

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

Des Moines Memorial Drive and South 200th Street Intersection Improvement 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, SEATAC is planning to construct the Des Moines Memorial Drive and South 200th Street Intersection Improvement Project (PROJECT) that will construct left turn lanes at all four legs of the intersection and a right turn lane on the east leg. The west leg of the intersection is located in DES MOINES jurisdiction, while the north, south and east legs are located in SEATAC jurisdiction. Sidewalks and bike lanes will be extended to the beginning of the turn pocket transitions or approximately 300-feet in each direction. The existing span wire traffic signal will be replaced with a mast arm system and the street lighting will be upgraded. Curb ramps and pedestrian signals will be upgraded to current ADA and APS standards and the storm drainage system will be reconstructed; and

WHEREAS, DES MOINES has requested SEATAC to include a Stormwater Drainage Extension as part of the PROJECT solely benefiting DES MOINES; 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 SEATAC through a professional engineering services contract; and

WHEREAS, the PROJECT will require right of way (ROW) acquisition within SEATAC and DES MOINES jurisdiction: and

WHEREAS, the PROJECT is programmed by SEATAC for construction in 2019/2020; and

WHEREAS, construction of the PROJECT benefits both Parties; and

WHEREAS, DES MOINES is willing to provide payment to reimburse SEATAC for the design, ROW acquisition, and construction costs of PROJECT elements within DES MOINES’ 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, ROW acquisition, and construction, and specifies reimbursement to SEATAC by DES MOINES for the costs of performing the WORK.

2. SEATAC RESPONSIBILITIES

- 2.1. SEATAC shall design the PROJECT to be consistent with the “Proposed Design” as specified in the City’s 95% plans, specifications, and cost estimate.
- 2.2. SEATAC shall design the Stormwater Drainage Extension as part of the PROJECT to be consistent with the City’s 95% plans, specifications, and cost estimate. A separate Bid Schedule shall be included in the Bid Proposal and constitute full expenditures for the construction of the Stormwater Drainage Extension work.
- 2.3. SEATAC shall submit to DES MOINES, for DES MOINES review and written approval of all PROJECT elements to be constructed within DES MOINES right of way, as shown in 100% (Bid Ready) PROJECT design plans and specifications.
- 2.4. SEATAC 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, SEATAC shall:
 - 2.4.1. Provide DES MOINES a construction schedule that shall be updated as the construction proceeds;
 - 2.4.2. Give DES MOINES written notice fourteen (14) calendar days prior to the start of PROJECT construction;
 - 2.4.3. Coordinate with DES MOINES on the correction of items identified during construction as not conforming to the final approved PROJECT plans and specifications. SEATAC shall make the final decision regarding such corrections;
 - 2.4.4. SEATAC will notify DES MOINES of all change orders for WORK being constructed within the DES MOINES ROW. DES MOINES may provide SEATAC with comments related to such change orders, but SEATAC will proceed with such changes in its sole discretion except as provided 2.4.4.1.
 - 2.4.4.1. Any change orders necessary for completion of the Stormwater Drainage Extension work shall be approved by DES MOINES as soon as practicable, prior to SEATAC’s approval.
- 2.5. SEATAC shall complete all Right-of-Way acquisition necessary to complete the PROJECT in accordance with adopted Right-of-Way procedures.

- 2.5.1. SEATAC shall provide the City of Des Moines a copy of the Preliminary Funding Estimate (PFE) developed by third party consultants to ensure DES MOINES can respond to residents as appropriate as well as ensure proper procedures are maintained.
- 2.5.2. SEATAC shall notify DES MOINES if and when any Right-of-Way acquisition negotiations fail to result in real property acquisition and SEATAC determines condemnation is eminent. It is mutually agreed that if condemnation is required within DES MOINES jurisdiction, DES MOINES will be required to be the lead Agency. However, the Parties, through their respective City Attorney's Office, will determine the most advantageous and cost effective manner to prosecute any condemnation actions. Additionally, SEATAC shall have final settlement authority for any Right-of-Way acquisitions associated with the PROJECT.
- 2.6. Bid Process – SEATAC shall provide the bid tabulation to DES MOINES for review prior to contract award. Within (10) days of receiving the bid tabulation, DES MOINES shall notify SEATAC in writing that DES MOINES either agrees to proceed with the Stormwater Drainage Extension Bid Schedule as part of the PROJECT, or DES MOINES chooses not to proceed with this work.
 - 2.6.1. The basis of contract award for the PROJECT will be the lowest, responsive, and responsible bidder on the total base bid for all PROJECT work. Although the Stormwater Drainage Extension work will be included in the total base bid, it will be listed on a separate schedule.
- 2.7. Within one hundred and eighty (180) calendar days following SEATAC's final acceptance of the PROJECT, SEATAC shall submit to DES MOINES an electronic copy and a complete set of reproducible as-built plans signed and stamped by the engineer of record.
- 2.8. Subsequent final acceptance, SEATAC shall be responsible for all operation, maintenance repair, removal, and/or replacement of all PROJECT elements within SEATAC ROW including the signal system.

3. DES MOINES RESPONSIBILITIES

- 3.1. DES MOINES shall review and approve the 100% (Bid Ready) plans and specifications, including the Bid Schedule associated with the Stormwater Drainage Extension work, and return written review comments to SEATAC within ten (10) days of receipt.
- 3.2. Accept or reject the Stormwater Drainage Extension Bid Schedule associated with the Stormwater Drainage Extension work per Section 2.5.
- 3.3. DES MOINES, at its discretion and sole cost, may furnish an inspector during construction of the WORK.
 - 3.3.1. DES MOINES' Designated Representative specified in Section 5 will provide SEATAC with the contact information for its inspector. All contact between said

inspector and SEATAC's contractor shall be through SEATAC's Designated Representative as specified in Section 5.

3.3.2. During construction of the PROJECT, DES MOINES shall have the right to inspect the WORK and shall coordinate with SEATAC on the correction of items identified during construction as not conforming to the final approved PROJECT plans and specifications as provided in Section 2.4.3 above.

3.4. Subsequent final acceptance, DES MOINES shall be responsible for all operation, maintenance, repair, removal, and/or replacement of all PROJECT elements within DES MOINES ROW.

4. FINAL INSPECTION AND ACCEPTANCE OF THE PROJECT

4.1. Final Inspection - SEATAC shall administer Final Inspection of the PROJECT. DES MOINES shall be invited to participate in the Substantial Completion Inspection activities, including any formal PROJECT tours and any formal meetings or discussions. DES MOINES will submit to SEATAC a complete list of concerns or deficiencies within ten (10) calendar days of the date of the Substantial Completion Inspection for inclusion in the formal punch list. SEATAC shall provide notice of the time and date of the Final Inspection to DES MOINES a minimum of fourteen (15) calendar days prior to the Final Inspection.

4.2. DES MOINES Final Acceptance of WORK - After Final Inspection and DES MOINES' determination of adequate completion of any and all punch list work, DES MOINES will issue a letter of final acceptance to SEATAC for the WORK. If DES MOINES determines that any elements of punch list work have not been adequately completed, DES MOINES shall provide written notice to SEATAC, detailing the deficiencies or incomplete WORK within fifteen (15) calendar days after Final Inspection. Failure of DES MOINES to issue a notice letter of final acceptance within fifteen (15) calendar days after Final Inspection shall constitute acceptance of the WORK by DES MOINES. Final Acceptance of the WORK by DES MOINES 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:

Florendo Cabudol
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. DES MOINES will provide SEATAC reimbursement for:

6.1.1. LUMP SUM PAYMENT - a lump sum payment of \$500,000 (“LUMP SUM PAYMENT”) will be made by DES MOINES to SEATAC for the design, ROW acquisition, and construction of the PROJECT, excluding the Stormwater Drainage Extension described in Section 2.2.

6.1.1.1. The Parties agree that the \$500,000 LUMP SUM PAYMENT is calculated based on each phase outlined below:

- Preliminary Engineering (PE) – \$31,000
- Right-of-Way Acquisition (RW) - \$12,000
- Construction (CN) - \$417,000
- Construction Administration (CA) - \$40,000

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

- Prior to May 1, 2019 - \$43,000 (PE & RW)
- Within (60) days following SEATAC’s issuance of the Contract Notice to Proceed - \$457,000 (CN & CA)

6.1.2. STORMWATER DRAINAGE PAYMENT – Payment by DES MOINES to SEATAC for the design and construction of the PROJECT Stormwater Drainage Extension improvements shall be made in accordance with this Section 6.1.2.

6.1.2.1. The Parties agree that the Engineering Estimates for each phase outlined below are the basis for determining SEATAC’s compensation for the Stormwater Drainage Extension work, which totals approximately \$161,000.

- Preliminary Engineering (PE) – \$6,000
- Construction (CN) - \$140,000 (approximate cost)
- Construction Administration (CA) - \$15,000

6.1.2.2. The Parties agree that the Engineering Estimate for PE and CA will be Lump Sum Payments as set forth above. The CN cost in the estimated amount of \$140,000 will be adjusted based on actual costs incurred in accordance with the Stormwater Drainage Extension bid schedule.

6.1.2.3. DES MOINES will provide SEATAC with payments according to the following schedule:

- Prior to May 1, 2019 - \$21,000 (PE & CA)
- (30) days following executed monthly pay estimates – Payment equal to schedule of work completed for the Stormwater Drainage Extension.

6.1.2.4. If a change order is required to complete the Stormwater Drainage Extension WORK, any additional costs shall be borne by DES MOINES.

6.2. SEATAC will provide DES MOINES reimbursement for all costs incurred by DES MOINES if Right-of-Way acquisition requires condemnation to complete the PROJECT, as identified in Section 2.5. In order to limit reimbursement costs, SEATAC may perform condemnation work on behalf of DES MOINES upon agreement of each Party's City Attorney.

6.3. If DES MOINES initiates a Change Order per DES MOINES requests during construction through SEATAC contract administration, DES MOINES shall fully reimburse SEATAC for the change based on payment made to the Contractor.

7. CLAIMS FOR ADDITIONAL PAYMENT BY CONTRACTOR

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

7.2. Disputes and Claims shall conform to WSDOT Standard Specification 1.09.11. Any settlement to be reviewed and agreed upon by both SEATAC and DES MOINES.

8. RIGHT OF ENTRY

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

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

8.2.1. WORK activities utilizing DES MOINES right-of-way shall be 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 as of April 1, 2019 and will terminate upon DES MOINES' 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 SEATAC nor DES MOINES may terminate this Agreement without the written concurrence of the other Party.

10.1.1. If this Agreement is terminated by DES MOINES prior to the fulfillment of the terms stated herein, DES MOINES agrees to reimburse SEATAC 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 DES MOINES prior to agreement termination, SEATAC will reimburse DES MOINES 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 SEATAC prior to the fulfillment of the terms stated herein, SEATAC 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. SEATAC shall be deemed an independent contractor for all purposes and the employees of SEATAC or any of its contractors or subcontractors, shall not in any manner be deemed to be employees of DES MOINES.

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) DES MOINES, its employees, authorized agents, contractors and/or subcontractors and (b) SEATAC, 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. SEATAC shall require all contractors and subcontractors that construct the PROJECT to carry insurance that names the City of Des Moines 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. SEATAC shall obtain a certificate of insurance that complies with the requirements above, which must be approved by the DES MOINES 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 DES MOINES, 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

Carl Cole
By (print):

MICHAEL MATTHIAS
By (print):

[Signature]
Signature:
City Manager

[Signature]
Signature:
City Manager

04/27/2019
Date:

5.2.19
Date:

APPROVED AS TO FORM:

APPROVED AS TO FORM:

[Signature]
City Attorney

[Signature]
City Attorney

04/25/2019
Date:

5-2-19
Date: