it successfully each time. If the parking system needs to be upgraded or improved, I would rather the city increase the parking fees to pay for such improvements.

Councilman Martinelli wrote on Facebook that the council is thinking to impose a parking system at the marina similar to what is in use now at the Redondo parking area. From a relative and other acquaintances I have who live near the Redondo parking area, that system is not liked at all by area residents. Please don't move the problems with noise, traffic, and unruly people from that area of our city to the marina.

Sincerely,

Bill Schadt

## Bonnie Wilkins

---

**From:** Jo Schadt <joschadt1@gmail.com>  
**Sent:** Tuesday, July 14, 2020 9:49 AM  
**To:** Bonnie Wilkins  
**Subject:** Marina parking

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

Bonnie,

I have notified several individual Council members about my opposition to change the paid parking system at the Marina to an honor system like the one at Redondo.

The Council is well aware of the noise, drug use and lack of police enforcement at Redondo, as residents have been complaining about it for years.

The Council recently canceled a meeting with a Redondo representative about this issue and has yet to reschedule.

This indicates an ongoing lack of interest on the part of the Council to solve the problem which will only be compounded if a similar parking system is installed at the Marina.

I recall Mayor Pina reporting a noticeable reduction in police calls to the Marina once paid parking was installed.

I even wrote a Thank You note to the Council for the much appreciated peace and quiet that resulted with the new parking system.

Don't mess with success!

Jo Schadt

South Shores resident

206-618-9206

Sent from my iPhone

## Bonnie Wilkins

---

**From:** noreply@civicplus.com  
**Sent:** Thursday, July 9, 2020 6:06 PM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council Meeting Comments

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

### Council Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

First Name	George
Last Name	Scott
Address 1	22220 7th Ave S
City	Seattle
State	Washington
Zip	98198
Phone	2062712113
Email	gcscott93@hotmail.com
Subject	Des Moines' historic Van Gasken 'red house
Comment	<p>If the structure is past redeeming then we have to let it go. But who is this view for? Who will enjoy this great view. Without some commercial attraction,( coffee shop, cafe, amphitheater etc.) the view is left to those that might pay to park in the marina and then walk up the hill to get a more elevated view of what they already have in the marina. Walkers in and around the marina would enjoy it. What about the neighborhood parking for those who might drive in and want to park near the viewpoint. Is there room for parking on the property? Can the house property be easily connected to have access from the marina floor?</p> <p>A commercial enterprise on that point would more than pay for itself in sort order if it's feasible to establish. If it's restoring the</p>

historic house or new construction or a summertime coffee cart, or just open space, what is the best value to the community?

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Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?

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*Field not completed.*

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**Bonnie Wilkins**

---

**From:** noreply@civicplus.com  
**Sent:** Tuesday, June 30, 2020 8:07 PM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council Meeting Comments

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

Council Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

---

First Name	samantha
Last Name	Scown
Address 1	21600 24th ave s c101
City	Des moines
State	WA
Zip	98198
Phone	4253272217
Email	Samanthascown@gmail.com
Subject	Eats program
Comment	<p>Hello councilmembers,</p> <p>I am writing to you about an issue that the mayor did not think was worth discussion at the last council meeting. The issue is Wallys participation in the EATS program. Wallys has become a very divisive restaurant in our community and facts aside, our city shouldn't have restaurants that cause those kind of issues as part of a city program. When you add the facts back in, it's even worse. The owners son, who has worked for the business, and whose wife still works for the business; is a white supremacist who assaults people. The owners wife has posted anti gay, anti Muslim, and racist posts on social media. Their business can remain open and serve customers who are fine with supporting racism, but having them as part of the EATS</p>

---

program is not "remaining neutral."

Our city government should not be openly supporting this business in any way. Especially in the times we are in where we need to be showing more support and making CHANGES in our systems to support people of color.

Des Moines already has a reputation as a very "old" and "white" community, we need to push back on that by showing that our community doesnt support racist businesses. Removing Wallys from the EATS program is one small step of many that are needed to head in the right direction.

I hope you choose to give this issue significant discussion time at the next council meeting.

Thank you,

Samantha L. Scown  
Des Moines Resident

---

Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?

Yes

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## Bonnie Wilkins

---

**From:** sevores@comcast.net  
**Sent:** Tuesday, July 14, 2020 12:58 PM  
**To:** \_CityCouncil  
**Subject:** Parking at Des Moines marina

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

Good afternoon to you all,

I would appreciate a response to my questions.

I agree with paid parking, there will numerous comments about "not wanting paid parking".

1. How will you address this?
2. How much revenue has been generated and what is the revenue used for?
3. How much is needed to pay for...?
2. Compare to Redondo, cost of parking, citizens for or against, how much revenue?

Options are fix current or purchase new?

1. How many options have been researched? Just the 2? I want more options presented. 5 vendors and how much for each. There are several different pay to park options. Look to Seattle or Bellevue for other options.

The current system \$25k to fix

1. A warranty was not purchased?
2. How many issues have happened?
3. What type of issues have happened?, Who fixed the issues and the cost?
4. Did you talk to the vendor about future issues? Example I get my car tuned up and they let me know in the next year I might need to have another item serviced or fixed.
5. I believe the opinion is it will continue to break, what items are expected to break?
6. How much has it been available vs how much it has not been available?
7. How much lost revenue?
8. What will the \$25k fix?
9. The current system not user friendly, what steps have happened to correct this issue? Better signage? Reviewing the process with parkers instead of just doing it for them?

\$700k was/is lots of money

1. When was this approved?
2. How was this purchase to be paid for?
3. Has the revenue generated covered the \$700k purchase?

New system \$85k

1. Will the new system have a warranty?
2. Where is the company located? I think I heard the current system is not local.
3. How does the new system work?
4. I believe you get a ticket and place on your dashboard?

5. If true are you going to use current employee or will you need to hire a new employee? Cost?
6. How often will the parking be monitored? Rumor people cheat when using Redondo which of course is less revenue? Also the pay box is broken often.
5. How will people pay?
6. Will there still be a pass for \$30 for residents.
7. Will there be validation still?
8. What is the companies customer satisfaction?
9. What issues are to be expected?

How are large events handled for current and new system?

Thanks,  
Marnie Sevores  
22018 13th Avenue S  
Des Moines, WA 98198  
206-683-4217

## Bonnie Wilkins

---

**From:** Beverly Walker <missbeverlyann@gmail.com>  
**Sent:** Monday, July 13, 2020 5:53 PM  
**To:** \_CityCouncil  
**Subject:** Thursday's Meeting

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

Hi! My name is Beverly Walker and I live in Des Moines and use the marina with my prepaid parking pass. You are correct that the system we have is difficult to use and cumbersome if you are trying to pay. It starts when you are leaving and trying to get your receipt accepted by the machine. Paper is way too thin to slide up into the machine. It's even harder for elderly and handicapped folks. It's a shame you didn't invite the community to come down and work these machines before you signed on the dotted line.

So now we are left to what to do with gates. Sure you can take them out which is another cost. Then what? If you open it up to the honor system are expecting the police to come down and write up tickets? Surely you jest. So now you will be making NO money because tickets won't be written. Do you put a little guard house with a gate? That way folks have to bust through the gate to leave or drive out the wrong way so they don't have to pay. Again it's just another problem of not being paid.

All I have to say is please quit wasting our money make decisions that directly effect the folks who live here without letting us know. Seems too often you all have already come to a decision and then vote with community involvement. This practice is wrong and you know it is.

Thank you!!!

## Bonnie Wilkins

---

**From:** Bernice Warren <bernicewarren@yahoo.com>  
**Sent:** Tuesday, July 14, 2020 12:29 PM  
**To:** \_CityCouncil  
**Subject:** Marina parking

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

Des Moines city council members, rather than continuing to pour thousands of dollars into charging the residents of des Moines for parking at the marina, go back to not charging! Allow us to enjoy what we already pay taxes for. This was not a good idea in the first place.

I suggest the next time you want to charge for what has already been covered in taxes, you start with decreasing your own pay. I don't see for the life of me why you are paid such high salaries. When traveling around the city I see so many things that need to be cleaned, repaired, replaced, etc. How are you earning your salaries is a question I put to you.

Sincerely,  
Mrs. Warren

[Sent from Yahoo Mail on Android](#)

**Bonnie Wilkins**

---

**From:** Susan White <susanrdo@aol.com>  
**Sent:** Monday, July 13, 2020 6:15 PM  
**To:** \_CityCouncil  
**Subject:** Change in parking system at the Marina

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

Dear City Council:

I wholeheartedly support changing the current configuration for parking at the Marina to pay stations as we have in Redondo. These gates have been complicated and not user friendly since they were put in. It's impacted the City in a negative way since they were put in.

Sincerely,

Susan White  
28742 Redondo Beach Dr S  
Des Moines  
253-670-6096

## Bonnie Wilkins

---

**From:** noreply@civicplus.com  
**Sent:** Wednesday, July 1, 2020 6:11 PM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council Meeting Comments

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

### Council Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

First Name	Keith
Last Name	Williams
Address 1	750 S 216th ST
City	Des Moines
State	WA
Zip	98198
Phone	425-894-6760
Email	krwilliams1982@gmail.com
Subject	Wally's and EATS
Comment	<p>Please remove Wally's from the EATS program. Given the association to extremist groups and recently uncovered social media post that contained Islamophobic and homophobic content, I do not feel any partnership between the city and Wally's is something that will make all of our residents feel welcomed or heard. Wally's could no longer stay silent and had to address the issue, it's about time the city of Des Moines does too.</p> <p>Thanks,</p> <p>-Keith</p>

---

Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?

---

No

Email not displaying correctly? [View it in your browser.](#)

## Bonnie Wilkins

---

**From:** noreply@civicplus.com  
**Sent:** Wednesday, July 15, 2020 1:33 PM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council / Public Meeting Comments

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

### Council / Public Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

---

First Name	David
Last Name	Wilson
Address 1	1232 S 235th Pl
City	Des Moines
State	WA
Zip	981987404
Phone	2063497133
Email	bassfiddlefixer@gmail.com
Subject	Significant tree retention File No.LUA2018-00667
Comment	<p>I personally planted the Sequoia trees (erroneously identified as Cedars) along the North boundary of this development forty six years ago. It would be a disservice to the neighborhood to remove these trees for the purpose of adding a redundant sidewalk on the North side of the proposed street. The properties adjacent to this development to the North have no need for another sidewalk here. They have their own access and are separated by a significant elevation difference. The sidewalk on the South side of the proposed street should be adequate for the 5 homes in this development and whatever future development may happen in the properties adjacent to the South. Removing these trees to satisfy a one-size-fits-all city regulation is inappropriate in this case. I ask that you make an exception to keep these trees in the neighborhood.</p>

---

Remember these trees can live for 3000 years,we have a good start lets keep them growing!

---

Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?

---

Yes

Email not displaying correctly? [View it in your browser.](#)

## Bonnie Wilkins

---

**From:** noreply@civicplus.com  
**Sent:** Tuesday, July 14, 2020 10:13 PM  
**To:** Bonnie Wilkins; Taria Keane  
**Subject:** Online Form Submittal: Council / Public Meeting Comments

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

### Council / Public Meeting Comments

*Your name and the subject of your comment will be read into the record at the next available City Council meeting.*

---

First Name	Cynthia
Last Name	Ricks-Maccotan
Address 1	CHI Franciscan, St. Francis Hospital, 34515 9th Ave. South
City	Federal Way
State	Washington
Zip	98003
Phone	253-740-5788
Email	cynthiaricks-maccotan@chifranciscan.org
Subject	Reach Out Des Moines
Comment	Just want to provide the City Council an update on the Reach Out Des Moines Coalition efforts since Covid-19.
Do you wish to be contacted by the City Clerk's Office with instructions on how to participate in the City Council Zoom meeting?	Yes

---

Email not displaying correctly? [View it in your browser.](#)

## Bonnie Wilkins

---

**From:** Loh, Julien <Julien.Loh@pse.com>  
**Sent:** Thursday, July 9, 2020 2:52 PM  
**To:** Bonnie Wilkins  
**Subject:** Written Public Comment for July 9 Meeting: PSE resources for SCA members

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

>>

>> Dear Mayor Pina and Councilmembers:

>> During this challenging time, I wanted to again share PSE's resources to assist our customers. Please feel free to share this information on your website and other channels and as always let me know how PSE can be a resource to Des Moines' residents and businesses. These links are also on our main landing page.

>>

>> We have one set of resources for residential customers and another for small business customers.

>

>

>> As a provider of an essential service, we are working to ensure we are here for our customers, our community and our employees as coronavirus impacts the region.

>>

>> HELPING RESIDENTIAL CUSTOMERS

>> As a provider of an essential service, we are working to ensure we are here for our customers, our community and our employees as coronavirus impacts the region. Need financial assistance and support for your energy bill? We know some customers might be worried about paying their bills. Here are measurable actions we've taken on behalf of our customers:

>>

>> \* We will not be disconnecting customers for non-payment during this time.

>> \* We received approval from the Washington Utilities and Transportation Commission for a waiver that allows PSE to waive late fees.

>> \* We will work with our customers on options such as payment plans<<https://www.pse.com/account-and-billing/Payment-Assistance/payment-arrangement>> and choosing a new bill due date<<https://www.pse.com/account-and-billing/My-Account/Preference-Center/billing>>.

>> \* We have multiple bill payment assistance programs<<https://www.pse.com/pages/bill-and-weatherization-assistance>> available to income-qualified customers.

>> \* In order to help our community partners, the PSE Foundation, which is a nonprofit entity operating independently of PSE but helps communities PSE serves, has donated \$250,000 to support relief efforts in the community through the Seattle Foundation as well as donating to foodbanks to cover emergency preparations.

>>

>> <https://www.pse.com/pages/help-during-the-pandemic>

>>

>> HELPING SMALL BUSINESS CUSTOMERS

>> We know some of our business customers might be worried about paying their bills. Here are measurable actions we've taken on behalf of our customers:

>>

>> \* We will not be disconnecting customers for non-payment during this time.

>> \* We will work with our customers on options such as payment plans<<https://www.pse.com/account-and-billing/Payment-Assistance/payment-arrangement>> and choosing a new bill due date<<https://www.pse.com/account-and-billing/My-Account/Preference-Center/billing>>.

>>

>> <https://www.pse.com/pages/help-for-your-small-medium-business>

>>

>> Julien C. Loh

>> Local Government Affairs and Public Policy Manager PUGET SOUND ENERGY<<http://pse.com/Pages/default.aspx>>

>> 425-457-5546 (desk)

>> [Julien.Loh@pse.com](mailto:Julien.Loh@pse.com)<<mailto:Julien.Loh@pse.com>>



Prsrt STD  
US Postage  
Paid  
Seattle, WA  
Permit # 816

Wednesday, July 22, 2020

# Normandy Park, Burien, and Des Moines



POSTAL PATRON



City of Normandy Park  
801 SW 174th St  
Normandy Park, WA 98166  
www.normandyparkwa.gov



2020 Business Recycling Event

## Business Recycling Event

Wednesday, July 22, 2020  
10 AM - 3 PM

John Knox Presbyterian Church  
109 SW Normandy Road  
Normandy Park, WA 98166

*Flyer Printed on Recycled Paper*

Questions? Call 206-938-8262 or visit  
[normandyparkwa.gov](http://normandyparkwa.gov)

### Acknowledgements

John Knox Presbyterian Church

### FUNDING PROVIDED BY

The King County Solid Waste Division

*This event is open to Normandy  
Park, Burien, and Des Moines  
Businesses.*

Alternative Formats Available on request

206-248-7603

TTY Relay: 711

## BE SAFE!

Wear face masks, gloves, and pack your items so they can be removed quickly.

Please visit Seattle and King County Public Health's COVID-19 page for information, guidelines, and recommendations.

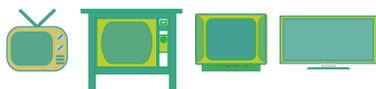
[kingcounty.gov/covid](http://kingcounty.gov/covid)

## OTHER OPTIONS

Do you know that **Hazardous Waste** cannot go in the trash or down the drain?

Hazardous products say **CAUTION, WARNING, DANGER, or POISON** on the label and can be harmful to humans, wildlife, and the environment if not disposed of safely.

For more information about waste disposal options visit [hazwastehelp.org](http://hazwastehelp.org) or call **206-296-4692**.



For larger quantities, call  
**1-866-779-6632**  
For more information go to  
[ecyclewashington.org](http://ecyclewashington.org)

## ITEMS THAT WILL BE ACCEPTED

Processing fees apply to certain items. **CASH ONLY.** Please be prepared to pay at event entrance. Bring exact change.

**Fees: Fees for computer monitors, TV sets, and for refrigerators/freezers/CFC units.**



**ELECTRONIC/COMPUTER EQUIPMENT:** Hard drives, monitors (\$10 fee-cash only), keyboards, printers, mice.

**TV SETS:** TV sets with 36 inch or smaller screens and encased in plastic (**\$20 fee-cash only**). TV sets with larger than 36 inch screens, wood console, sets encased in wood, and big screen TV sets - (**\$25 fee-cash only**). Projection TV sets (**\$30 fee-cash only**).



**CARDBOARD:** Flattened. No wax coated cardboard.

**CDs, FLOPPY DISKS, VIDEO TAPES:** Please remove paper or plastic covers

**CELLULAR PHONES:** Phones, batteries, chargers, adapters

**PLASTICS:** Grocery bags, stretch wrap, film, bubble wrap, shrink wrap, garment bags.

**SCRAP METAL:** chairs, desks, file cabinets, telephones, fax machines, scanners, adding machines, copiers, other ferrous and non-ferrous metals. Sealed tanks and drums, metals that are insulated, rubber coated, contain chemicals, paint, or hazardous materials will not be accepted.



**REFRIGERATORS/FREEZERS/AIR CONDITIONERS:** \$30 per refrigerator or freezer. \$35 for each household air conditioner.



**WOOD PALLETS AND CLEAN, UNTREATED SCRAP WOOD**

**TONER AND PRINTER CARTRIDGES**

**DOCUMENT SHREDDING:** Shredding and recycling of confidential paper materials. Limit 5 file-size boxes that are approximately 11 x 11 x 17.5 inches. Use these dimensions as a guideline. No exceptions.

**PLEASE NOTE: Fluorescent lights, tubes, bulbs, and incandescent lights will not be accepted. Please visit <http://www.lightrecycle.org/> for a drop location near you.**

Note: Only the types of materials listed above will be collected. No hazardous waste will be accepted. Visit <http://www.hazwastehelp.org/BHW/sqg.aspx> if you need assistance with hazardous materials disposal.

The Hazardous Waste Management Program now provides all small businesses (Small Quantity Generators) in King County the opportunity to use the household/Moderate Risk Waste facilities four times per year with quantity limits of 25 gallons per visit. For more information visit <http://www.hazwastehelp.org/BHW/sqg.aspx> or call the Business Waste Line at (206) 263-8899.