

**INTERLOCAL AGREEMENT
CITY OF DES MOINES AND
CITY OF SEATAC**

24th Ave S & S 208th St Intersection Improvements Project

RECITALS

This Agreement is entered into by the City of SeaTac (SEATAC) and the City of Des Moines (DES MOINES), collectively referred to as "Parties" and individually referred to as "Party."

WHEREAS, DES MOINES is planning to construct the 24th Ave S & S 208th St Intersection Improvements Project (PROJECT) that will construct a signalized intersection. The west and south legs of the intersection are located in DES MOINES, while the north and south legs of the intersection are located in SEATAC. No existing roadway elements are expected to be altered with the installation of the signal system except for possible roadway re-channelization and ADA curb ramps. The City of DES MOINES and City of SEATAC has installed the majority of underground facilities to accommodate the signal system as part of the previous Transportation Gateway Project - 24th Ave S and Connecting 28th/24th Ave S Project, respectively; and

WHEREAS, Chapter 39.34 RCW authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities; and

WHEREAS, the PROJECT is currently under design by DES MOINES through a professional engineering services contract; and

WHEREAS; the PROJECT will not require right of way (ROW) acquisition within SEATAC and DES MOINES jurisdiction; and

WHEREAS, the PROJECT is programmed by DES MOINES for construction in 2020; and

WHEREAS, construction of the PROJECT benefits both Parties; and

WHEREAS, SEATAC is willing to provide payment to reimburse DES MOINES for the design, and construction costs of PROJECT elements within SEATAC's jurisdiction (WORK), subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the terms, conditions, and performances contained herein, the above recitals that are incorporated herein as if fully set forth below, IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE

- 1.1. This Agreement defines the roles and responsibilities between the Parties for construction of the PROJECT, including design, construction, and specifies reimbursement to DES MOINES by SEATAC for the costs of performing the WORK.

2. DES MOINES RESPONSIBILITIES

- 2.1. DES MOINES shall design the PROJECT to be consistent with existing roadway geometrics, Manual of Uniform Traffic Control Devices (MUTCD), and Washington State Department of Transportation (WSDOT) Standards.
- 2.2. DES MOINES shall submit to SEATAC, for SEATAC review and written approval of all PROJECT elements to be constructed within SEATAC right of way. Review submittals shall occur at 30%, 90%, and 100% (Bid Ready) for PROJECT design plans, specifications, and cost estimates.
- 2.3. DES MOINES shall construct the PROJECT in accordance with the approved plans and specifications, as provided in the 100% (Bid Ready) PROJECT design plans and specifications. Prior to constructing the PROJECT, DES MOINES shall:
 - 2.3.1. Provide SEATAC a construction schedule that shall be updated as the construction proceeds; and
 - 2.3.2. Give SEATAC written notice fourteen (14) days prior to the start of PROJECT construction; and
 - 2.3.3. Coordinate with SEATAC on the correction of items identified during construction as not conforming to the final approved PROJECT plans and specifications. DES MOINES shall make the final decision regarding such corrections; and
 - 2.3.4. DES MOINES will notify SEATAC of all change orders for WORK being constructed within the SEATAC ROW. SEATAC may provide DES MOINES with comments related to such change orders, but DES MOINES will proceed with such changes in its sole discretion.
- 2.4. Within five (5) business days after bid opening, DES MOINES shall provide the bid tabulation to SEATAC for review prior to contract award.
- 2.5. Within one hundred and eighty (180) days following DES MOINES' final acceptance of the PROJECT, DES MOINES shall submit to SEATAC an electronic copy and a complete set of reproducible as-built plans signed and stamped by the engineer of record.
- 2.6. Subsequent final acceptance, DES MOINES shall be responsible for all operation, energy costs, maintenance repair, removal, and/or replacement of all PROJECT elements within DES MOINES ROW including the signal system.

3. SEATAC RESPONSIBILITIES

- 3.1. SEATAC shall review and approve the 30%, 90% and 100% (Bid Ready) plans and specifications, and return written review comments to DES MOINES within ten (10) business days of receipt.
- 3.2. SEATAC, at its discretion and sole cost, may furnish an inspector during construction of the WORK.
 - 3.2.1. SEATAC Designated Representative specified in Section 5 will provide DES MOINES with the contact information for its inspector. All contact between said inspector and DES MOINES' contractor shall be through DES MOINES' Designated Representative as specified in Section 5.
 - 3.2.2. During construction of the PROJECT, SEATAC shall have the right to inspect the WORK and shall coordinate with DES MOINES on the correction of items identified during construction as not conforming to the final approved PROJECT plans and specifications.
- 3.3. Subsequent final acceptance, SEATAC shall be responsible for all operation, maintenance, repair, removal, and/or replacement of all PROJECT elements within SEATAC ROW except for the signal system as specified in Section 2.6.

4. FINAL INSPECTION AND ACCEPTANCE OF THE PROJECT

- 4.1. Final Inspection – DES MOINES shall administer Final Inspection of the PROJECT. SEATAC shall be invited to participate in the Substantial Completion Inspection activities, including any formal PROJECT tours and any formal meetings or discussions. SEATAC will submit to DES MOINES a complete list of concerns or deficiencies within ten (10) days of the date of the Substantial Completion Inspection for inclusion in the formal punch list. DES MOINES shall provide notice of the time and date of the Final Inspection to SEATAC a minimum of fourteen (15) days prior to the Final Inspection.
- 4.2. SEATAC Final Acceptance of WORK - After Final Inspection and SEATAC's determination of adequate completion of any and all punch list work, SEATAC will issue a letter of final acceptance to DES MOINES for the WORK. If SEATAC determines that any elements of punch list work have not been adequately completed, SEATAC shall provide written notice to DES MOINES, detailing the deficiencies or incomplete WORK within fifteen (15) calendar days after Final Inspection. Failure of SEATAC to issue a notice letter of final acceptance within fifteen (15) days after Final Inspection shall constitute acceptance of the WORK by SEATAC. Final Acceptance of the WORK by SEATAC shall not be unreasonably withheld.

5. DESIGNATED REPRESENTATIVES

5.1. All contact between the Parties, including, but not limited to, invoicing and administration for this Agreement and the WORK will be between the Designated Representatives of each Party, as follows:

5.1.1. For SEATAC:

City of SeaTac
ATTN: Florendo Cabudol, City Engineer
Public Works Department
4800 South 188th Street
SeaTac, WA 98188
(206) 973-4740
fcabudol@seatacwa.gov

5.1.2. For DES MOINES:

City of Des Moines
ATTN: Transportation & Engineering Services Manager
Andrew Merges, P.E.
21650 11th Avenue South
Des Moines, WA 98198-6317
206-870-6525
amerges@desmoineswa.gov

6. PAYMENT

6.1. SEATAC will provide DES MOINES reimbursement as follows:

6.1.1. TOTAL PAYMENT - a total payment of Three Hundred Thousand Dollars \$300,000.00 ("TOTAL PAYMENT") will be made by SEATAC to DES MOINES for the design and construction of the PROJECT.

6.1.1.1. The Parties agree that the \$300,000.00 TOTAL PAYMENT is calculated based on each phase outlined below:

- Preliminary Engineering (PE) – \$30,000.00
- Construction (CN) - \$250,000.00
- Construction Administration (CA) - \$20,000.00

6.1.1.2. SEATAC will make the TOTAL PAYMENT to DES MOINES in installments as set forth below:

- Within 30 days of mutual execution of this Agreement - \$30,000.00 (PE).

- Within 30 days of DES MOINES issuing its contractor a notice to proceed for construction of the WORK - \$270,000 (CN & CA).

7. CLAIMS FOR ADDITIONAL PAYMENT BY CONTRACTOR

7.1. In the event DES MOINES' contractor files any claims for additional payment associated with the WORK, SEATAC shall not be obligated to pay such claims or their cost of defense due to DES MOINES being compensated for solely administering the Construction Contract.

8. RIGHT OF ENTRY

8.1. DES MOINES hereby grants to SEATAC, its employees, authorized agents, contractors, and subcontractors, a right of entry upon all DES MOINES-owned property necessary for SEATAC's design review and construction inspection of the WORK.

8.2. SEATAC hereby grants to DES MOINES and its authorized agents, contractors, subcontractors, and employees, a right of entry upon all public right-of-way in which DES MOINES has an interest for the purpose of performing the WORK.

8.2.1. WORK activities utilizing SEATAC right-of-way shall be reviewed and approved through Right-of-Way permit application. In consideration of the PROJECT mutual benefits, all permit fees shall be waived.

9. TERM

9.1. This Agreement is effective upon mutual execution of the Parties and will terminate upon SEATAC's acceptance of the WORK or the expiration of any contractor warranties of the WORK, whichever is later. This Agreement may also be terminated sooner pursuant to Section 10, TERMINATION.

10. TERMINATION

Neither DES MOINES nor SEATAC may terminate this Agreement without the written concurrence of the other Party.

10.1.1. If this Agreement is terminated by SEATAC prior to the fulfillment of the terms stated herein, SEATAC agrees to reimburse DES MOINES 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.

10.1.1.1. If payment has been made as outlined in Section 6 above by SEATAC prior to agreement termination, DES MOINES will reimburse SEATAC the Lump Sum Payment minus actual direct and indirect expenses, subject to Section 10.1.1.

10.1.2. If this Agreement is terminated by DES MOINES prior to the fulfillment of the terms stated herein, DES MOINES will be responsible 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.

10.1.3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

11. AMENDMENT

11.1. 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.

12. INDEPENDENT CONTRACTOR

12.1. DES MOINES shall be deemed an independent contractor for all purposes and the employees of DES MOINES or any of its contractors or subcontractors, shall not in any manner be deemed to be employees of SEATAC.

13. INDEMNIFICATION AND INSURANCE

13.1. To the extent authorized by law, the Parties shall protect, defend, indemnify, and hold harmless each other and their employees and authorized agents, 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, the work to be performed or performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or save 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 sole negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) SEATAC, its employees, authorized agents, contractors and/or subcontractors and (b) DES MOINES, 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 each Party's, its employees, contractors, subcontractors and/or authorized agents own negligence.

13.2. DES MOINES shall require all contractors and subcontractors that construct the PROJECT to carry insurance that names the City of SeaTac and its officers and employees primary non-contributory additional insureds, with minimum policy limits in the following amounts:

Commercial General Liability--\$3.0 million.

Automobile Liability--\$2.0 million per occurrence.

Worker's Compensation--Employees of Contractors and Subcontractors are to be insured under Washington State Industrial Insurance.

The above policy limits may be obtained through the use of excess liability (umbrella) insurance. DES MOINES shall obtain a certificate of insurance that complies with the requirements above, which must be approved by the SEATAC Risk Management or Legal Department.

13.3. This Section 13 shall survive termination of this Agreement.

14. DISPUTES

14.1. In the event that a dispute arises under this Agreement, it shall be resolved as follows: The Parties shall each appoint a member to a disputes board; these two members shall select a third 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 the 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.

15. VENUE

15.1. 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 King County Superior Court, Maleng Regional Justice Center. Further, the Parties agree that each will be solely responsible for payment of its own attorney's fees, witness fees, and costs.

16. RECORDS RETENTION AND AUDIT

16.1. During the progress of the WORK and for a period not less than six (6) years from the date of final payment by SEATAC, the records and accounts pertaining to the WORK and accounting therefore are to be kept available by the Parties for inspection and audit by Washington State and/or the Federal Highway Administration and copies of all records, accounts, documents, or other data pertaining to the WORK will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six-year retention period. This Section 16 shall survive termination of this Agreement.

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

CITY OF SEATAC

CITY OF DES MOINES

Ewan Voelpel

MICHAEL MATTHIAS

By (print):

By (print):

Ewan Voelpel

Michael Matthias

Signature:

Signature:

City Manager

City Manager

Dty.

2/7/2020

11-15-19

Date:

Date:

APPROVED AS TO FORM:

APPROVED AS TO FORM:

[Signature]

[Signature]

City Attorney

City Attorney

02/05/2020

11/15/2019

Date:

Date: