

AGENDA

REGULAR MEETING
DES MOINES CITY COUNCIL
21630 11th Avenue South, Des Moines, City Council Chambers

July 11, 2013 - 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT

EXECUTIVE SESSION

The purpose of the Executive Session is to discuss potential litigation per RCW 42.30.110.

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes of the June 6, 2013 City Council Meeting.

Item 2: SETTING NEW PUBLIC HEARING DATES FOR DRAFT ORDINANCE 13-086, PACIFIC RIDGE ZONE AND 13-108, PARKING CODE

Motion 1 is to adopt Draft Resolution No. 13-086-A superseding Resolution No. 1227 and setting a new public hearing on August 8, 2013 to consider Draft Ordinance 13-086 amending DMMC 18.31, Pacific Ridge Zone.

AND

Motion 2 is to adopt Draft Resolution No. 13-108-A superseding Resolution No. 1228 and setting a new public hearing on August 8, 2013 to consider Draft Ordinance 13-108, amending DMMC 18.44, Loading Areas and Off-Street Parking.

Item 3: NATIONAL NIGHT OUT

Motion is to approve the Proclamation observing Tuesday, August 6, 2013 as National Night Out in the City of Des Moines.

MINUTES**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue South, Des Moines****June 6, 2013 - 7:00 p.m.****CALL TO ORDER**

Mayor Pro Tem Pina called the meeting to order at 7:04 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Burrage.

ROLL CALL

Council present: Mayor Pro Tem Pina; Councilmembers Jeremy Nutting, Melissa Musser, Jeanette Burrage, Bob Sheckler, and Carmen Scott.

Mayor Dave Kaplan was absent.

Councilmember Musser moved to excuse Mayor Kaplan; seconded by Councilmember Burrage.

The motion passed 6-0.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Public Works & Parks Maintenance Superintendant John Blackburn; IT Manager Dale Southwick; Clerk Autumn Lingle.

COMMENTS FROM THE PUBLIC

There were no comments from the public.

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Scott:

- Opening day of the Des Moines Farmers Market
- Green House Dedication to Georgie Nupen at Sonju Gardens

Councilmember Sheckler:

- No report

Councilmember Burrage:

- No report

Councilmember Musser:

- North Hill Community Club Annual Summer BBQ
- Sculpture Dedication Art Walk

Councilmember Nutting:

- North Hill Elementary Annual Carnival

PRESIDING OFFICER'S REPORT

- Reconfirmed Budget Retreat Date of Saturday, August 3, 2013, 9:00 a.m.-12:00 noon with present Councilmember's.
- The Finance and Economic Development Committee met May 28 & June 3. Topics discussed were: Pacific Ridge zoning code, parking code revisions, code enforcement revisions, potential sign code changes and a rezoning request.
- Public Safety & Transportation Committee met June 6th. Discussion included Transportation Improvement Plan, Sound Transit Planning update, traffic revisions around Des Moines Elementary and the Field House. The car wash property acquired at 216th was briefly discussed.

ADMINISTRATION REPORTS

- City Manager Piasecki stated that he had sent an email to Council noting that the City of Des Moines, along with other SCORE cities, has received The International City County Management Association Annual Award for Community Partnerships in the category with a population of 50,000 and greater. Assistant City Manager Lorri Ericson will be accepting that award on behalf of the City in Boston, this September. Many cities, both nationally and internationally, are nominated, so it is an honor to receive this award.
- Public Works at the Farmers Market was discussed by Public Works and Parks Maintenance Superintendent John Blackburn.
- Computer Services Manager Dale Southwick briefed the Council on technology productivity enhancements.

CONSENT CALENDAR

- Item 1: APPROVAL OF MINUTES
Motion is to approve the minutes of the May 23, 2013 Regular Council Meeting.
- Item 2: SETTING PUBLIC HEARING DATES FOR DRAFT ORDINANCE 13-086, PACIFIC RIDGE ZONE, AND 13-108 PARKING CODE
Motion is to adopt Draft Resolution No. 13-086 setting a public hearing on July 11, 2013 to consider Draft Ordinance 13-086 amending DMMC 18.31, Pacific Ridge Zone.
AND
Motion is to adopt Draft Resolution No. 13-108 setting a public hearing on July 11, 2013 to consider Draft Ordinance No. 13-108, amending DMMC 18.44, Loading Areas and Off-Street Parking.

- Item 3: INTERLOCAL AGREEMENT WITH HIGHLINE WATER DISTRICT FOR THE 24TH AVENUE SOUTH IMPROVEMENT PROJECT (S 216TH STREET TO S 208TH STREET)
Motion is to approve the Interlocal Agreement between the City of Des Moines and Highline Water District regarding improvements for the 24th Avenue South Improvement Project (S 216th Street to S 208th Street) in the estimated amount of \$580,175.00, and further to authorize the City Manager to sign the Agreement, substantially in the form as submitted.
- Item 4: REQUEST TO SET DATE FOR PUBLIC HEARING FOR VACATION OF PUBLIC RIGHT-OF-WAY WITHIN CITY OF DES MOINES KNOWN AS 15TH AVENUE S AND ALLEY EAST THEREOF BETWEEN S 222ND STREET AND S 223RD STREET
Motion is to adopt Draft Resolution No. 12-086 setting a public hearing on July 11, 2013, for a street vacation request relating to public right of way within the City of Des Moines.
- Item 5: RESOLUTION SUPPORTING THE STATE'S 2013 TRANSPORTATION INVESTMENT PACKAGE
Motion is to approve Draft Resolution 13-126 expressing the City's support for the State's 2013 Transportation Investment Package.
- Item 6: JOINT UTILITY TRENCH AGREEMENT WITH CENTURY LINK FOR THE 24TH AVENUE SOUTH IMPROVEMENT PROJECT (S 216TH STREET TO S 208TH STREET)
Motion is to approve the attached Joint Trench Utility Agreement with Century Link for the utility undergrounding improvements of the 24th Avenue South Project (S 216th Street to S 208th Street), including reimbursing the City up to \$39,877, and further authorize the City Manager to sign the Agreement, substantially in the form as submitted.

Councilmember Burrage pulled Item 5 for an amendment.

Direction/Action

Motion made by Councilmember Musser to approve the consent agenda; seconded by Councilmember Burrage.
The motion passed 6-0.

Direction/Action

Amended Motion was made by Councilmember Burrage to approve Draft Resolution 13-126 expressing the City's support for the States' 2013 Transportation Investment Package adding new section 3 to the Resolution stating that the Des Moines City Council requests that the additional fuel tax increment of up to 3 cents per gallon, which will take effect on July 1, 2015, unless the secretary of the WSDOT certifies that there is sufficient funding to complete the identified improvements on State Route (SR) 520 between I-5 and the SR520 floating bridge, have the same distribution as the first 10 cents, with 5% going to cities through the established distribution process; seconded by Councilmember Musser.

The motion passed 6-0.

NEW BUSINESS

1. BUDGET RETREAT UPDATE
Staff Presentation: City Manager Tony Piasecki
City Manager Piasecki presented an update and outline of the April 6, 2013 Budget Retreat.

NEXT MEETING DATE

June 27, 2013 Regular City Council Meeting

ADJOURNMENT

Motion made by Councilmember Musser to adjourn; seconded by Councilmember Sheckler.

The motion passed 6-0

The meeting was adjourned at 7:52 p.m.

Respectfully Submitted,
Autumn Lingle
Clerk

Background

The 1990 Growth Management Act is codified in RCW 36.70A. It requires, among other things, that “cities ... take action to review and, if needed, revise their comprehensive plans and *development regulations* (*emphasis added*) to ensure the plan and regulations comply with the requirements of this chapter . . . Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.”

The City Council continues to support the redevelopment of the Pacific Ridge Neighborhood as a high density, commercially viable mixed use neighborhood, transforming Pacific Ridge into a new urban community that takes advantage of its geographic location, local and regional transportation linkages, stable soils, and view potential. The transformation of Pacific Ridge will include replacement of lower-scale, existing buildings with taller structures that will dramatically enhance the appearance, character, economy, and safety of the area.

Many Pacific Ridge properties are not improved to the extent presently allowed by the City of Des Moines Comprehensive Plan and the Zoning Code and are unlikely to be redeveloped in the near future without changes to the City’s development regulations. It has been over thirteen years since the City’s development regulations for the Pacific Ridge Neighborhood were established, and there has been very little successful commercial development and no new residential development.

Comprehensive Plan Policy 11-03-05 and Policy 11-03-07 seeks to promote redevelopment of Pacific Ridge properties to attract new or expanded businesses and commercial development to Pacific Ridge and encourages affordable homeownership within Pacific Ridge, but the marketplace does not now nor is it expected in the foreseeable future to make this economically feasible.

Strategy 2-04-08 of the Land Use Element of the Comprehensive Plan states that the City should “encourage improvement of the Pacific Ridge Neighborhood by working with the business community and other representative organizations to achieve the goals of the City of Des Moines Comprehensive Plan”. To implement this Policy, the Des Moines City Council has been asking help from the development and design community and Pacific Ridge property owners since 2000, commissioning studies, and holding multiple stakeholder forums, meetings and tours. Those development professionals and property owners have encouraged the City to expand the permitted uses, increase building heights, reduce or remove dimensional standards, relax use percentages, reduce parking requirements and restrictions, relax building placement requirements, and modify other restrictive language, allowing the marketplace to decide how best to achieve the City’s broad development goals.

Discussion

Current development regulations in the commercial and residential zones appear to be unduly burdensome and restrictive, making it uneconomically feasible for property owners to redevelop their properties under current and projected future market conditions according to these stakeholders. Accepting this representation, the City Council directed City staff to prepare an ordinance for its consideration which creates more flexible development regulations for Pacific Ridge.

Staff and the City Council Finance and Economic Development Committee have been researching and working on these development regulation changes for the past six months and believe these goals can be achieved with changes implemented by these Draft Ordinances in conjunction with the Pacific Ridge Design Guidelines; more land assemblage (lot consolidation) so that larger-scale development proposals

can be considered; fewer restrictions on land uses such as commercial parking lots, automobile sales, car washes, drive-through facilities and other automobile oriented uses that capitalize on the 33,000 cars per day which use Pacific Highway South, and acceptance that the highest and best uses in this area should be more auto-friendly and capitalize on the proximity to Seattle-Tacoma International Airport.

Staff and the Committee also agree the proposed Parking Code changes will make the Code more clear, ensure better citizen understanding and support more effective enforcement of parking-related nuisance codes in residential neighborhoods and on improved rights-of-way City-wide.

The proposed textual code amendments are expected to be consistent with the range of impacts studied under the SEPA Planned Action Environmental Impact Statement, the Pacific Ridge Neighborhood Improvement Plan and the Comprehensive Plan. The Planning, Building & Public Works Director acting as the SEPA responsible official will review these proposed non-project actions and determine that the proposed textual code amendments are within the scope of the existing environmental documents and fulfill the SEPA requirements established by chapter 197-11 WAC and chapter 165.04 DMMC pursuant to WAC 197-11-600 and DMMC 16.04.108.

Pursuant to DMMC 18.56.080, amendments of the Zoning Code (Title 18 DMMC) are legislative (Type VI) land use decisions, and pursuant to DMMC 18.56.200 amendments to the Zoning Code (Title 18 DMMC) require the City Council to conduct a public hearing to receive public comment regarding these proposals. DMMC 18.60.120(3) requires that the date of the public hearing to consider amendments to Title 18 DMMC be set by motion of the City Council and that a 15-day public hearing notice be published. The City failed to ensure that the 15-day notice was timely published for the July 11th hearings set by Resolutions 1227 and 1228 thereby necessitating the need for the two new resolutions proposed herein.

The textual code amendments proposed in these Draft Ordinances were provided to the Department of Commerce as required by RCW 36.70A.106. The Finance and Economic Development Committee completed its final review of Draft Ordinance 13-086, Pacific Ridge Zone, on May 28th and will continue to work with staff on finalized Draft Ordinance 13-108 on July 2nd.

Because of the extensive changes to Chapter 18.31 DMMC, Draft Ordinance 13-086, Pacific Ridge Zone, repeals the entire chapter and replaces it with the proposed text. To help facilitate Council's review, the Council packet for the public hearing will include as an attachment a version of Chapter 18.31 with track changes to identify proposed changes and also show where no changes to the Code are recommended and the existing Code is simply re-codified.

Alternatives

The City Council may:

1. Adopt the proposed Draft Resolutions.
2. Adopt the Draft Resolutions with different hearing dates for one or both of the Draft Ordinances.
3. Decline to adopt one or both Draft Resolutions.

Financial Impact

Amended development regulations will help the City grow and commercially develop.

Recommendation or Conclusion

Staff recommends that the City Council adopt Draft Resolutions No. 13- 086-A and 13-108-A as written or amend the Resolutions to establish different hearing dates.

CITY ATTORNEY'S FIRST DRAFT 07/01/2013

DRAFT RESOLUTION NO. 13-086-A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, superseding Resolution No. 1227 and fixing a new time for a public hearing to consider Draft Ordinance No. 13-086 that adopts a new zoning map, repeals and replaces chapter 18.31 DMMC as "*Pacific Ridge Zone*", and amends DMMC 14.12.010 14.12.060, 18.41.315, 18.42.310, and 18.80.010.

WHEREAS, the City Council supports reducing overly restrictive development regulations to facilitate the redevelopment of the Pacific Ridge Neighborhood as a high density, commercially viable mixed use neighborhood, and

WHEREAS, a public hearing is necessary to receive public comment regarding amendments to Title 18 DMMC, and

WHEREAS, a public hearing is required for adoption of an ordinance which amends a portion of the Title 18 DMMC commonly referred to as the Zoning Code; now therefore,

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

The matter of amendments to chapters 18.31, 18.41, 18.442, and 18.80 DMMC, is set for a public hearing before the City Council on Thursday, August 8, 2013, at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, Suite B, Des Moines, Washington.

ADOPTED BY the City Council of the City of Des Moines, Washington this 11th day of July, 2013 and signed in authentication thereof this ____ day of July, 2013.

M A Y O R

APPROVED AS TO FORM:

7/1/2013 3:03 PM

Draft Resolution No. 13-086A

Resolution No. ____
Page 2 of ____

City Attorney

ATTEST:

City Clerk

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7/2/13 9:24 AM

CITY ATTORNEY'S FIRST DRAFT 07/01/2013

DRAFT RESOLUTION NO. 13-108-A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, superseding Resolution No. 1228 and fixing a new time for a public hearing to consider Draft Ordinance No. 13-108 relating to the *Parking Code* that amends DMMC 18.44.040, .060, and .097, and .110 DMMC.

WHEREAS, the City Council supports reducing overly restrictive development regulations to facilitate the redevelopment of the Pacific Ridge Neighborhood as a high density, commercially viable mixed use neighborhood, and

WHEREAS, the City Council supports more effective enforcement of nuisance codes including parking of vehicles on landscaped areas, removal of junk vehicles, parking of oversized recreational and commercial vehicles in residential neighborhoods and on improved rights of way, and

WHEREAS, the City Council is considering amending chapter 18.44 DMMC relating to the *Parking Code*, and

WHEREAS, a public hearing is necessary to receive public comment regarding amendments to Title 18 DMMC, and

WHEREAS, a public hearing is required for adoption of an ordinance which amends portions of Title 18 DMMC commonly referred to as the *Parking Code*; now therefore,

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

The matter of amendments to chapter 18.44 DMMC, *Parking Code*, is set for a public hearing before the City Council on Thursday, August 8, 2013, at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, Suite B, Des Moines, Washington.

ADOPTED BY the City Council of the City of Des Moines, Washington this 11th day of July, 2013 and signed in authentication thereof this ____ day of July, 2013.

7/1/2013 3:08 PM
Draft Resolution No. 13-108-A

Resolution No. ____
Page 2 of ____

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

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7/2/13 9:23 AM

RESOLUTION NO. 1227

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider Draft Ordinance No. 13-086 that adopts a new zoning map, repeals and replaces chapter 18.31 DMMC as "Pacific Ridge Zone", and amends DMMC 14.12.010 14.12.060, 18.41.315, 18.42.310, and 18.80.010.

WHEREAS, the City Council supports reducing overly restrictive development regulations to facilitate the redevelopment of the Pacific Ridge Neighborhood as a high density, commercially viable mixed use neighborhood, and

WHEREAS, a public hearing is necessary to receive public comment regarding amendments to Title 18 DMMC, and

WHEREAS, a public hearing is required for adoption of an ordinance which amends a portion of the Title 18 DMMC commonly referred to as the Zoning Code; now therefore,

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

The matter of amendments to chapters 18.31, 18.41, 18.442, and 18.80 DMMC, is set for a public hearing before the City Council on Thursday, July 11, 2013, at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, Suite B, Des Moines, Washington.

ADOPTED BY the City Council of the City of Des Moines, Washington this 6th day of June, 2013 and signed in authentication thereof this 6th day of June, 2013.


MAYOR

APPROVED AS TO FORM:

Assistant City Attorney

ATTEST:

City Clerk

RESOLUTION NO. 1228

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider Draft Ordinance No. 13-108 relating to the *Parking Code* that amends DMMC 18.44.040, .060, and .097, and .110 DMMC.

WHEREAS, the City Council supports reducing overly restrictive development regulations to facilitate the redevelopment of the Pacific Ridge Neighborhood as a high density, commercially viable mixed use neighborhood, and

WHEREAS, the City Council supports more effective enforcement of nuisance codes including parking of vehicles on landscaped areas, removal of junk vehicles, parking of oversized recreational and commercial vehicles in residential neighborhoods and on improved rights of way, and

WHEREAS, the City Council is considering amending chapter 18.44 DMMC relating to the *Parking Code*, and

WHEREAS, a public hearing is necessary to receive public comment regarding amendments to Title 18 DMMC, and

WHEREAS, a public hearing is required for adoption of an ordinance which amends portions of Title 18 DMMC commonly referred to as the *Parking Code*; now therefore,

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

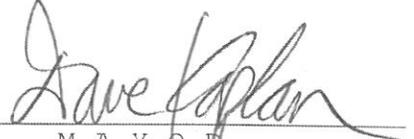
The matter of amendments to chapter 18.44 DMMC, *Parking Code*, is set for a public hearing before the City Council on Thursday, July 11, 2013, at 7:00 p.m., or as soon thereafter as

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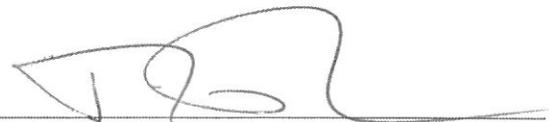
Resolution No. 1228
Page 2 of 2

the matter may be heard, in the City Council Chambers, 21630
11th Avenue South, Suite B, Des Moines, Washington.

ADOPTED BY the City Council of the City of Des Moines,
Washington this 6th day of June, 2013 and signed in
authentication thereof this 6th day of June, 2013.


MAYOR

APPROVED AS TO FORM:


Assistant City Attorney

ATTEST:


City Clerk

6/7/13 8:50 AM

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:

National Night Out

ATTACHMENTS:

1) Proclamation

FOR AGENDA OF: July 11, 2013

DEPT. OF ORIGIN: Police

DATE SUBMITTED: July 2, 2013

CLEARANCES:

- Legal N/A
- Finance N/A
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works N/A
- Police AW
- Courts N/A

APPROVED BY CITY MANAGER

FOR SUBMITTAL: AT

Purpose and Recommendation

The purpose of this agenda item is to observe National Night Out in the City of Des Moines to stand together and promote awareness, safety and neighborhood unity.

SUGGESTED MOTION:

“I move to approve the Proclamation observing Tuesday, August 6th, 2013 as National Night Out in the City of Des Moines.”

Background

The introduction of National Night Out, “America’s Night Out Against Crime” began in 1984 as an effort to promote involvement in crime prevention activities, police-community partnerships, neighborhood camaraderie and send a message to criminals letting them know that neighborhoods are organized and fighting back. The National Association of Town Watch (NATW) National Night Out program culminates annually, on the first Tuesday of August.

The first National Night Out took place on Tuesday, August 7th 1984. That first year, 2.5 million Americans took part across 400 communities in 23 states.

National Night Out now involves over 37 million people and 15,000 communities from all fifty states, U.S. Territories, Canadian cities, and military bases worldwide.

The traditional “lights on” campaign and symbolic front porch vigils turned into a celebration across America with various events and activities including, but not limited to, block parties, cookouts, parades, visits from emergency personnel, rallies and marches, exhibits, youth events, safety demonstrations and seminars, in effort to heighten awareness and enhance community relations.



City of Des Moines

Proclamation

National Night Out 2013

WHEREAS, the National Association of Town Watch (NATW) and TARGET is sponsoring a unique, nationwide crime, drug and violence prevention program on August 6, 2013 entitled “National Night Out”; and

WHEREAS, the “30th” Annual National Night Out” provides a unique opportunity for the City of Des Moines to join forces with thousands of other communities across the country in promoting cooperative police-community crime prevention efforts; and

WHEREAS, the City of Des Moines plays a vital role in assisting the Des Moines Police Department through joint crime, drug and violence prevention efforts in Des Moines and is supporting “National Night Out 2013” locally; and

WHEREAS, it is essential that all citizens of Des Moines be aware of the importance of crime prevention programs and impact that their participation can have on reducing crime, drugs and violence in Des Moines; and

WHEREAS, police-community partnerships, neighborhood safety, awareness and cooperation are important themes of the “National Night Out” program;

NOW, THEREFORE, the City Council of Des Moines, Washington, does hereby proclaim August 6, 2013 as “National Night Out 2013” do hereby call upon all citizens of Des Moines to join the Des Moines Police Department, the National Association of Town Watch and TARGET in supporting “30th Annual National Night Out”, on August 6th, 2013.

David L. Kaplan, Mayor

Attest: _____
City Clerk

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Im Residential Addition –
Proposed Process for Review by Hearing
Examiner

FOR AGENDA OF: July 11, 2013

DEPT. OF ORIGIN: Planning, Building and Public
Works

DATE SUBMITTED: July 2, 2013

CLEARANCES:

- Legal PB
- Finance N/A
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works DJB
- Police N/A
- Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval to delegate the SEPA Appeal decision and the underlying Shoreline Conditional Use Permit decision for the Im Residential Addition application filed under LUA2012-0023 from the Planning Agency and City Council to the Hearing Examiner. The decision on the underlying permit requires technical analysis related to geotechnical and shoreline issues and complicated legal issues that would be better suited to the Hearing Examiner. Staff recommends City Council approve the following motion:

Suggested Motion

Motion: I move to delegate the SEPA Appeal decision and the Shoreline Conditional Use Permit decision for the IM Residential Addition filed under LUA2012-0023 to the Hearing Examiner pursuant to DMMC 18.94.112(3).

Background

The proposal relates to additions to an existing single family residence (Im residence), located at 27419 8th Avenue South. The existing residence is 3,934 square feet (sf) situated on a 17,630 sf lot. Proposed activities include a 3,982 sf addition to the residence that include first and second floor additions, a new third floor, decks, concrete patio on fill, and retaining wall system. All requested improvements are within the City's designated geologic, erosion and landslide hazard areas and shoreline jurisdiction. In addition, existing improvements to the site (first and second story enclosures, concrete patio and retaining wall system) require after-the-fact permits.

Following is a brief summary of the project history which dates back to an initial application submittal in 2010:

- On June 25, 2010 a Shoreline Exemption request was submitted for SFR addition filed under LUA10-013. The City sent a letter to the Applicant on August 5, 2010 requesting additional information to determine whether critical area review was necessary. On September 17, 2010 supplemental geotechnical information was received. On October 5, 2010 the City sent an e-mail stating the Development Exception and SEPA review were necessary based upon submitted information.
- On March 30, 2011, the City sent a letter notifying the Applicant of no activity on the application for over 180 days. Subsequently, on April 13, 2011, the Applicant submitted letter indicating intent to submit for critical area review within 60 days. The SEPA and Development Exception applications were submitted on June 24, 2011 and deemed complete on June 30, 2011. A SEPA DNS was issued on July 27, 2011 and on August 17, 2011 an appeal was filed by the neighbors to the south (the Higgins) that identified unpermitted work (large patio, fill and retaining structures) installed on the western portion of the Im property. On September 6, 2011, the City withdrew the DNS decision stating that additional information and review was needed.
- On June 22, 2012, a Shoreline Variance, SEPA, and grading permit applications for the unpermitted retaining wall and the proposed additions to an existing house were filed under LUA2012-0023. These applications were deemed complete on July 20, 2012. Staff completed its review of the project and provided comments back to the Applicant on September 13, 2012 indicating that a shoreline conditional use permit and shoreline variance would be required.
- On February 12, 2013, the Applicant submitted revised materials (project narrative, Technical Information Report, SEPA checklist, and JARPA application), a Geotechnical Technical Memorandum, a response to previous City comments and an application for a Shoreline Conditional Use permit. Staff reviewed the SEPA documents for the proposal and issued a SEPA Determination of Non Significance (DNS) decision on March 27, 2013. The appeal period concluded on April 21, 2013 and an appeal was filed on behalf of a neighboring property owner (the Higgins). On June 5, 2013, the City received a request from legal counsel for the appellant requesting that the appeal of the SEPA DNS associated with the Shoreline Conditional Permit, first be considered by the City's Hearing Examiner before it is considered by City Council.

Discussion

The SEPA determination is a Type II land use action made by the community development director (DMMC 18.56.160). In accordance with the review process for Type II land use actions (DMMC 18.56.160(3)) the Community Development Director's decision is appealable to the hearing examiner as provided for in DMMC 18.94.113.

The underlying decision for a shoreline conditional use permit is a Type IV land use decision made by the City Council. In accordance with the review process for a Type IV land use action (DMMC 18.56.180), the Planning Agency shall conduct a public meeting on the proposed land use action and recommend approval, approval with conditions or amendments, or denial of a Type IV land use action. The recommendation of the Planning Agency is then forwarded to City Council for consideration. Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the City Council may approve, approve with conditions, or deny a Type IV land use action. The City Council's decision regarding a Type IV land use action is appealable to the Superior Court of Washington as specified by DMMC 19.84.300.

The Local Project Review Act (RCW 36.70B) provides for integrated and consolidated land use review process. As such, both the SEPA appeal and the underlying permit decision should be heard by the Hearing Examiner. DMMC provides specifically at DMMC 18.94.112(3):

Specifically, the hearing examiner conducts public hearings (where applicable) and renders final decisions on the following:

(3) Such other matters as the city council may from time to time refer.

Alternatives

The alternative to the recommendation would be that City Council maintains decision authority for the SEPA appeal and underlying permit application.

Financial Impact

None.

Recommendation or Conclusion

Given the legal and environmental issues raised in the SEPA appeal and the underlying Shoreline Conditional Use permit application, staff recommends that the City Council remand the SEPA Appeal decision and the underlying Shoreline Conditional Use Permit decision for the Im Residential Addition application filed under LUA2012-0023 to the Hearing Examiner.

Concurrence

The City Attorney concurs with the staff recommendation.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing
Transportation Improvement Plan
(2014-2033)

AGENDA OF: July 11, 2013

DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: June 25, 2013

ATTACHMENTS:

1. Draft Resolution No. 13-148
2. Draft Transportation Improvement Program (2014-2033)
3. Criteria for Prioritizing Projects

CLEARANCES:

- Legal PB
- Finance CP
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works DJB
- Police N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation:

The purpose of this public hearing is provide an update to the City’s Transportation Improvement Program (TIP) and for the Council to approve Draft Resolution No. 13-148 (Attachment 1) adopting the proposed Transportation Improvement Program for the City of Des Moines for the years 2014-2033.

Suggested Motion:

“I move to approve Draft Resolution No. 13-148 adopting the 2014-2033 Transportation Improvement Plan for the City of Des Moines.”

Background:

Each year the City of Des Moines, and all cities and counties in Washington, submit a Transportation Improvement Program (TIP) to the State. This document is useful for agencies to plan and prioritize transportation system improvements. The purpose of these plans is to provide a planning tool for the individual agencies, and to also provide a consistent method of coordinating interagency needs and funding requirements on a regional and state wide basis.

The Transportation Improvement Plan is provided as Attachment 2. The format is similar to the State form on which the projects are listed along with a brief description of the proposed improvements. In the middle of the form is an estimated project schedule along with preliminary planning level cost

estimates for the projects. The costs are broken down into three categories, engineering (PE), right-of-way (RW) and construction (CN). The proposed year in which each phase is planned to occur is also shown.

The completed TIP is sent to utility companies as well as adjacent cities for their information, and for project coordination planning. Some cities choose to list high priority projects that are not within their city limits, or projects that will be managed by other agencies. The City of Des Moines Comprehensive Transportation Plan (CTP) lists projects that are outside of its boundaries.

Discussion:

Staff updated the previous TIP with the most current project funding information and expenditure schedule, and is forwarding this Draft 2014-2033 TIP (Attachment 2) to the full Council for public hearing and approval.

The PS&T Committee was furnished a copy of the proposed TIP on May 9, 2013, and discussed the Draft TIP on June 6, 2013.

Criteria that is helpful when considering the prioritization of projects can be found in the City's Comprehensive Transportation Plan. This is provided as Attachment 3.

Alternatives:

Proposed projects can be moved to different years or taken off the Plan. Other proposed projects can be added to the Plan. Priority numbers can be changed. The City is required to file an adopted plan with the Secretary of Transportation no later than August 1, 2013.

Financial Impact:

Although this plan does not commit the City to any expenditures, it does allow the City to make application for many types of grants or other funds. Frequently, project loans or grants require that the project be on a plan adopted by the City. Furthermore, projects using Federal funds are specifically required to be identified on the City's TIP.

Recommendation/Conclusion:

Staff recommends that the City Council approve Draft Resolution No. 13-148 (refer to Attachment 1) which covers the Transportation Improvement Program for the City of Des Moines for the years 2014-2033.

Concurrence:

The Legal, Finance, and Planning, Building, and Public Works Departments concur.

CITY ATTORNEY'S FIRST DRAFT 06/20/2013

DRAFT RESOLUTION NO. 13-148

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, adopting a Transportation Improvement Plan for the City of Des Moines for the years 2014 through 2033.

WHEREAS, in accordance with the provisions of RCW 35.77.010, a public hearing was held on July 11, 2013 by the Des Moines City Council to consider the adoption of a Transportation Improvement Plan, and all persons wishing to be heard were heard, and

WHEREAS, based on the information presented at such public hearing the City Council finds it to be in the public interest to adopt the Transportation Improvement Plan attached to this Resolution; now therefore,

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

Sec. 1. The City Council adopts the Transportation Improvement Plan for the City of Des Moines for the years 2014 through 2033, which is attached to this Resolution as Attachment "1" and by this reference incorporated herein.

Sec. 2. The program adopted by this Resolution shall be reviewed annually at a public hearing, at which time such program may be amended, revised, or extended.

Sec. 3. The City Clerk is directed to file two certified copies of this Resolution and Exhibit with the Washington State Department of Transportation (WSDOT), Olympia, Washington, within thirty (30) days of the date of adoption of this Resolution.

ADOPTED BY the City Council of the City of Des Moines, Washington this 11th day of July, 2013 and signed in authentication thereof this 11th day of July, 2013.

MAYOR

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Agency: City of Des Moines, WA
 County No.: 17
 City No.: 0325
 County Name: King County
 MPO/RTPO: PSRC

Transportation Improvement Plan
 From: 2014 To: 2033
 Hearing Date: 07/11/13
 Amend Date: Resolution Number: 13148

Functional Classification	Proposed Priority No.	Current Priority No.	City Project Number	Project Identification	Coordination with other City Project (Numbers)	Improvement Type(s)	Status	Total Length	Utility Codes	Project Phase	Project Cost in Thousands of Dollars							Local Agency Expenditure Schedule (Year)							Federally Funded Projects Only	Envir. Type	R/W Required Date (m/yy)				
											Federal Funding	Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033								
00	1	1	3	Pavement Preservation Program Citywide Maintain and preserve the City's roadway surfaces through pavement rehabilitation measures such as overlays/patching, crack sealing and other preventative maintenance measures.	PRES-5.0 TRAFF-3.0 TRAFF-4.0	07 S	S		C S G W	PE RW CN	8/1/2012 4/1/2013	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25					
00	2	2		Traffic Signal Program Citywide Replace and upgrade the City's Traffic Signal Systems to be compliant with MUTCD updates. This program is primarily funded through the City's Street Fund.	TRAFF-5.1	12 S	S		S W T R W C N	PE RW CN	TOTALS 1/1/2010	0					20	20	20	10	10	10	30	40	100						
00	3	3		Sign Changeout Program Citywide Replace and upgrade the City traffic signs to be compliant with MUTCD updates. This program is primarily funded through the City's Street Fund.	TRAFF-5.1	12 S	S		P	PE RW CN	TOTALS 1/1/2007	0					21	21	0	5	5	5	6								
14	4	4		S. 216th Street Improvement (Segment 2) Transportation Gateway Project (1 of 4 projects) South 216th Street from: 24th Ave. S. to: 18th Ave. S. Widen to provide additional travel lanes, bike lanes, curb, gutter & sidewalks. Partially funded through development. Signal rebuild @ 24th Ave. S. & S. 216th.	TFE-1.1 TFE-1.3 TFE-2.0 TFE-3.0 ITS-3.0	06 P 12 04 04 03	C S G T W	0.34	C S G T W	PE RW CN	1/1/2009 1/1/2010 6/1/2011	0		TIB	250	250	100	0	100	100	500	500							CE	Yes 7/12	
14	5	5		24th Ave. S. Improvement (Segment 2) Transportation Gateway Project (1 of 4 projects) 24th Avenue South from: S. 208th St. to: S. 216th St. Widen to provide additional travel lanes, bike lanes, curb, gutter & sidewalks. Partially funded through development or LID. Signal rebuild @ 24th S. & S. 216th in conjunction w/S. 216th Segment 2.	TFE-1.1 TFE-1.2 TFE-3.0 ITS-3.0	04 P 06 12 03	C S G T W	0.53	C S G T W	PE RW CN	1/1/2009 1/1/2011 8/1/2013	0				4500	750	7500	600	500	250	3000							CE	Yes 3/12	
14	6	6		S. 216th Street Improvement (Segment 1a) Transportation Gateway Project (1 of 4 projects) South 216th Street from: 29th Ave. S. to: 24th Ave. S. Widen to provide additional travel lanes, bike lanes, curb, gutter & sidewalks. Signal rebuild @ S. 216th & Pac Hwy S. Partially funded through development.	TFE-1.1b TFE-1.2 TFE-2.0 TFE-3.0 ITS-3.0	12 P 06 04 04 03	C S G T W	0.50	C S G T W	PE RW CN	1/1/2009 1/1/2010 5/1/2014	1000		OTHER	1000	800	1250	5000	7050	550	350	400	3000	2000						CE	Yes 12/13
TOTALS											1000		1000	5050	7050	550	600	3800	2100	0	0										

Agency: City of Des Moines, WA
 County No.: 17
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										Fund Source Information					Local Agency Expenditure Schedule (Year)												
										Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019				2020-2023	2024-2033			
14	7	7	TIF-10.0	Des Moines Memorial Drive & S. 200th St. Intersection Improvements from: DMMD to: S. 200th St. Widen to provide left turn lanes on all legs, and right turn lane on east leg. Rebuild traffic signal and provide channelization improvements. The improvements would be done in partnership with Sea Tac.	S-3.0	05 P 12 06	C S G T W	PE RW CN	1/1/2016 1/1/2017	OTHER OTHER	80 850	350 20 250	350 100 1100	0	0	450	1100	0	0	0	0	0	0	CE	Yes		
16	8	8	S-26.0	24th Ave. S./28th Ave. S. Road Improvement 24th Avenue South from: S. 208th St. to: S. 200th St. Coordinate with City of Seatrac on the construction of a new Principal Arterial roadway.	(Seatrac ST-065) TIF-2.0	01 05 P 06 12 32	C S G T W	PE RW CN	1/1/2012 1/1/2013 1/1/2015			60 200	60 200	260	20	240	0	0	0	0	0	0	0	0	CE	Seatrac	
00	9	9	TRAF.-5.1	Citywide Arterial Street Improvements Citywide Improve arterial street safety through 4 main focus areas. 1) upgrade Arterial intersection street name signs with 6" text and retroreflective sheeting. 2) upgrade signal heads with backplates and reflective yellow tape. 3) replace arterial pavement markings (arrows, stop bars, and crosswalks) thermoplastic that is more retroreflective, and 4) upgrade pedestrian signal indications to countdown style heads.	TRAF.-5.0	03 P 06 12	C G P S T	PE RW CN	1/1/2011 5/1/2013		15 235		140 1135	15 110	95	30	8	18	24	60	250	0	0	0	0		
00	10	10	TRAF.-5.0	Traffic Safety Improvement Program Citywide Respond to capital needs associated with traffic and pedestrian safety. These funds would be primarily focused on capital projects near existing schools and other traffic safety related concerns.	TRAF.-5.1	03 P 06 12	C G P S T	PE RW CN	1/1/2011 3/1/2011		250		140 1135	125	95	30	8	18	24	60	250	0	0	0	0		
17	11	11	PRES.-3.0	Salwater Bridge Repairs & Seismic Retrofit Marine View Drive from: to: Seismic retrofit, patch and repair spalling areas; replace pin and hanger connection detail.	N/A	10 P	C G R W P S T	PE RW CN	8/1/2013 3/1/2015 3/1/2016	BR OTHER OTHER	650 2300 2750	450 250	1700 0 5300	420	220	108	93	124	310	0	0	0	0	0	CE	No	
00	12	12	PRES.-5.0	Sidewalk and Curb Ramp Program Citywide Installation of pedestrian improvements.	PRES.-1.0	12 P 32	C G R W P S T	PE RW CN	1/1/2011 5/1/2011		2950	700	7000	510	2300	0	0	3500	0	0	0	0	0	0	0		
										TOTALS		0	0	1200	1200	60	60	60	180	240	600						

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											Federal Fund Code	Federal Fund Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023			2024-2033		
16	25	32	TIF-14.0	Marine View Dr and S. 240th St. Intersection Project from: to: Reconstruct roadway to improve horizontal alignment. Provide pedestrian facilities, and widen approaches. Install traffic signal if warranted.	S-21.2	12 P 03 32		0.05	C G P S T W	PE P S CN	Phase Start (mm/dd/yyyy)	Federal Fund Code	Federal Fund Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033			
											TOTALS		0	OTHER 500 500 3000	530	530	1060	0	0	0	0	1060	0	0		
14	26	45	INT-7.0	Pacific Highway S. and S. 240th St. Intersection Improvements from: to: Widen to provide dual left turn pocket for eastbound approach, revise signal timing. Coordinate with the City of Kent.	S-21.1 (KENT)	05 P 06 12		1.02	S W T C G P	PE P S CN	TOTALS		0	OTHER 500 500 3000	4000	100	4100	0	0	0	0	4100	0	0		
16	27	47	S-21.1	South 240th St. Improvements (Segment 1) South 240th Street from: East City Limits to: 16th Ave. S. Reconstruct roadway including two travel lanes, bicycle lanes, curb, gutter and sidewalks.	TIF-4.3 TIF-4.5 TIF-19.0 S-21.2	05 P 06 12 32			C S G P T W	PE S RW CN	TOTALS		0	OTHER 2000	2000	1000	3000	0	0	0	0	3000	0	0		
17	28	27	TIF-6.0	16th Ave.S./18th Ave. S. Road Improvement Following along old SR 509 Right-of-Way from: S. 220th St. to: S. 216th St. Construct new neighborhood collector alignment along 16/18th Ave. S. corridor, incl. curb/gutter. May be shared use path constructed along RW so pedestrian/bicycle facilities may be away from roadway alignment.	TRAL-2.0 S-16.0	01 P 05 06 12 32		0.25	C S G P T W	PE S RW CN	TOTALS		0	OTHER 300 2200	2500	800	3300	0	0	0	0	3300	0	0		
19	29	28	TRAF-.3.0	Neighborhood Traffic Calming Program Citywide Respond to traffic calming concerns.	PREES-.1.0	12 P			C P S G T W	PE S RW CN	TOTALS		0		800	200	1000	0	0	0	0	1000	0	0		
00	30	17	PL-2.0	Downtown Circulation Study from: to: Develop a plan to maximize multi-modal use, pedestrian access and traffic operations.	PL-1.0 PL-3.0	12 P 31			PE S RW CN	TOTALS	1/1/2011		0		100	100	0	0	0	0	0	100	0	0		

Agency: City of Des Moines, WA
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 County Name: King County
 City No.: 0325 MPO/RTPO: PSRC

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											Fund Source Information			Local Funds				Expenditure Schedule									
											Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033					
14	36	36	TIF-18.0	Marine View Dr. and 7th/216th Street Intersection Improvements from: to: Optimize signal timing, and coordinate signal with DIMMD and MVD Intersection.	TIF-11.0 TIF-20.0	03 P 12		2.19	C W T C G P	S W T C G P	PE PE RW CN	Phase Start (mm/dd/yyyy)	Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033			
00	39	37	S-24.0	Downtown Des Moines Improvements from: S. 227th/220&223 to: 6th/8th Provide sidewalks 6th Ave. S & side streets from S.227th to S.220th/8th Ave S (west side) & side streets from S.227th to S.223rd. May include street & water distribution upgrades. 8th Ave. S. Improvement Project (Segment 1) 8th Avenue South (North Hill) from: North City Limits to: S. 200th Street Reconstruct to Minor Arterial standards including bike lanes, curbs, gutters, and sidewalks. Kent-Des Moines Road (Segment 3) (SR 516) from: Marine View Drive to: 16th Ave. South Widen roadway to provide pedestrian facilities and additional lanes where warranted.	TIF-5.1 TIF-13.0	05 P 12 06 32		1.00	C S G P T W	S W T C G P	PE PE RW CN	TOTALS	STP(C)	OTHER	OTHER	OTHER	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033	CE	Yes 12/20	
14	41	39	TIF-5.3	Kent-Des Moines Road (Segment 3) (SR 516) from: Marine View Drive to: 16th Ave. South Widen roadway to provide pedestrian facilities and additional lanes where warranted.	TIF-5.1 TIF-13.0	05 P 12 06 32		0.78	C S G P T W	S W T C G P	PE PE RW CN	TOTALS	STP(C)	OTHER	OTHER	OTHER	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033	CE	Yes 12/20	
14	42	40	TIF-13.0	Marine View Drive and Kent-Des Moines Road Intersection Improvements from: to: Add a second eastbound through lane through the intersection.	TIF-5.3 TIF-12.0	32 P 05 12 06			S W T C G P	S W T C G P	PE PE RW CN	TOTALS	STP(E)	OTHER	OTHER	OTHER	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033	CE	Yes 12/20	
14	43	41	TIF-12.0	Marine View Drive and S. 227th St. Intersection Improvements from: to: Revise lane configuration to single eastbound right with overlap signal phase. Add second southbound through lane at intersection.	TIF-13.0	32 P 05 06 12			S W T C G P	S W T C G P	PE PE RW CN	TOTALS	OTHER	OTHER	OTHER	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033				
14	44	42	TIF-5.1	Kent-Des Moines Road (Segment 1) (SR 516) from: 16th Ave. S. to: 24th Ave. S. Widen roadway to provide pedestrian facilities and center 2-way turn lane where warranted	TIF-5.2 TIF-5.3	05 P 12 06 32		0.64	C G O P T W	C G O P T W	PE PE RW CN	TOTALS	STP(C)	OTHER	OTHER	OTHER	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033	CE	Yes 12/20	

Agency: City of Des Moines, WA
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Transportation Improvement Plan
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Functional Classification	Proposed Priority No.	Current Priority No.	City Project Number	Project Identification	Coordination with other City Project (Numbers)	Improvement Type(s)	Status	Total Length	Utility Codes	Project Phase	Project Cost in Thousands of Dollars						Local Agency Expenditure Schedule (Year)						Federally Funded Projects Only	Envir. Type	RW/ Required Date (m/yy)				
											Federal Fund Code	Federal Fund Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033							
17	51	51	S-4.0	S. 268th Street Improvement Project South 268th Street		05 P 06 12 32	05 P 06 12 32	0.26	C S G P T W	PE RW CN	Phase Start (m/ddd/yyy)	Federal Fund Code	Federal Fund Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033						
				from: 16th Ave. S. to: Pacific Highway South Reconstruct to Neighborhood Collector Standard with 2 travel lanes, curb, gutter & sidewalk.							TOTALS		0	OTHER	1300	1300	300	600	0				600	2600	0				
14	52	52	TI-F-4.3	16th Ave. S. Improvement Project (Segment 3) 16th Avenue South		05 P 06 12 32	05 P 06 12 32	0.74	C S G P T W	PE RW CN	TOTALS		0	OTHER	2000	1200	400	400	0				400	500	3200	0			
				from: Kent-Des Moines Rd. to: S. 240th St. Widen to provide center turn lane at apartment driveways south of Kent-Des Moines Road. Provide bus pullouts.							TOTALS		0	OTHER	2000	1200	400	400	0				400	500	3200	0			
14	53	53	TI-F-4.2	16th Ave. S. Improvement Project (Segment 2) 16th Avenue South		05 P 06 12 32	05 P 06 12 32	0.80	C S G P T W	PE RW CN	TOTALS		0	OTHER	3000	2100	1200	1200	5100	0				1200	300	5100	0		
				from: S. 260th St. to: S. 250th Street Install curbs, gutters and sidewalks and bike lanes. Provide 2-way left turn lane.							TOTALS		0	OTHER	3000	2100	1200	1200	5100	0				1200	300	5100	0		
17	54	86	S-12.0	S. 208th St. Sidewalk Project South 208th Street		32 P 05 06 12	32 P 05 06 12		C S G P T W	PE RW CN	TOTALS		0	OTHER	1600	260	260	260	6600	0				260	40	1300	6600		
				from: 1st Ave. S. to: DMMD Install sidewalk and make pedestrian improvements.							TOTALS		0	OTHER	1600	260	260	260	6600	0				260	40	1300	6600		
17	55	54	TI-F-8.0	20th Ave. S. Improvement Project (Segment 2) 20th Avenue South		01 P 06 12 32	01 P 06 12 32	0.10	C S G P T W	PE RW CN	TOTALS		0	OTHER	1200	300	300	300	1200	0				300	0	1200	0		
				from: S. 240th St. to: S. 243rd Street Reconstruct and extend neighborhood collector street with curb, gutter and sidewalks.							TOTALS		0	OTHER	1200	300	300	300	1200	0				300	0	1200	0		
17	56	55	S-6.0	20th Ave. S. Improvement Project (Segment 1) 20th Avenue South		04 P 06 12	04 P 06 12	0.45	C S G P T W	PE RW CN	TOTALS		0	OTHER	200	200	200	400	0					400	0	2000	0		
				from: S. 243rd St. to: S. 250th Street Reconstruct to Neighborhood Collector standards and provide curb, gutter and sidewalks.							TOTALS		0	OTHER	1000	1000	1000	2000	0					2000	0	2000	0		

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											Federal Funding			State Funding			Local Funds	Total Funds	2014	2015	2016	2017-2019			2020-2023	2024-2033
											Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Federal Fund Code	Federal Cost by Phase										
17	57	56	S-7.0	South 250th/251st Street Improvement South 250th/251st Street from: Marine View Drive to: 16th Ave. S. Construct bike lanes and curb, gutter and sidewalk on both sides.	INT-2.0	05 P 32 12 06	0.47	C S G P T W	PE RW CN	Phase Start (m/ddd/yyy)	Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033				
										TOTALS							2800	0	0	0	0	0	0	350	50	2400
17	58	57	INT-2.0	S. 250th Street and 16th Ave. S. Intersection Improvements from: to: Add eastbound right turn pocket.	TF-4.2 TF-4.4 S-7.0	05 P 12	0.20	C S G P T W	PE RW CN	TOTALS						200	250	0	0	0	0	0	0	50	200	
14	59	58	S-9.0	S. 272nd Street / Marine View Drive from: to: Reconstruct roadway to improve horizontal and vertical alignment.	S-19.0	03 P 12	0.20	C S G P T W	PE RW CN	TOTALS						150	650	0	0	0	0	0	0	150	650	
14	60	59	INT-6.0	Pacific Highway S. and S. 250th St. Intersection Improvements from: to: Revise signal timing. Coordinate with the City of Kent.	(KENT)	12 P		S W T C G	PE RW CN	TOTALS						800	40	0	0	0	0	0	0	120	40	
14	61	60	TF-4.4	16th Ave. S. Improvement Project (Segment 4) 16th Avenue South from: S. 240th St. to: S. 250th St. Widen to three lane minor arterial with curbs, gutters, bike lanes and sidewalks.	TF-4.2 TF-4.3 S-7.0	05 P 06 32 12	0.90	C S G P T W	PE RW CN	TOTALS						160	800	0	0	0	0	0	0	0	800	200
17	62	61	S-10.0	South 222nd Street Improvement Project South 222nd Street from: Marine View Drive to: Pacific Highway South Reconstruct to Neighborhood Collector standards including two travel lanes, bicycle lanes, curb, gutter and sidewalks.	INT-1.0	05 P 06 12 32	1.02	C S G P T W	PE RW CN	TOTALS						4500	500	0	0	0	0	0	0	0	500	2500
										TOTALS	0					3000	700	3000	0	0	0	0	0	0	3000	

Agency: City of Des Moines, WA
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Functional Classification	Proposed Priority No.	Curnet Priority No.	City Project Number	Project Identification	Coordination with other City Project (Numbers)	Improvement Type(s)	Status	Total Length	Utility Codes	Project Phase	Project Cost in Thousands of Dollars						Local Agency Expenditure Schedule (Year)						Federally Funded Projects Only	Envir. Type	R/W Required Date (m/yy)					
											Federal Funding			State Funding			Local Funds	Total Funds	2014	2015	2016	2017-2019				2020-2023	2024-2033			
											Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	OTHER	OTHER														
14	63	62	TIF-1-1b	S. 216th Street Improvement (Segment 1b) Transportation Gateway Project (1 of 4 projects) South 216th Street from: East City Limits to: Pacific Highway South Widen to provide additional travel lanes, bike lanes, curb, gutter, & sidewalks. Project coordinated with WSDOT construction of SR509 to replace the I-5 overcrossing with transitions to the planned lane configuration.	TIF-1,1a TIF-1,2 TIF-2,0 TIF-3,0 ITS-3,0 @	12 P 06 04 32 03	P	0.26	C S G P T W	PE S RW CN P	Phase Start (m/yy)	STP(E)	800	OTHER	800	500	800	2600	0	0	0	0	0	0	0	500	CE	Yes		
14	64	63	TIF-7-2	16th Ave. S. Improvement Project (Segment 5b) 16th Avenue South from: S. 276th St. to: Pacific Highway South Widen to provide 3-lane roadway w/curbs, gutters, bike lanes & sidewalks. Provide new alignment to Pacific Hwy. S. if feasible. Joint project w/City of Federal Way. Also coordinate w/City of Kent and King County Metro.	TIF-7,1	05 P 06 01 12 32	P	0.50	C S G P T W	PE S RW CN P	TOTALS	0	OTHER	240	900	1660	200	600	2460	0	0	0	0	0	0	0	4400	CE	Yes	
16	65	64	S-28,0	S. 240th Street Overcrossing Bridge Crossing over I-5 from: Pacific Highway South to: Military Road Construct bridge over Interstate 5. Coordinate with City of Kent.		01 32 P 06 12	P		S W T C G	PE T RW CN G	TOTALS	0	0	0	2000	1500	10000	10000	2000	1500	10000	0	0	0	0	0	4400			
00	66	65	S-23,0	Dock Street Bike Lanes from: S. 227th Street to: Cliff Ave. S. Install bike lanes through the Marina to link the Des Moines Creek Trail to S. 227th St.	TRAIL-1,0 @ TRAIL-3,0	32 P 06 12	P		S W T C G	PE T RW CN P	TOTALS	0	0	0	60	200	200	60	200	13500	13500	0	0	0	0	0	0	60		
14	66	66	S-11,0	S. 272nd Street Improvements South 272nd Street from: Pacific Highway South to: 16th Ave. S. Install access control to enhance safety.		12 P	P		S W T C G	PE T RW CN P	TOTALS	0	0	0	20	80	80	20	80	260	260	0	0	0	0	0	0	20		
17	67	67	INT-5,0	Redondo Beach Drive and Redondo Way South Intersection Improvements from: to: Install traffic signal, or consider other intersection treatments to enhance capacity.	S-8,0	12 P	P		S W T C G	PE T RW CN P	TOTALS	0	OTHER	60	400	200	60	120	600	120	600	0	0	0	0	0	0	120		
											TOTALS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	720		

Agency: City of Des Moines, WA
 County No.: 17
 City No.: 0325
 County Name: King County
 MPO/RTPO: PSRC

Transportation Improvement Plan
 From: 2014 To: 2033
 Hearing Date: 07/11/13 Adoption Date:
 Amend Date: Resolution Number: 13148

Functional Classification	Proposed Priority No.	Current Priority No.	City Project Number	Project Identification	Coordination with other City Project (Numbers)	Improvement Type(s)	Status	Total Length	Utility Codes	Project Phase	Project Cost in Thousands of Dollars						Local Agency Expenditure Schedule (Year)						Federally Funded Projects Only	Envir. Type	RW Required Date (mm/yy)				
											Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033							
17	68	68	PRNIP-N2.0	S. 220th St. Improvements Pacific Ridge NIP N2 from: Pacific Highway South to: 30th Ave. S. Reconstruct roadway		32 P 03 12			S W T C P	PE RW CN	Phase Start (mm/dd/yyyy)	Federal Fund Code	Federal Cost by Phase	State Fund Code	State Funds	Local Funds	Total Funds	2014	2015	2016	2017-2019	2020-2023	2024-2033						
											TOTALS				0	1000	1500	1500	0	0	0	0	0	1000					
17	69	69	TI-9-0	S. 220th St. and Pacific Highway S. Intersection Improvements from: to: Widen for left turn pockets, adjust roadway profile and approach grades, and revise signal phasing to remove split phasing		32 P 05 12 06			S W T C P	PE RW CN	TOTALS		OTHER		100	50	150	150	0	0	0	0	0	150					
											TOTALS		OTHER		500	50	550	550	0	0	0	0	0	550					
19	70	70	PRNIP-S4.0	S. 225th Pl. Connection Improvement Pacific Ridge NIP S4 from: Pacific Highway South to: 30th Ave. S. Construct new roadway	PRNIP-S5.0	01 P 06 12 32			S W T C P	PE RW CN	TOTALS				600	100	700	700	0	0	0	0	0	700					
											TOTALS				0	4600	350	4600	350	0	0	0	0	0	4600				
19	71	71	PRNIP-N4.0	S. 222nd Pl. Connection Improvement Pacific Ridge NIP N4 from: 28th Ave. S. to: 30th Ave. S. Construct new roadway		01 P 06 12 32			S W T C P	PE RW CN	TOTALS					350	350	350	350	0	0	0	0	0	350				
											TOTALS				0	1200	1200	1200	1200	0	0	0	0	0	1200				
17	72	72	S-22.0	South 224th Street Improvements South 224th Street from: East City Limits to: 24th Ave. S. Reconstruct to Neighborhood Collector standards including two travel lanes, bicycle lanes, curb, gutter and sidewalks.	PRNIP-S3.0	03 P 06 12 32			C S G P W	PE RW CN	TOTALS				0.44	400	400	400	400	0	0	0	0	0	400				
											TOTALS				0	2400	2400	2400	2400	0	0	0	0	0	2400				
17	73	73	PRNIP-N1.0	30th Ave. S. Improvements Pacific Ridge NIP N1 from: S. 216th St. to: S. 220th St. Reconstruct roadway		32 P 05 03 12			S W T C P	PE RW CN	TOTALS					0	2900	300	2900	300	0	0	0	0	0	300			
											TOTALS				0	1200	1200	1200	1200	0	0	0	0	0	1200				
											TOTALS				0	1600	1600	1600	1600	0	0	0	0	0	1600				

CRITERIA FOR PRIORITIZING PROJECTS

In developing the annual six-year Transportation Improvement Plan (TIP) for the City, project prioritization is needed to help identify when best to fund and implement the projects since funding is limited. Criteria were established to help prioritize the projects and implementation based on several goals for the Des Moines transportation system, as noted in **Table 8-2**.

Table 8-2. Criteria for Project Prioritization

Criteria	Measurement
Mobility	
Traffic Mobility	Improves corridor and signal LOS operation
Regional Mobility	Vehicle capacity improvements on major regional routes
System Preservation	Improves existing or substandard roadways
Safety	
Traffic Safety	Improvements that address HAL (based on collision history) location
Emergency Response	Reduces travel time to fire demand zones based on percent response in <= 7 minutes
Environment	
Environmental Preservation	Protects open spaces and minimizes increases to paved areas
Neighborhood Protection	Supports protection of residential areas and neighborhood streets
Multimodal	
Transit Mobility	Supports transit operation on primary transit corridors
Pedestrian Mobility	Improvements that benefit pedestrians based on Accessibility
Bicycle Mobility	Improvements that provide bicycle facilities
Connectedness-Accessibility	Completes missing links to improve access
Implementation	
Cost Effectiveness	Maximizes PM peak usage per 1000 dollar of investment
Funding	Level of funding commitment for project
Project Readiness	Degree the project is ready to be implemented
Economic Development	Supports Land Use Vision

Using these criteria, the recommended projects will need to be evaluated and ranked based on how well each could meet the criteria. High priority projects for Des Moines are those that meet multiple criteria in enhancing travel, mobility for all modes of travel and that will meet the near-term requirements of development and growth. Opportunities for funding can help to boost the priority of a project – allowing the City to take advantage of funding sources and development contributions to the completion of a key project.



A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Public Hearing for SV2012-02:
Vacation of Public Right-of-Way within City of
Des Moines known as the east half of 15th Ave S.
and alley east thereof between S. 222nd St. and S.
223rd St.

FOR AGENDA OF: July 11, 2013
DEPT. OF ORIGIN: PBPW
DATE SUBMITTED: July 1, 2013

ATTACHMENTS:

1. Draft Ordinance No. 12-086
2. Copy of Petition
3. DMMC 12.12
4. RCW 35.79
5. Street/Alley Vacation Checklist
6. Resolution No. 1229

CLEARANCES:

- Legal PB
- Finance N/A
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Bldg & Public Works DJB
- Police N/A
- Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL 

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider Draft Ordinance No. 12-086 (refer to Attachment 1), for the vacation of a certain portion of right-of-way in accordance with the provisions of DMMC 12.12.040 and RCW 35.79.030.

Suggested Motions

Motion 1A: "I move suspend City Council Rule 26(a) in order to enact Draft Ordinance No. 12-086 on first reading"

Motion 1B: "I move to enact Draft Ordinance No. 12-086 approving the vacation of certain portions of public rights-of-way specifically identified and legally described in Draft Ordinance Number 12-086."

Background

Gerald and Miriam Andrus, originally approached the City in February of 2012 for a potential lot line adjustment and a vacation of public right-of-way. During 2012, there were several discussions about the potential lot line adjustment and right-of-way vacation with the Andrus family. Gerald and Miriam

Andrus officially filed right-of-way vacation application materials with the City on November 29, 2012 (refer to Attachment 2), requesting vacation of portions of public right-of-way within an area known as the east half of 15th Avenue South, and alley east thereof between South 222nd Street and South 223rd Street.

Throughout this timeframe the City was in negotiations with the Washington State Department of Transportation (WSDOT) for acquisition of the Historic SR 509 property located on the west side of 15th Avenue South. At issue is that WSDOT's right-of-way plan for SR 509 indicates that the state's right-of-way in this area extends to the east margin of 15th Avenue South. City staff pointed out to WSDOT that the City of Des Moines has never vacated 15th Avenue South, and that 15th Avenue South is still a Des Moines right-of-way. While WSDOT staff originally took some exception to this, it appears that they are no longer disputing this fact, and their right-of-way plan is in error. Because of this discrepancy, early on in the process it was felt that the best approach was to defer the right-of-way vacation petition until the City's acquisition of the SR 509 property was complete. This approach was discussed with the Andrus' and at the time seemed reasonable. However, by November 2012, the city's negotiations with WSDOT were taking much longer than anticipated. In May of 2013, the Andrus family requested that the City to take action on the petition.

Right-of-Way Vacation Process:

The right-of-way vacation process is listed in Chapter 12.12 of the DMMC (refer to Attachment 3) and in RCW 35.79 (refer to Attachment 4). The process is generally as follows: The right-of-way vacation petition and non-refundable fee is filed with the Planning, Building and Public Works Director. The petition must be signed by at least two-thirds of the adjacent property owners. The Public Works Division sends the application to all public utilities in the area including the police and fire department. The utilities state whether they have utilities within the right-of-way and request an easement if necessary. The police and fire departments provide comments and state whether they approve or disapprove of the right-of-way vacation.

The Public Works Director then either approves or disapproves the petition. If the petition not approved, the Public Works Director sends a written response to the petitioner citing the rationale for the denial and indicates that the denial may be appealed to the hearings examiner.

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

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

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

Discussion

The area requested to be vacated is identified in Exhibit A of Attachment 1. The application meets the statutory requirements of RCW 35.79, and has the signatures of over half of all abutting property owners. The two abutting property owners to the east of the alley have submitted letters in support of the right-of-way vacation.

Staff mailed notices of this proposed right-of-way vacation to all utility purveyors and other City departments on January 11, 2013, requesting their comments and input on the issue. Utility purveyors and other City departments responded by February 25, 2013.

A review of all responses received showed that the area requested to be vacated is unimproved public right-of-way. The area was platted under the New Addition to the Town of Des Moines in 1890. Since it appears that the proposed area was never improved for transportation purposes, the right-of-way can be vacated as a matter of law under the Laws of 1889-1891. The right-of-way is classified as a "Type C" right-of-way pursuant to DMMC 12.12.020 (Attachment 3), therefore compensation is not required. The area requested to be vacated is not needed for any present or future transportation purposes. Vacating this area will not result in land locking any present or future properties, and the vacated property can be placed back on the tax rolls.

There are existing public utilities within the right of way including Midway Sewer and PSE. They have requested easements through the potentially vacated areas in accordance with our Franchise Agreements. These easements are legally described in the Draft Ordinance. Utilities that were contacted and are not affected are: Water District #54, Highline Water District, AT&T, Comcast, Century Link (Qwest), Southwest Suburban Sewer District, Lakehaven Utility, and City of Des Moines Surface Water Management.

The Right-of-Way Vacation Checklist is provided as Attachment 5.

Procedural Requirements

As authorized by RCW 35.79.010 this request for vacation was initiated by the legislative action of the City Council under Resolution No. 1229 (refer to Attachment 6). Vacation of public rights-of-way requires a public hearing before the City Council set by resolution no more than 60 days but not less than 20 days prior to the public hearing per RCW 35.79.010 and DMMC 12.12.040. On June 6, 2013, the City Council approved Resolution No. 1229 setting a public hearing on July 11, 2013. Notice of the public hearing was provided as required by RCW 35.79.020.

State Environmental Policy Act (SEPA)

The vacation of public rights-of-way are categorically exempt from the State Environmental Policy Act pursuant to WAC 197-11-800(2)(h) adopted by reference per DMMC 16.04.230.

Alternatives

The City Council has the following alternatives:

- (1) Waive Council Rule 26(a) and enact Draft Ordinance 12-086 on 1st reading as written.
- (2) Waive Council Rule 26(a) and enact Draft Ordinance 12-086 on 1st reading with amendments by the City Council.
- (3) Pass Draft Ordinance 12-086 to a second reading.
- (4) Not enact Draft Ordinance 12-086.

Financial Impact

By vacating these portions of currently unimproved public right-of-way, the property can be placed back onto the tax rolls, thus allowing the City to collect property taxes. It is unlikely, however, that this vacation will materially increase the assessed value of the property. However, this right-of-way vacation will allow for the potential development of new single family homes.

Recommendation or Conclusion

Administration recommends that the City Council enact Draft Ordinance 12-086 on first reading.

Concurrence

Administration, Planning, Building, and Public Works, and Legal Departments concur.

CITY ATTORNEY'S FIRST DRAFT 07/1/2013**DRAFT ORDINANCE NO. 12-086**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, vacating a portion of City right-of-way in an area generally described as a portion of public right-of-way on the east half of 15th Avenue South and the alley east thereof, between South 222nd Street and South 223rd Street located in the City of Des Moines, subject to the applicant's compliance with requirements set forth herein.

WHEREAS, DMMC 12.12.040 adopts the street vacation procedures of chapter 35.79 RCW, and

WHEREAS, The City has received a petition from Gerald and Miriam Andrus to vacate a portion of the public right-of-way commonly known as 15th Avenue South and the alley east thereof, between South 222nd Street and South 223rd Street located in the City of Des Moines as shown on Exhibit "A", attached hereto and incorporated by reference, and

WHEREAS, the petition was signed by the owners of more than two-thirds of the property abutting the portion of the streets sought to be vacated as required by RCW 35.79.010, and

WHEREAS, RCW 35.79.010 requires that the City Council set the public hearing and date by resolution which was, in this case, established by Resolution No. 1229 fixing the public hearing for July 11, 2013, to be followed by City Council action, and

WHEREAS, notice of the public hearing was given in accordance with RCW 35.79.020 and the public hearing was held before the Des Moines City Council on July 11, 2013, and all persons wishing to be heard were heard, and

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

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

Draft Ordinance No. 12-086

Page 2 of 5

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

(1) The public right-of-way subject to this Ordinance consists of portions of public rights-of-way identified as the east half of 15th Avenue South and the alley east thereof, between South 222nd Street and South 223rd Street further legally described in Section 2 of this Ordinance; and

(2) The public right-of-way described in section 2 of this Ordinance was not improved for transportation purposes nor dedicated under the Plat and Subdivision Act of 1969 currently codified as chapter 58.17 RCW, its predecessor the Platting and Subdivision Act of 1937 previously codified as chapter 58.16 RCW or under the Laws of 1889-90; and

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

(4) The public right-of-way was recorded as the First Railroad Addition to Des Moines platted in 1890, has never been opened for transportation purposes, and

(5) The public right-of-way described in section 2 is not used at all, for the reason it is not improved; and

(6) The right-of-way is not required for the present and future needs of the citizens of the City of Des Moines for vehicular transportation purposes; and

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

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

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

Draft Ordinance No. 12-086
Page 3 of 5

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

15th Avenue South: The east half of 15th Avenue South adjacent Block 29, New Addition to the Town of Des Moines, according to the plat thereof recorded in volume 4 of plats, page 84, in King County, Washington.

Alley: The west half of the alley adjacent to Block 29, New Addition to the Town of Des Moines, according to the plat thereof recorded in volume 4 of plats, page 84, in King County, Washington. Together with the east half of the alley adjacent to Block 26, New Addition to the Town of Des Moines, according to plat thereof recorded in volume 4 of plats, page 84, in King County, Washington.

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

(1) The abutting property owners shall not be required to pay the City of Des Moines on compensation for vacation of this Class C right-of-way, pursuant to DMMC 12.12.050(2)(b).

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

(a) To protect existing sewer district facilities in locations and dimensions generally described as covering the eastern twenty (20) feet of the area to be vacated within South

Draft Ordinance No. 12-086

Page 4 of 5

15th Street, and covering the entire twenty (20) feet of the area to be vacated within the alley east of 15th Avenue South, which exact locations and dimensions have been provided by Midway Sewer District; and

(b) A non-exclusive perpetual easement ten (10) feet in width having five (5) feet of such width on each side of the centerline of Grantee's facilities as constructed, to be constructed, extended or relocated lying within the twenty (20) foot alley between 15th Avenue South and 16th Avenue and between South 222nd Street and South 223rd Street is hereby granted to Puget Sound Energy, Inc., its successor and assigns, together with the right to erect, lay, construct, support, attach, connect, operate, maintain, repair, replace, improve, remove, extend, enlarge and use any and all of its facilities in, upon, over, under, along, across and through the Easement Area(s) for one or more overhead and/or underground electric utility systems for the transmission, distribution and sale of electricity; and

(c) For the purposes of easement retention, the above-mentioned easement dimensions are based upon being centered over the existing utility facilities.

(3) Petitioner, Gerald and Miriam Andrus, shall be responsible for obtaining and recording all utility easements referenced herein, and provide recorded copies of such easements to the City of Des Moines. If the utility easements are not obtained and recorded, and proof of such provided to the City of Des Moines, within 180 days of the signing of this Ordinance, this Ordinance shall be repealed and the street vacation shall be null and void.

Sec. 4. Easements and reservation of easements.

Pursuant to RCW 35.79.030, the City of Des Moines retains or will be granted easements as set forth in section 3 of this Ordinance and retains the right to exercise and grant easements in respect to the land vacated by this Ordinance and abutting property for the construction, repair, and maintenance of public utilities and services, and for vehicular access.

Draft Ordinance No. 12-086
Page 5 of 5

Sec. 5. Severability - Construction.

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

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

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

Sec. 7. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 11th day of July, 2013 and signed in authentication thereof this 11th day of July, 2013.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Exhibit A





DEPARTMENT OF PUBLIC WORKS
21650 11TH AVENUE SOUTH
DES MOINES, WASHINGTON 98198-6317
(206) 870-6522 FAX: (206) 870-6596



PETITION FOR THE VACATION OF
A PUBLIC STREET OR ALLEY

NAME OF PETITIONER (S): Gerald and Miriam Andrus, Husband & Wife

LOCATION OF PROPERTY: 1503 South 222nd Street

TO THE CITY COUNCIL OF DES MOINES, STATE OF WASHINGTON:

1. I/We, the undersigned owner(s) of the property abutting on that (street) (alley) commonly known as 15th Ave S & alley east thereof, herein sought to be vacated, petition the legislative body of the City of Des Moines to vacate the following portion of, to wit (exact legal description of property to be vacated):

See attached.

2. This (street) (alley) vacation is requested for the following purposes:

Unopened/unimproved right-of-way to be combined with adjacent lots as part of lot line adjustment.

3. This (street) (alley) sought to be vacated is presently being used for the following purposes:

The rights-of-way are unimproved. A sewer line exists in a portion of the 15th Avenue South right-of-way. The alley is used as the applicants' driveway.

4. The property abutting the (street) (alley) to be vacated is served by the following public utilities (state the name and mailing address for each separate utility):

Midway Sewer, Highline Water, PSE, Comcast & Century Link.

See attached page for mailing info.

5. The owners or reputed owners of ALL lots, parcels of land, or other property abutting upon the street or alley or any part thereof sought to be vacated, as shown on the rolls of the King County Treasurer, are (if deceased, so state; use additional paper if necessary):

<u>Name</u>	<u>Mailing Address</u>	<u>Telephone</u>
Gerald Andrus	1503 South 222nd Street, Des Moines	98198 206-824-3868
Gerald Andrus	1508 South 223rd Street, Des Moines	98198 206-824-3868
James McCullogh	22231 16th Ave South, Des Moines	98198 206-409-1956
Kurt Mecklenburg	22237 16th Ave South, Des Moines	98198 206-250-6735

- 6. The undersigned Petitioners have attached hereto two (2) King County Assessor's Maps that show each lot within three hundred (300) feet of the exterior boundaries of the property sought to be vacated.
- 7. For each undersigned Petitioner, state:

A. Name: Gerald and Miriam Andrus

B. Date property was acquired: Varies--multiple parcels

C. Nature of instrument: See attached

D. If answer to "C" is real estate contract, state the name and mailing address of the seller from whom you are purchasing (Note: The "seller" must also sign this petition):

E. State the King County Auditor's receiving number under which instrument is recorded:
 Date of Recording: See attached

F. Legal description of property owned:
See attached

STATE OF WASHINGTON)
) SS.
 COUNTY OF KING)
 Gerald and Miriam Andrus

_____, being duly sworn depose and say that I am/we are the owner(s) of the property/properties involved in this application and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of my/our knowledge and belief.

Gerald M Andrus
Miriam Andrus

SUBSCRIBED AND SWORN TO BEFORE ME this 8 day of NOV, 2012.



[Signature]
 Notary Public in and for the State of Washington, residing at KENT, WA
 My commission expires: 01/19/15

Section 1—Legal Description of rights-of-way to be vacated

R/W Adjacent to Andrus

15TH AVENUE SOUTH:

THE EAST HALF OF 15TH AVENUE SOUTH ADJACENT BLOCK 29, NEW ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 84, IN KING COUNTY, WASHINGTON.

ALLEY:

THE WEST HALF OF THE ALLEY ADJACENT TO BLOCK 29, NEW ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 84, IN KING COUNTY, WASHINGTON.

TOGETHER WITH THE EAST HALF OF THE ALLEY ADJACENT TO LOTS 1 THROUGH 8, INCLUSIVE, OF BLOCK 26, NEW ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 84, IN KING COUNTY, WASHINGTON.

R/W Adjacent to McCullough

ALLEY:

THE EAST HALF OF THE ALLEY ADJACENT TO LOTS 9 THROUGH 12, BLOCK 26, NEW ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 84, IN KING COUNTY, WASHINGTON.

R/W Adjacent to Mecklenburg

ALLEY:

THE EAST HALF OF THE ALLEY ADJACENT TO LOTS 13 THROUGH 16 BLOCK 26, NEW ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 84, IN KING COUNTY, WASHINGTON.

Section 4—Serving Utilities

Midway Sewer District
PO Box 3487
Kent, WA 98089

Puget Sound Energy Natural Gas and Electric
10885 Northeast 4th Street
Bellevue, WA 98004

Highline Water District
23828 30th Avenue South
Kent, WA 98032

CenturyLink Telephone
2800 Southcenter Mall
Tukwila, WA 98188

Comcast Cable
31423 Pacific Highway South
Federal Way, WA 98003

City of Des Moines Public Works Department Surface Water Management
21650 11th Avenue South
Des Moines, WA 98198-6317

South King Fire and Rescue
31617 1st Ave S.
Federal Way, WA 98003

Section 7—Ownership Acquisition

(Petitioners' Adjoining Parcels)

Parcel A (tax lot 605240-1630)

Acquired by Statutory Warrantee Deed, May 6, 1975 Rec #7505090631

Legal Description: THE EAST ONE-HALF OF LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 29, NEW ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 84, IN KING COUNTY, WASHINGTON.

Parcel B (tax lot 605240-1631)

Acquired by Quit Claim Deed, November 9, 2005 Rec #20051109000001

(Note, Originally acquire by Statutory Warrantee Deed in June 8, 1966, then condemned by State, then sold back to Andrus)

Legal Description: THE WEST ONE-HALF OF LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 29, NEW ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 84, IN KING COUNTY, WASHINGTON.

Parcel C (tax lot 605240-1655)

Acquired by Warrantee Fulfillment Deed, July 11, 1985 Rec #8507110908

Legal Description: LOTS 6 THROUGH 16, INCLUSIVE, OF BLOCK 29, NEW ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 84, IN KING COUNTY, WASHINGTON.

Parcel D (tax lot 605240-1420)

Acquired by Statutory Warrantee Deed January 30, 1989 Rec #8902030624

Legal Description: LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 26, NEW ADDITION TO DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 84, IN KING COUNTY, WASHINGTON.

Chapter 12.12 VACATION OF PUBLIC RIGHTS-OF-WAY¹

Sections

- 12.12.010 Short title.
- 12.12.020 Road classification.
- 12.12.030 Authority.
- 12.12.040 Procedures.
- 12.12.050 Fees and compensation.
- 12.12.060 Condition precedent.
- 12.12.070 Manner of payment.

12.12.010 Short title.

This chapter is known as and may be referred to as the "vacation of public rights-of-way code." [Ord. 1007 § 1, 1993.]

12.12.020 Road classification.

For the purposes of this chapter, all public rights-of-way within the city are declared to be within one of three classes:

(1) All streets or alleys that have been part of a dedicated public right-of-way for 25 years or more, all rights-of-way conveyed to or held by the city for transportation purposes for which public funds have been expended in the acquisition, improvement or maintenance of such rights-of-way interests, and rights-of-way that abut a body of fresh or salt water, are classified Class A rights-of-way.

(2) All city rights-of-way conveyed to or held by the city for transportation purposes for which no public funds have been expended in the acquisition of the same, excluding any Class A rights-of-way and any rights-of-way subject to being vacated by the provisions of section 32, chapter 19, Laws of 1889-90, are classified Class B rights-of-way.

(3) All city rights-of-way originally conveyed to the city by a party who subsequently petitions for the vacation of said rights-of-way for which no public expenditures have been made in the acquisition of the same and any rights-of-way or portions thereof subject to being vacated by the provisions of section 32, chapter 19, Laws of 1889-90; or any other rights-of-way not included within Classes A or B are classified Class C rights-of-way. [Ord. 1398 § 1, 2007; Ord. 1007 § 2, 1993.]

12.12.030 Authority.

Petitions for the vacation of city rights-of-way may be granted by the city council in accordance with the provisions of chapter 35.79 RCW, as presently constituted or as may be amended, and the city shall receive compensation as provided for in this chapter. [Ord. 1007 § 3, 1993.]

12.12.040 Procedures.

The procedures for the vacation of the public rights-of-way shall be as follows:

(1) The petition for rights-of-way vacation is filed with the public works director on a form prescribed by the public works director, and shall contain sufficient facts to enable the public works director to determine whether the petition(s) have complied with the provisions in this section and chapter 35.79 RCW as presently constituted or as may be subsequently amended.

(2) If the public works director, after a review of the petition, recommends approval of the vacation petition, it is transmitted to the city council who shall proceed under the provision cited in this section.

(3) If the public works director, after a review of the petition, recommends denial of the vacation petition, the following procedure is followed:

(a) Written notification is transmitted via certified mail to the petitioner(s) by the public works director citing the rationale for the denial and indicating that the denial may be appealed to the hearing examiner. A copy of the notice of denial shall be filed with the city clerk's office.

(b) The notice of denial is final unless the petitioner(s) files a written appeal with the hearing examiner within 15 days of the issuance of the notice of denial. The petitioner's written appeal shall specify the basis of the appeal and any arguments in support of the appeal.

(c) All matters dealing with the hearing examiner are conducted in accordance with the provisions of the hearing examiner code. [Ord. 1007 § 4, 1993.]

12.12.050 Fees and compensation.

(1) Each petition must be accompanied by an application fee to be set by administrative order of the city manager. Such fee is used to defray examination, report, publication, investigation, and other costs connected with the applications. Such fee shall not be returned to the petitioner.

(2) The amount of compensation, if required by this chapter, is determined by the city council according to the following criteria:

(a) Vacation of all city rights-of-way included in Class A, if granted, shall require compensation at the full appraised value as of the effective date of the vacation; or, which amount, for the purposes of this chapter, may be determined from the records of the King County department of assessments or by informal or formal appraisal; provided, that the city council shall have the authority to accept real property of equal or greater value in lieu of cash compensation.

(b) Vacation of all city rights-of-way included in Class B, if granted, shall require compensation at 50 percent of the full appraised value as of the effective date of the vacation, which amount, for the purposes of this chapter, may be determined from the records of the King County department of assessments or by informal or formal appraisal.

(c) Vacation of all city rights-of-way included in Class C, if granted, requires no compensation.

(d) When a right-of-way is vacated for a governmental agency, compensation shall be in accordance with the classification of the right-of-way.

(e) The city council may waive some or all of the compensation for any classification of right-of-way, if it determines that such action would benefit the residents of the city. [Ord. 1398 § 2, 2007: Ord. 1007 § 5, 1993.]

12.12.060 Condition precedent.

Payment of compensation is a condition precedent to the final vacation of any city right-of-way and shall be paid to the city by responsible parties within 90 days of receipt of the request for compensation prepared by the city, unless otherwise approved by the city council or waived in accordance with DMMC 12.12.050(2)(e). In the event of the failure of the responsible parties to pay such sum within 90 days, unless otherwise allowed by the city council, the petition of vacation shall be denied except that if a right-of-way proposed for vacation is bordered by more than one parcel of property and if the owners of some, but not all, of those parcels want to have those portions abutting their properties vacated and are willing to pay their prorated share of the required compensation, the public works director may so modify the vacation request. [Ord. 1418 § 1, 2007: Ord. 1007 § 6, 1993.]

12.12.070 Manner of payment.

Payment is made to the finance director and shall be credited as follows:

(1) Revenue received by the city as compensation for the area vacated, excluding revenue received as compensation for vacation of rights-of-way that abut a body of fresh or salt water, shall be dedicated to the acquisition, improvement, development, and related maintenance of public transportation capital projects within the city.

(2) Revenue received by the city as compensation for vacation of rights-of-way that abut a body of fresh or salt water shall be dedicated to the acquisition of additional beach or water access, acquisition of additional public view sites to a body of water, or acquisition of additional moorage or launching areas. [Ord. 1398 § 3, 2007: Ord. 1007 § 7, 1993.]

¹Prior legislation: Ords. 116, 129 and § 1(o) of 454, all repealed by Ord. 1007.

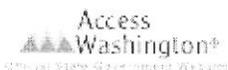


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[RCWs](#) > [Title 35](#) > [Chapter 35.79](#)

Chapter 35.79 RCW STREETS — VACATION

[Chapter Listing](#)

RCW Sections

- [35.79.010](#) Petition by owners -- Fixing time for hearing.
- [35.79.020](#) Notice of hearing -- Objections prior to hearing.
- [35.79.030](#) Hearing -- Ordinance of vacation.
- [35.79.035](#) Limitations on vacations of streets abutting bodies of water -- Procedure.
- [35.79.040](#) Title to vacated street or alley.
- [35.79.050](#) Vested rights not affected.

35.79.010 Petition by owners — Fixing time for hearing.

The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the legislative authority to make vacation, giving a description of the property to be vacated, or the legislative authority may itself initiate by resolution such vacation procedure. The petition or resolution shall be filed with the city or town clerk, and, if the petition is signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated, legislative authority by resolution shall fix a time when the petition will be heard and determined by such authority or a committee thereof, which time shall not be more than sixty days nor less than twenty days after the date of the passage of such resolution.

[1965 c 7 §

[35.79.010](#). Prior: 1957 c 156 § 2; 1901 c 84 § 1, part; RRS § 9297, part.]

35.79.020 Notice of hearing — Objections prior to hearing.

Upon the passage of the resolution the city or town clerk shall give twenty days' notice of the pendency of the petition by a written notice posted in three of the most public places in the city or town and a like notice in a conspicuous place on the street or alley sought to be vacated. The said notice shall contain a statement that a petition has been filed to vacate the street or alley described in the notice, together with a statement of the time and place fixed for the hearing of the petition. In all cases where the proceeding is initiated by resolution of the city or town council or similar legislative authority without a petition having been signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated, in addition to the notice hereinabove required, there shall be given by mail at least fifteen days before the date fixed for the hearing, a similar notice to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, as shown on the rolls of the

county treasurer, directed to the address thereon shown: PROVIDED, That if fifty percent of the abutting property owners file written objection to the proposed vacation with the clerk, prior to the time of hearing, the city shall be prohibited from proceeding with the resolution.

[1965 c 7 §

35.79.020. Prior: 1957 c 156 § 3; 1901 c 84 § 1, part; RRS § 9297, part.]

35.79.030

Hearing — Ordinance of vacation.

The hearing on such petition may be held before the legislative authority, before a committee thereof, or before a hearing examiner, upon the date fixed by resolution or at the time the hearing may be adjourned to. If the hearing is before a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If the hearing is held before a committee it shall not be necessary to hold a hearing on the petition before the legislative authority. If the hearing is before a hearing examiner, the hearing examiner shall, following the hearing, report its recommendation on the petition to the legislative authority, which may adopt or reject the recommendation: PROVIDED, That the hearing examiner must include in its report to the legislative authority an explanation of the facts and reasoning underlying a recommendation to deny a petition. If a hearing is held before a hearing examiner, it shall not be necessary to hold a hearing on the petition before the legislative authority. If the legislative authority determines to grant the petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated. The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. One-half of the revenue received by the city or town as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town.

[2011 c 130 § 1; 2002 c 55 § 1; 2001 c 202 § 1; 1987 c 228 § 1; 1985 c 254 § 1; 1969 c 28 § 4. Prior: 1967 ex.s. c 129 § 1; 1967 c 123 § 1; 1965 c 7 §

35.79.030 ; prior: 1957 c 156 § 4; 1949 c 14 § 1; 1901 c 84 § 2; Rem. Supp. 1949 § 9298.]

35.79.035

Limitations on vacations of streets abutting bodies of water — Procedure.

(1) A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless:

(a) The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

(b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching

sites, park, public view, recreation, or education; or

(c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.

(2) Before adopting a resolution vacating a street or alley under subsection (1)(b) of this section, the city or town shall:

(a) Compile an inventory of all rights-of-way within the city or town that abut the same body of water that is abutted by the street or alley sought to be vacated;

(b) Conduct a study to determine if the street or alley to be vacated is suitable for use by the city or town for any of the following purposes: Port, boat moorage, launching sites, beach or water access, park, public view, recreation, or education;

(c) Hold a public hearing on the proposed vacation in the manner required by this chapter, where in addition to the normal requirements for publishing notice, notice of the public hearing is posted conspicuously on the street or alley sought to be vacated, which posted notice indicates that the area is public access, it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to a particular official indicating his or her objection; and

(d) Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under (b) of this subsection, and that the vacation is in the public interest.

(3) No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. Moneys received from the vacation may be used by the city or town only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites.

[1987 c 228 § 2.]

35.79.040

Title to vacated street or alley.

If any street or alley in any city or town is vacated by the city or town council, the property within the limits so vacated shall belong to the abutting property owners, one-half to each.

[1965 c 7 §

35.79.040. Prior: 1901 c 84 § 3; RRS § 9299.]

35.79.050

Vested rights not affected.

No vested rights shall be affected by the provisions of this chapter.

[1965 c 7 §

35.79.050. Prior: 1901 c 84 § 4; RRS § 9300.]

RIGHT-OF-WAY VACATION CHECK LIST – SV2012-002 7/1/13

Name of Petitioner(s) Gerald and Miriam Andrus

Right-of-way to be vacated: **Street** East half of 15th Ave. S. (between S. 222nd Street and S. 223rd Street)
Alley 20' wide unopened (between 15th Ave. S and 16th Ave S.)

- | | | |
|----|--|---|
| 1. | Name of Plat and date of addition under which the right-of-way was dedicated: | New Addition to the Town of Des Moines, January 1890 |
| 2. | What percent of the adjacent ownerships have petitioned in favor of the vacation? | 50%; 2 out of 4. The applicant owns the abutting frontage to 83.3% of the petitioned ROW vacation. The other two have submitted letters in support. |
| 3. | Was the street/alley in a plat filed before March 12, 1904, thus making it eligible for vacation by operation of law (Sect. 32, Ch. 19, Laws of 1889-90) if it was not opened before March 12, 1904? | Yes |
| 4. | Is the right-of-way currently used for public access by vehicular traffic? Or pedestrian traffic? | No - Unopened Right of Way |
| 5. | Is the right-of-way the only access to other parcel ownerships? | No |
| 6. | What impact will vacating the right-of-way have on the overall traffic circulation in the area? | None |
| 7. | Does the right-of-way provide access to any shorelines, streams or other recreational areas? | No |
| 8. | Is the right-of-way proposed for vacation adjacent to another agency (city, county)? | No, however WSDOT owns the property adjacent to the west half of 15 th Ave S. |
| 9. | Which utilities currently have facilities in the right-of-way? | PSE
Midway Sewer District |

10. Which utilities have requested retention of an easement?

Midway Sewer District
PSE

UTILITY COMPANY

EASEMENT

Midway Sewer District

20' over existing facilities along the length of the alley, 20' along eastern side of 15th Ave.

PSE

10' over existing facilities along the length of the alley

11. Police Department Comments:

No Concerns

12. Fire District Comments:

No Concerns

13. Staff Recommendations:

Vacate public R-O-W as requested by petition.

RESOLUTION NO. 1229

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

WHEREAS, the City Council is considering vacation of portions of public rights-of-way known as the east half of 15th Avenue South and the alley east thereof, between South 222nd Street and South 223rd Street located in the City of Des Moines as shown on Exhibit "A", attached hereto and incorporated by reference, by the petition method, and

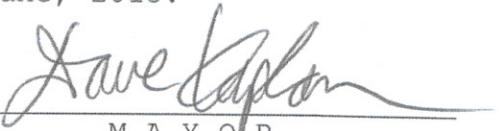
WHEREAS, the provisions of RCW 35.79.010 authorize the City Council to fix a time for a public hearing in order to receive public comment regarding this proposal; now therefore,

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

The matter of the vacation of the following described portions of public rights-of-way in the City of Des Moines is set for a public hearing before the City Council on Thursday, July 11, 2013 at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue So., Suite B, Des Moines, Washington:

The east half of 15th Avenue South and the alley east thereof, between South 222nd Street and South 223rd Street located in the City of Des Moines as shown on Exhibit "A", attached hereto.

ADOPTED BY the City Council of the City of Des Moines, Washington this 6th day of June, 2013 and signed in authentication thereof this 6th day of June, 2013.


MAYOR

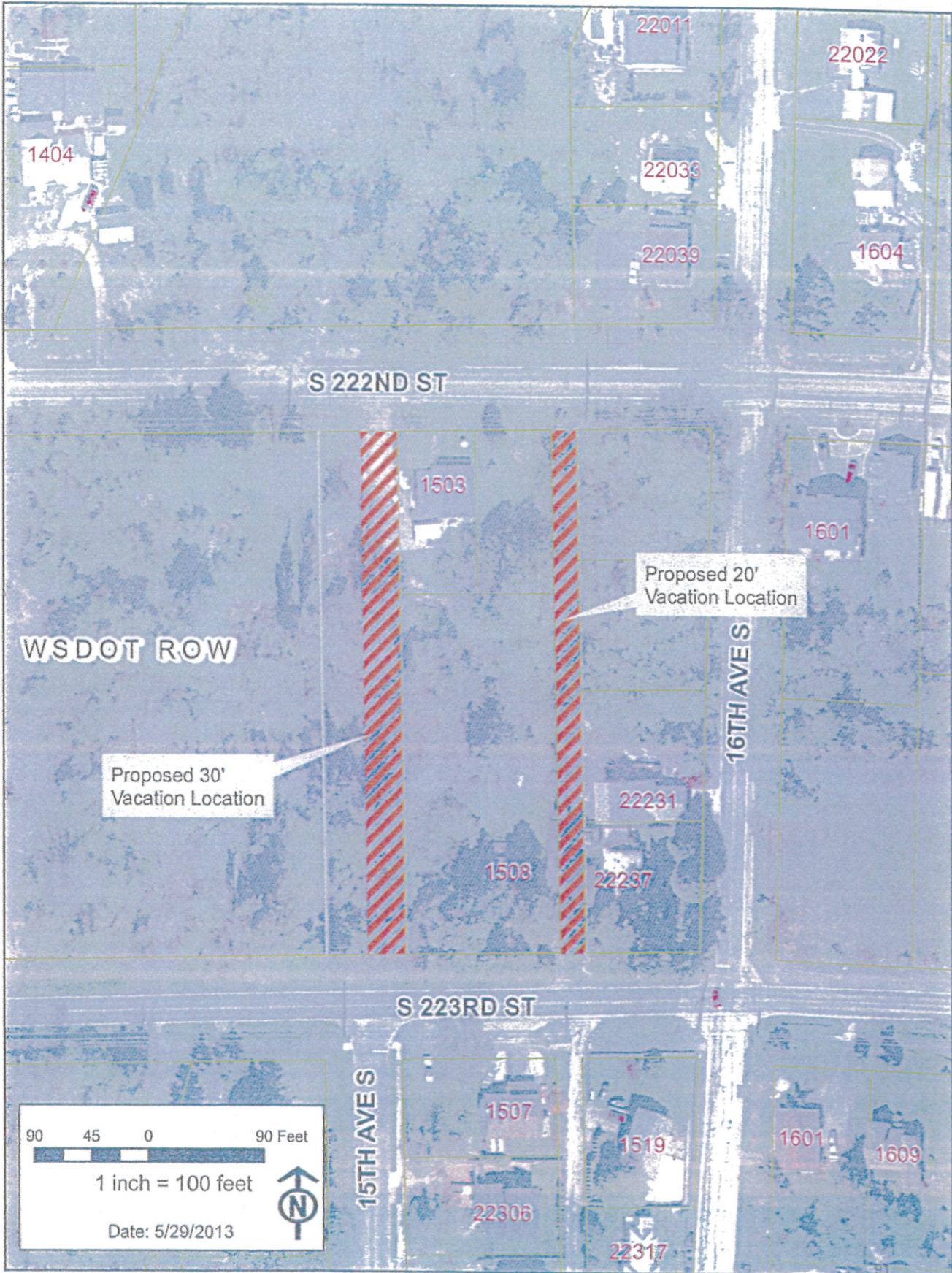
APPROVED AS TO FORM:


Assistant City Attorney

ATTEST:


City Clerk

Exhibit A



AGENDA ITEM

SUBJECT: Emergency Resolution 13-155
Accepting Findings of Fact That An
Emergency Existed

AGENDA OF: July 11, 2013

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: June 25, 2013

ATTACHMENTS:

1. Draft Resolution No. 13-155
2. Proclamation of Emergency
3. Contract with Global Diving & Salvage –
Not to exceed \$100,000 (Dock Demo &
Clean up)
4. Contract with Global Diving & Salvage -
\$3500 Estimate – (Recover Submerged
Vessel)
5. Contract with Moffat & Nichol for Design
not to exceed \$18,785
6. Contract with Wood Harbinger for
Electrical Repair – Not to exceed \$23,232

CLEARANCES:

- Legal _____
- Finance _____
- Marina _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose:

The purpose of this agenda item is to seek Council approval to waiver of competitive bidding requirements for contracts authorized by the City Manager as a result of the June 23, 2013 fire on the Marina “J” Dock, as an emergency measure as declared by the June 24, 2013 Proclamation of Emergency.

Suggested Motion

“I move to adopt Draft Resolution Number 13-155 to allow the waiver of competitive bidding requirements for contracts authorized by the City Manager pursuant to the June 24, 2013 Proclamation of Emergency pursuant to RCW 39.04.280.

Background and Discussion:

On June 23, 2013 at approximately 10:15 P.M., the City experienced a fire in the Marina on “J” Dock which represented a real and immediate threat to the Marina and the surrounding Puget Sound aquatic environment.

In response, a Proclamation of Emergency was issued by the Assistant City Manager on June 24, 2013, thereby waiving competitive bidding requirements and award of professional services and public works contracts for any emergency related work. Staff was also directed to provide Council with the written findings to support the existence of this emergency.

The City Council was briefed on the situation by e-mail on June 23, 2013 and has been kept updated on a regular basis since the event including formal notification at the June 27, 2013 council meeting.

The City is contracting with Moffatt & Nichol, Wood Harbinger, IMCO, and Global Diving & Salvage to provide immediate site remediation, emergency structural repairs, and permanent rebuilding of "J" Dock. They have helped the City during emergency situations in the past, and they have always performed the necessary repairs professionally and expeditiously.

The Department of Fish and Wildlife has issued the City a three (3) week permit commencing June 24, 2013 to remediate and stabilize "J" Dock and the surrounding Puget Sound aquatic environment.

City Staff will provide an update and briefing to the Council on July 11th.

Financial Impact:

Costs for the site remediation, emergency structural repairs, and subsequent rebuilding of "J" Dock are unknown at this time. It is expected that the insurance of the owner of the boat upon which the fire started will participate in funding this effort. The balance of the funds, however, will most likely come from the City's insurance provider WCIA or their excess coverage carrier McLarens. The City should not expect to receive any emergency relief funds from the State or Federal Government.

Recommendation/Conclusion:

Approve the Draft Resolution.

Concurrence:

Executive, Planning, Building & Public Works, Legal, Finance, and Marina Departments concur.

CITY ATTORNEY'S FIRST DRAFT 07/03/13**DRAFT RESOLUTION NO. 13-155**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, accepting findings that an emergency existed on June 23, 2013, which justified the City's entering into emergency contracts to repair and remediate the effects of a fire in the Marina on "J" Dock and to ratify the actions taken and the waiver of the competitive bid laws pursuant to state law and the June 24, 2013 Proclamation of Emergency.

WHEREAS, on Sunday, June 23, 2013 at approximately 10:15 P.M., the City experienced a fire in the Marina on "J" Dock which represented a real and immediate threat to the Marina and the surrounding Puget Sound aquatic environment, and

WHEREAS, RCW 39.04.280(1)(e) allows for the waiver of competitive bidding for contracts for emergency expenditures caused by unanticipated occurrences for the restoration to a condition of usefulness of any public property which has been damaged or destroyed or for public relief from an unanticipated emergency; and

WHEREAS, on June 24, 2013, a Proclamation of Emergency was issued by the Acting City Manager, thereby waiving competitive bidding requirements and award for any emergency related work, and

WHEREAS, emergency related work included efforts to secure and stabilize the Marina and the surrounding Puget Sound aquatic environment, and

WHEREAS, the City entered into emergency professional services and public works construction contracts to respond to, the remediation of the site, the emergency structural stabilization of "J" Dock, and the subsequent rebuilding of "J" Dock to its previous condition prior to the fire, and

WHEREAS, The City Council was formally briefed on the situation on June 27, 2013; now therefore,

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

Sec. 1. The foregoing recitals are adopted as findings of fact.

Draft Resolution No. 13-155
Page 2 of 2

Sec. 2. The City Council finds that, under these circumstances, an emergency existed as defined by RCW 39.04.280(3), justifying execution of a construction contract and professional services contracts without compliance with competitive bidding requirements of state law including a contract with Global Diving and Salvage for an amount not to exceed \$100,000.

Sec. 3. The Des Moines City Council does hereby ratify the actions taken and the waiver of the competitive bid laws pursuant to state law and the June 24, 2013 Proclamation of Emergency.

ADOPTED BY the City Council of the City of Des Moines, Washington this 27th day of June, 2013 and signed in authentication thereof this 27th day of June, 2013.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

PROCLAMATION OF EMERGENCY

WHEREAS, Des Moines staff has reported to the City Manager, beginning at approximately 10:00 p.m. on June 23, 2013, there was a fire on "J" dock of the Des Moines Marina that damaged several boats as well as the infrastructure of the moorage facility, and

WHEREAS, these problems may last for a significant period of time and cause a threat to life and property, and

WHEREAS, this constitutes an emergency as defined by the City of Des Moines Comprehensive Emergency Management Plan and necessitates the utilization of emergency powers granted pursuant to chapter 2.36 DMMC, RCW 36.40.180, and RCW 38.52.070(2); now therefore,

BE IT PROCLAIMED by the City Manager of the City of Des Moines that an emergency exists in the City of Des Moines; therefore, the Des Moines Director of Emergency Management and City departments are authorized to take emergency actions and to provide emergency services to protect the health and safety of persons and property pursuant to the City of Des Moines Comprehensive Emergency Management Plan ("Plan") chapter 38.52 RCW, and chapter 2.36 DMMC. As directed pursuant to the Plan, each City department is authorized to exercise the powers vested under this proclamation to enter into contracts and to incur obligations necessary to combat such victims of such disaster in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements).

DATED this 24th day of June, 2013.

CITY OF DES MOINES

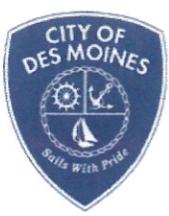


 Acting City Manager

APPROVED AS TO FORM:



 Des Moines City Attorney



CONTRACT
between City of Des Moines and
GLOBAL DIVING & SALVAGE, INC.

THIS CONTRACT is made and entered into this 27th day of June, 2013, by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and GLOBAL DIVING & SALVAGE, INC. organized under the laws of the State of Washington, located and doing business at 3840 W. Marginal Way SW, Seattle, WA 98106 (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

Contractor shall perform the services for the City as specifically described in Exhibit "A" Scope and Schedule of Work, attached hereto and incorporated herein by reference.

J Dock Fire Damage Removal as outlined in the attached Scope of Work

- a. Contractor represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.
- b. The Contractor shall provide and furnish any and all labor, materials, tools, equipment and utility and transportation services along with all miscellaneous items necessary to perform this Contract except for those items mentioned therein to be furnished by the City.
- c. All work shall be accomplished in a workmanlike manner in strict conformity with the attached plans and specifications including any and all Addenda issued by the City, City Regulations and Standards, other Contract Documents hereinafter enumerated.

In addition, the work shall be in conformance with the following documents, if applicable, which are by reference incorporated herein and made part hereof:

- (i) the Standard Specifications of the Washington State Department of Transportation (WSDOT) (current edition);
- (ii) the American Public Works Association (APWA) (current edition);
- (iii) the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (current edition);
- (iv) the Standard Plans for Road, Bridge and Municipal Construction (as prepared by the WSDOT/APWA current edition);
- (v) the American Water Works Association Standard (AWWA) (current edition), and;
- (vi) shall perform any changes in the work in accord with the Contract Documents.

d. Any inconsistency in the parts of the Contract and the documents referenced in section I c above shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Terms and provisions of the Contract and scope of work
2. Addenda,
3. Proposal Form,
4. Special Provisions, including APWA General Special Provisions, if they are included,
5. Contract Plans,
6. Amendments to the Standard Specifications,
7. WSDOT Standard Specifications for Road, Bridge and Municipal Construction,
8. Contracting Agency's Standard Plans (if any), and
9. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

II. TIME OF COMPLETION. The parties agree that work on the tasks described in Section I above and more specifically detailed in Exhibit A attached hereto will begin immediately upon execution of this Contract. Upon the effective date of this Contract, the Contractor shall complete the work described in Section I Est. 2-3 weeks to complete, project will be completed on or before August 2, 2013.

III. COMPENSATION. The City shall pay the Contractor on a time and material basis **in an amount not to exceed \$100,000** as detailed in the attached scope of work plus any applicable Washington State Sales Tax, for the work and services contemplated in this Contract. Any amount exceeding the \$100,000 contract limit will require prior

written approval of the City. The Contractor shall invoice the City on a Weekly basis. The City will make payment within 45 days of receipt of the invoice. The City's payment shall not constitute a waiver of the City's right to final inspection and acceptance of the project.

- A. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted within 30 days upon entering into this Contract, through a bonding company meeting standards established by the City.
- B. Defective or Unauthorized Work. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor 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 the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor. Notwithstanding the terms of this section, the City's payment to contractor for work performed shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.
- C. Final Payment: Waiver of Claims. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

IV. INDEPENDENT CONTRACTOR. The parties understand and agree that Contractor is a firm skilled in matters pertaining to construction and will perform independent functions and responsibilities in the area of its particular field of expertise. Contractor and its personnel, subcontractors, agents and assigns, shall act as independent contractors and not employees of the City. As such, they have no authority to bind the

City or control employees of the City, contractors, or other entities. The City's Planning, Building and Public Works Director or his or her designated representative shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

The Contractor acknowledges that all mandatory deductions, charges and taxes imposed by any and all federal, state, and local laws and regulations shall be the sole responsibility of the Contractor. The Contractor represents and warrants that all such deductions, charges and taxes imposed by law and/or regulations upon the Contractor are, and will remain, current. If the City is assessed, liable or responsible in any manner for those deductions, charges or taxes, the Contractor agrees to indemnify and hold the City harmless from those costs, including attorney's fees.

V. TERMINATION. The City may terminate this Contract for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Contract.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.
- F. The Contractor's breach of any portion of this Contract.

If the City terminates this Contract for good cause, the Contractor shall not receive any further money due under this Contract until the Contract work is completed. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project which may be used by the City without restriction.

VI. PREVAILING WAGES. Contractor 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 Contractor'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. Contractor shall pay prevailing wages in effect on the date the bid is accepted or executed by Contractor, 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 Contractor. It shall be the responsibility of Contractor to require all subcontractors to comply with Chapter 39.12 RCW and this section of the Contract.

VII. Compliance with Wage, Hour, Safety, and Health Laws. The Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 29 U.S.C. 201 et seq, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq, the Washington Industrial Safety and Health Act, Chapter 49.17 RCW, and any other state or federal laws applicable to wage, hours, safety, or health standards.

VIII. Workers' Compensation. The Contractor shall maintain Workers' Compensation insurance in the amount and type required by law for all employees employed under this Contract who may come within the protection of Workers' Compensation Laws. In jurisdictions not providing complete Workers' Compensation protection, the Contractor shall maintain Employer's Liability Insurance in the amount, form and company satisfactory to the City for the benefit of all employees not protected by Workers' Compensation Laws.

The Contractor shall make all payments arising from the performance of this Contract due to the State of Washington pursuant to Titles 50 and 51 of the Revised Code of Washington.

Whenever any work by the Contractor under the authority of this Contract is on or about navigable waters of the United States, Workers' Compensation coverage shall be extended to include United States Longshoreman and harbor worker coverage. The Contractor shall provide the City with a copy of the necessary documentation prior to the start of any activity.

IX. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Contract, section XXII(C), within seven (7) calendar days of the date Contractor 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 Contractor'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 Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section XIII, Claims, below.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor 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.

X. CLAIMS. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the City of all claims within seven (7) calendar days of the occurrence of the events giving rise to the claims, or within seven (7) calendar days of the date the Contractor 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 Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Contractor'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 Contractor'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 Contractor is asserting a schedule change or disruption.
- B. Records. The Contractor 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 Contractor'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. Contractor's Duty to Complete Protested Work. In spite of any claim, the Contractor 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 Contractor 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 Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

XI. LIMITATION OF ACTIONS. CONTRACTOR 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 CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

XII. WARRANTY. Upon acceptance of the contract work, Contractor must provide the City a warranty bond for one year in the amount of the contract value specified in Section III above and in a form acceptable to the City. In the event any defects are found within the first year, the warranty bond shall be extended for an additional year. The Contractor 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 parts are repaired or replaced, 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 Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

XIII. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any sub-contract, the Contractor, its sub-contractors, or any person acting on behalf of the Contractor 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.

XIV. INDEMNIFICATION. Contractor 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 Contract, except for injuries and damages caused by the sole negligence of the City.

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

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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

XV. INSURANCE. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

No Limitation. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor 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

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-

Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

C. Other Insurance Provisions

The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor'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

Contractor 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 insurance of the Contractor before commencement of the work.

F. Subcontractors

The Contractor shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

E. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

F. Failure to Maintain Insurance

Failure on the part of the Contractor 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 Contractor 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 Contractor from the City.

XVI. WORK PERFORMED AT CONTRACTOR'S RISK. Contractor 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 Contractor's own risk, and Contractor 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.

XVII. Bond - Separate Payment and Performance Bond Required. Pursuant to Chapter 39.08 RCW, the Contractor shall, prior to the execution of the Contract, furnish both a performance bond and a payment bond to the City, both in the amount of \$100,000 with a surety company as surety. The purpose of the bonds is to ensure that the Contractor shall faithfully perform all the provisions of this Contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such Contractor or subcontractors with provisions and supplies for the carrying on of such work. Such bonds shall provide that any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original Contractor. In addition, the surety company providing such bond shall agree to be bound to the laws of the state of Washington, and subjected to the jurisdiction of the state of Washington and the King County Superior Court in any proceeding to enforce the bond. This Contract shall not become effective until said bond is supplied and approved by the Engineer and filed with the City Clerk.

In the event that the Compensation called for in Section III of this Contract is less than \$35,000.00, which sum shall be determined after the addition of applicable Washington State sales tax, the Contractor may, prior to the execution to this contract and in lieu of the above mentioned bond, elect to have the City retain 50% of the contract amount for a period of either thirty (30) days after final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

XVIII. Debarment. The Contractor must certify that it, and its subcontractors, have not been and are not currently on the Federal or the Washington State Debarment List and if the Contractor or its subcontractors become listed on the Federal or State Debarment List, the City will be notified immediately.

XIV. 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.

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 XVII 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 Contractor.

F. Compliance with Laws. The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

G. 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.

H. Business License. Contractor shall comply with the provisions of Title 5 Chapter 5.04 of the Des Moines Municipal Code.

I. 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.

J. 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, then the order of precedence shall be in accordance with Section I c of this Contract.

K. Severability. If any one or more sections, sub-sections, or sentences of this Contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Contract and the remainder shall remain in full force and effect.

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

<p>CONTRACTOR:</p> <p>By: <u><i>D. S. Green</i></u> <small>(signature)</small></p> <p>Print Name: <u><i>D. Green</i></u> Its <u><i>President</i></u> <small>(Title)</small></p> <p>DATE: <u><i>6.27.13</i></u></p>	<p>CITY OF DES MOINES:</p> <p>By: <u><i>Anthony A. Piasecki</i></u> <small>(signature)</small></p> <p>Print Name: <u>Anthony A. Piasecki</u> <i>Lois A. Ericson</i> Its <u><i>Acting</i></u> City Manager <small>(Title)</small></p> <p>DATE: <u><i>6-27-2013</i></u></p>
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	<p>Approved as to Form:</p> <p>_____</p> <p>City Attorney</p> <p>DATE: _____</p>
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<p>NOTICES TO BE SENT TO:</p> <p>CONTRACTOR:</p> <p>Devon Grennan, President Global Diving & Salvage, Inc. 3840 W. Marginal Way SW Seattle, WA 98106</p> <p>206-623-0621 (telephone) 206-932-9036 (facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Anthony A. Piasecki, City Manager City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-878-4595 (telephone) 206-870-6540 (facsimile)</p>
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Exhibit A

Scope of work:

- Steel and aluminum will be segregated to maximize recycle value and minimize disposal costs (all funds will be applied against the invoice or paid directly to the City of Des Moines)
- Global will work as directed with the City of Des Moines structural engineer on the dismantling approach and plan.
- Global will provide all labor, equipment, and materials necessary.
- The demolition pricing is limited to the overhead structure and fire damaged finger piers near the source of the fire
- Global will work with the City of Des Moines to minimize the number of boats that need to be shifted and provide access to boat owners on the west end of the dock.
- City of Des Moines will secure applicable building department permits for the project
- City of Des Moines will be generator for all disposal

Work to be performed on a time and materials basis with the following rough estimates:

Rough order of magnitude numbers for the structure demo is: \$60K- \$75K (based on 12 hours/ day commencing with onsite operations 6.27.13 through 6.30.13)

Rough order of magnitude numbers for the 7 boat demo is: \$15K (based on 12 hours/ day commencing with onsite operations 6.27.13 through 6.28.13)

Rough order of magnitude numbers for pressure washing the roof interior is: \$25K (based on 12 hours/ day commencing with onsite operations after July 4th, with anticipated duration of 5 days) Duration accommodates scaffolding, debris mitigation into water, and shifting boats

EXHIBIT A



**PACIFIC NORTHWEST REGION
MARINE AND ENVIRONMENTAL SERVICES TARIFF
Updated: February 2013**

Charges will commence from the time authorization to proceed is received and will include time to transport equipment and personnel to the job site. Charges will terminate at conclusion of the operation which includes demobilization, restock, and clean-up of contractor's equipment and transportation of personnel and equipment back to the contractor's operation center.

PERSONNEL

	Description	ST/HR	OT/HR	PT/HR
Diving/Salvage	Salvage Master	\$ 150.00	\$ 200.00	\$ 250.00
	Project Engineer	\$ 120.00	\$ 180.00	\$ 200.00
	Operating Engineer (crane, winch, etc.)	\$ 65.00	\$ 85.00	\$ 105.00
	Superintendent	\$ 105.00	\$ 139.00	\$ 173.00
	Dive Supervisor	\$ 176.00	\$ 239.00	\$ 302.00
	Diver	\$ 173.00	\$ 235.00	\$ 297.00
	Standby Diver	\$ 96.00	\$ 127.00	\$ 158.00
	Tender	\$ 88.00	\$ 116.00	\$ 144.00
	Pilebuck/Crew Standby/Salvage/Lighting	\$ 82.00	\$ 107.00	\$ 132.00
	ROV Operator	\$ 88.00	\$ 116.00	\$ 144.00
	Rack Operator	\$ 96.00	\$ 128.00	\$ 159.00
	Shop/Travel	\$ 55.00	\$ 65.00	\$ 75.00
Environmental/Remediation	Project Manager	\$ 135.00	\$ 135.00	\$ 135.00
	Assistant Project Manager	\$ 90.00	\$ 90.00	\$ 90.00
	ICS Personnel (Operations, Logistics, & Planning)	\$ 90.00	\$ 90.00	\$ 90.00
	Project Accountant	\$ 60.00	\$ 60.00	\$ 60.00
	Supervisor	\$ 60.00	\$ 72.00	\$ 80.00
	Foreman	\$ 50.00	\$ 60.00	\$ 72.00
	Heavy Equipment Operator	\$ 60.00	\$ 74.00	\$ 88.00
	Vessel Operator	\$ 60.00	\$ 74.00	\$ 88.00
	Remediation Technician (HAZWOPER certified)	\$ 48.00	\$ 55.00	\$ 65.00
	Skilled Laborer (HAZWOPER certified)	\$ 42.00	\$ 55.00	\$ 65.00
Mechanic	\$ 45.00	\$ 55.00	\$ 65.00	
Depth Premium	Description	Rate		
	51 to 100 feet	\$4.00/ft		
	101 to 150 feet	\$5.50/ft		
	151 to 220 feet	\$7.50/ft		
	221 feet and above	\$9.00/ft		
Penetration Premium	1 to 300 feet	\$2.00/ft/dive		
	Over 300 feet	Negotiable		

3840 W Marginal Way SW • Seattle, WA 98106 • WWW.GDIVING.COM • 24 Hr: (206) 623-0621 • Fax: (206) 932-9036



Notes:

- 1 Non-Emergency Environmental/Remediation Projects: Minimum call out is 4 hours/person/day for scheduled projects
ST: regular business hours from 0700-1530, with a non-chargeable 1/2 hour lunch
OT: any hours between 1530 and 0700 on the weekdays, and all time on Saturday.
PT: Sunday and all holidays annually, including New Year's Day, President's Day, Memorial Day, 4th of July, Labor Day, Veteran's Day, Thanksgiving Day, day after Thanksgiving, Saturday after Thanksgiving, and Christmas Day.
- 2 Emergency Diving/Environmental/Remediation Projects: Minimum call out 12 hours/person/day for unscheduled and out of town projects
ST: regular business hours from 0700-1530, with a chargeable lunch
OT: any hours after 1530 to 0700 on the weekdays, and all time on Saturday.
PT: Same as Non - Emergency Environmental/Remediation Projects
- 3 Per Diem (lodging and subsistence) is per person per day based on the applicable CONUS rates. Rates for premium locations or remote locations to be determined. All other personnel incidental costs to be billed at cost + 20%.
- 4 Special shifts may be arranged but only under special circumstances and only if on an ongoing nature and agreed to in writing
- 5 Diving Projects: Four hour minimum will apply to diver, standby diver, and tender during ST
Four hour minimum will apply to all personnel during OT and PT, except holidays
Eight hour minimum will apply to all personnel for holiday work
Eight hour minimum will apply to the diver when recompression is required
A supervisor will be used on all mixed gas dives and air dives of a particularly hazardous nature, or requiring unusually large crews. Under normal circumstances, the on-scene diver and/or tender will assume designated PIC responsibilities.
- 6 Depth Premium: Charges will be based on a per foot, per dive, per diver schedule. Depths will be ascertained mechanically, and based on mean sea level
- 7 Penetration Premium: Charges will be based on a per foot, per dive, per diver schedule. Applies where necessary for diver to enter pipes or tunnels or other enclosures where there is no vertical ascent and diver must travel more than ten feet from entrance. A second diver acting as an in-water tender may be required, and will be invoiced at appropriate rates.
- 8 If necessary, Global reserves the right to increase published labor rates if necessary due to increased insurance, liability, and other costs. Global will provide documentation as needed. These rates do not reflect prevailing wages. All diving and salvage rates are based on working rules and conditions for Western Washington Master Agreement (PNRCC).

Special Notes:

- 1 Dive Safety: all diving operations will be conducted in accordance with the Global Diving & Salvage, Inc. Manual of Safe Diving Practices, and all appropriate federal, state, and local regulations regarding diving operations. Final authority as to the safety of any given diving operation shall rest solely with the Global dive supervisor or designated person in charge.

Contractor shall furnish as necessary all available labor, equipment, and materials to perform pollution or marine services as requested and to comply with all federal, state, and local regulations.
- 2
- 3 All services are covered by a complete liability insurance policy, and workman's compensation policies, including USLH or MEL.
- 4 Federal, state, and local taxes will be added where applicable.

	Description	Unit	Rate
Containment Boom	Contractor Boom, 8" x 12"	Ft/Day	\$ 1.50
	Standby	Ft/Day	\$ 0.25
	Permanent Boom, 24"	Ft/Day	\$ 1.75
	Standby	Ft/Day	\$ 0.35
	Marina Boom, 4" x 4"	Ft/Day	\$ 1.25
	Standby	Ft/Day	\$ 0.25
	Anchoring Gear, 40 lb	Day	\$ 20.00
	Boom Lights	Day	\$ 7.00
Oil Recovery Equipment	Foxtail Vertical Band Adhesion	Day	\$ 800.00
	Includes pump and powerpack		
	RBS-5 Aquaguard Drum Skimmer	Day	\$ 600.00
	Includes pump and powerpack	Stby Day	\$ 350.00
	4" Rope Mop	Day	\$ 250.00
	Includes 5 kW gen set		
	3" Weir Skimmer	Day	\$ 150.00
Includes pump			
MI-2 Disc Skimmer	Day	\$ 200.00	
Includes 12v power supply			
Temporary Storage	55 Gallon Drum	Day	\$ 4.00
	95 Gallon Poly Over-Pack	Day	\$ 15.00
	250 Gallon Tank (Stainless & Poly)	Day	\$ 60.00
	275 Gallon Stainless Tote Tank	Day	\$ 65.00
	350 Gallon Stainless Steel Tote Tank	Day	\$ 70.00
	500 Gallon Fast Tank	Day	\$ 75.00
Vessels	14' Operational Vessel	Hr	\$ 35.00
	15'-17' Operational Vessel	Hr	\$ 50.00
	18' - 22' Operational Vessel	Hr	\$ 80.00
	23' Aluminum; 130 HP (Pacman)	Hr	\$ 100.00
	24' Aluminum; 50HP (Titan)	Hr	\$ 100.00
	27' Steel Pushboat; single screw (Archie)	Hr	\$ 120.00
	29' Aluminum; single screw (Blue Parrot)	Hr	\$ 125.00
	32' Aluminum; 425 HP (Steadfast)	Hr	\$ 150.00
	34' Fiberglass Raider/Loon; 2-175 HP	Hr	\$ 125.00
	40' Aluminum; 350HP (Auklet)	Hr	\$ 125.00
	62' Landing Craft; with 5-ton Crane (Prudhoe Bay)	Hr	\$ 200.00
		Day	\$ 4,000.00
		Stby Day	\$ 2,100.00
Barges	50' x 12' Flat Deck Barge (Skinny Barge)	Day	\$ 200.00
	20' x 8' Work Barge; 25HP (Mini-Me)	Day	\$ 150.00
Trucks & Vehicles	Passenger Vehicles	Day	\$ 65.00
	Pick-ups, to 3/4 ton	Day	\$ 75.00
	4 x 4 Pick-ups	Day	\$ 90.00
	1 Ton (flatbeds, crew cabs and trucks with a davit)	Day	\$ 90.00
	2 Ton (F-700 Flatbed)	Day	
	Utility Service Truck	Day	\$ 150.00
	5 Ton Flatbed Long Bed with Liftgate	Day	\$ 200.00
	6 Ton Crane Truck	Day	\$ 300.00
	ATV with Trailer	Day	\$ 200.00
	Forklift	Day	\$ 30.00
Trailers	10' Skimming Trailer	Day	\$ 50.00
	16'-20' x 8' Flatbed Trailer	Day	\$ 50.00
	18' x 8' Spill Response Trailer	Day	\$ 200.00
	all materials billed separately		
	50' x 8' Shoreline Trailer	Day	\$ 250.00
all materials billed separately			
Pumps	Electric Pump	Day	\$ 15.00
	2" Trash Pump, Gas/Diesel	Day	\$ 50.00
	2" Peristaltic Pump	Day	\$ 140.00
	2" Diaphragm Pump	Day	\$ 40.00

	Description	Unit	Rate
Pumps (cont.)	2" Float-o-pump	Day	\$ 70.00
	2.5" Pressure Pump	Day	\$ 80.00
	3" Trash Pump, Gas/Diesel	Day	\$ 75.00
	3" Diaphragm Pump	Day	\$ 60.00
	4" Trash Pump, Gas/Diesel	Day	\$ 100.00
	all pumps come with one section of suction and discharge		
Hoses	.75" CP Hose	Day/section	\$ 8.00
	1" Water Injection Hose	Foot/Day	\$ 0.40
	1.5" Fire Hose	Day/section	\$ 7.00
	2" Suction/Discharge Hose	Day/section	\$ 10.00
	2.5" Suction/Discharge Hose	Day/section	\$ 12.00
	2.5" Fire Hose	Day/section	\$ 20.00
	3" Suction/Discharge Hose	Day/section	\$ 12.00
	4" Suction/Discharge Hose	Day/section	\$ 15.00
	4" Oil Transfer Discharge Hose (pressure tested)	Foot/Day	\$ 0.90
	6" Suction/Discharge Hose	Day/section	\$ 20.00
	8" Airlift	Day	\$ 25.00
	8" Portegee Dredge	Day	\$ 25.00
	Hydraulic Hose (1" supply & return, 1/2" case drain)	Foot/Day	\$ 1.00
Pumping Systems	Hydraulic Submersible Ancillary Gear	Day	\$ 300.00
	2.5" Stanley Submersible Pump, 450 gpm	Day	\$ 65.00
	2.5" Grundfos Submersible Well Pump (3PH), 35 gpm	Day	\$ 75.00
	4" Marco Submersible Pump, 1000 gpm	Day	\$ 100.00
	4" Electric Submersible Pump; 600 gpm	Day	\$ 200.00
MPC 6" Submersible Lightening System includes ancillary gear, 200' hose			
	TK-6 Pump	Hr	\$ 140.00
		Day	\$ 3,360.00
		Stby Day	\$ 2,240.00
	CCN-150 Pump	Hr	\$ 140.00
		Day	\$ 3,360.00
		Stby Day	\$ 2,240.00
The MPC Lightening Systems are owned by Marine Pollution Control, Detroit, MI, and are part of the MPC Worldwide Pumping Equipment Network. Global Diving & Salvage is the Agent/Operator of this equipment in the Pacific Northwest			
	Desmi Pumping System (DOPS 200)	Day	\$ 900.00
	Includes powerpack, pump, 100' of hydraulic discharge hose	Stby Day	\$ 450.00
	DOPS 200 Pump head	Day	\$ 200.00
	Water Injection System	Day	\$ 300.00
	Includes 2 water annulus, 2 pumps, & 100' of hose	Stby Day	\$ 150.00
	Underwater Heat Transfer System	Day	\$ 400.00
	Includes 2 heat exchangers and 100' of hot water hose	Stby Day	\$ 200.00
Blowers & Compressors	Copus Blower	Day	\$ 60.00
	RAMFAN Blower/Exhauster	Day	\$ 50.00
Salvage/Remediation Equipment	Hydraulic Tool Station (supply and 150')	Day	\$ 300.00
	Hydraulic Tools (chainsaw, drill, etc.)	Ea/Day	\$ 60.00
	Hydraulic Hull Scrubbing System brushes billed separately	Day	\$ 600.00
	Hydraulic Mag Drill Station	Day	\$ 600.00
	Hydraulic Wheel Polishing System discs billed separately	Day	\$ 450.00
	Hydraulic Hose	Day	\$ 25.00
	Pneumatic Tools (drill, grinder, etc.) wet charges for post immersion maintenance: \$150.00 + parts	Day	\$ 40.00
	Hot Tap System requires powerpack Materials billed seperately	Day	\$ 450.00
	1000 gpm/350 psi Jet Pump	Day	\$ 350.00
	500 gpm/150 psi Jet Pump	Day	\$ 250.00
250 gpm/120 psi Jet Pump	Day	\$ 100.00	

	Description	Unit	Rate		
Waste/Remediation Equipment (cont.)	10,000 psi Hydroblaster	Day	\$ 400.00		
	Hydroblasting Gun for U/W use nozzles/valve rebuild kit billed separately	Day	\$ 50.00		
	NDT Thickness Tester	Day	\$ 250.00		
	Lift Bags (up to 1/2 ton)	Day	\$ 25.00		
	2 ton	Day	\$ 50.00		
	9 ton	Day	\$ 150.00		
	Ship Fender (4' x 6')	Day	\$ 125.00		
	Ship Fender (6' x 8')	Day	\$ 150.00		
	60 Ton Lift Straps	Day	\$ 250.00		
	400 Ton Lifting Frame	Lift	\$ 10,000.00		
	Anchor Hawk and Recovery Rigging	Day	\$ 750.00		
	#1500 Anchor Systems	Day	\$ 150.00		
	OSHA Manbasket	Day	\$ 35.00		
	Confined Space Equipment (ER Extraction Gear)	Day	\$ 50.00		
	Splash Zone (2 gallon)	Kit	\$ 185.00		
	Splash Zone Extruder	Day	\$ 25.00		
	Wheel Kit	Day	\$ 25.00		
	Misc. Small Cofferdams	Day	\$ 25.00		
	Support Equipment	Generator, .5 kW	Day	\$ 30.00	
		Generator, 2.5 kW	Day	\$ 40.00	
		Generator, 5.0 kW	Day	\$ 60.00	
		Generator (Diesel), 5 kW	Day	\$ 70.00	
		Generator, 10.0 kW	Day	\$ 100.00	
		Hydraulic Powerpack, 60 HP	Day	\$ 350.00	
		Hydraulic Powerpack, 40 HP	Day	\$ 300.00	
		Hydraulic Powerpack, 18 HP	Day	\$ 150.00	
		Hydraulic Tools	Day	\$ 60.00	
Hydraulic Hose per additional 100'		Day	\$ 25.00		
Braden Winch		Day	\$ 200.00		
Heat Transfer System requires boiler		Day	\$ 400.00		
Plate Compactor		Day	\$ 35.00		
Stihl Chop Saw		Day	\$ 42.00	Plus Blades	
Mag Drill		Day	\$ 130.00	Plus \$200 mob	
Welder, 200 amp Gas		Day	\$ 60.00	Plus Rod	
Welder, 425 amp, Diesel		Day	\$ 75.00	Plus Rod	
Oxygen/Acetylene Cutting Gear		Day	\$ 75.00		
Laser Transit		Day	\$ 86.00		
Portable Lights (500 Watt)		Day	\$ 28.00		
Steam Cleaner		Day	\$ 80.00		
Pressure Washer		Day	\$ 80.00		
Chain Saw		Day	\$ 50.00		
Weed-Eater/Brush Cutter		Day	\$ 35.00		
Elec/BO Power Tools		Ea/Day	\$ 35.00		
Hudson Sprayer		Day	\$ 10.00		
Hand Tools		Ea/Day	\$ 5.00		
Bulk Bag, 1 Yard		Day	\$ 45.00		
Fence Stakes		Ea/Day	\$ 3.00		
Drum Cart		Day	\$ 18.00		
Pallet Jack		Day	\$ 7.00		
Ladder		Day	\$ 25.00		
Space Heater		Day	\$ 50.00		
Cargo Nets		Day	\$ 20.00		
5 Ton Air Tugger		Week	\$ 380.00		
Hydraulic Sorbent Squeezer	Day	\$ 50.00			
Barrel Recovery Kit	Day	\$ 150.00			
2500lb Davit	Day	\$ 30.00			
Underwater Pumping Kit	Day	\$ 75.00			
Damage Control Kit	Day	\$ 50.00			
Barrel Lifting Chains	Day	\$ 10.00			
Portable Decon Station	Day	\$ 50.00			

Communication/Safety Equipment	Description	Unit	Rate
	4-Gas Meter (Scientific Industrial)	Day	\$ 75.00
	Soil/Water Sampling Equipment	Day	\$ 75.00
	GPS (Portable)	Day	\$ 50.00
	Cellular Phone/Calls	Day	\$ 30.00
	Base Station VHF Radios (non vessel mounted)	Day	\$ 25.00
	Portable Radios, UHF/VHF	Day	\$ 15.00
	Computer/Printer	Day	\$ 95.00
	Copier	Day	\$ 35.00
	Fax Machine	Day	\$ 20.00

Notes:

- 1 Charges for equipment begin with equipment mobilization and conclude with transportation and all demobilization at the operations center. Standby charges for equipment are general 1/2 day charge or a minimum of 4 hours, depending on equipment. Standby charges will be applicable only if agreed to in writing. All day rate equipment operated over 12 hours will be billed out at 1.5x the day rate. Minimum call out for equipment is 4 hours or 1/2 day.
- 2 For certain pieces of equipment, a separate mobilization and demobilization charge will be charged to prepare the piece to operating status.
- 3 Rental equipment not listed in tariff will be billed at cost + 20%.
- 4 Mileage will be charged at the current IRS rate.
- 5 Equipment prices do not include fuel unless otherwise noted. Non mileage fuel will be charged at cost + 20%
- 6 All subcontracted services will be charged at cost + 20%

MATERIALS

	Description	Unit	Rate
Sorbents	Sorbent Pad, 17" x 19"; 100 ct	Bale	\$ 64.00
	Sorbent Pad, 17" x 19"; 200 ct	Bale	\$ 68.00
	Sorbent Sweep, 19" x 100'	Bale	\$ 95.00
	Sorbent Roll, 38" x 144'	Roll	\$ 115.00
	Sorbent Industrial Rug, 36" x 150'	Roll	\$ 219.00
	Sorbent Rug 36" x 100'	Roll	\$ 145.00
	Sorbent Boom, 8" x 40'	Bale	\$ 134.00
	Sorbent Boom, 5" x 40'	Bale	\$ 95.00
	Sorbent Pillow, 14" x 25"; 10 ea	Bale	\$ 96.00
	Floor Dry, 33 lb	Bag	\$ 10.50
	Spill Dry	Bag	\$ 11.00
	Oil Snare on Rope, 50'	Bag	\$ 116.00
	Storage	Barrel Liners, 38" x 65"; 50 ct	Case
Spill Bags, 33" x 40"; 100 ct		Case	\$ 76.00
Trash Bags, 20" x 40"; 200 ct		Case	\$ 50.00
Sheeting, 20' x 100' x 4 mil		Roll	\$ 75.00
Sheeting, 20' x 100' x 6 mil		Roll	\$ 120.00
55 Gallon Open Top Drum		Ea	\$ 70.00
55 Gallon Close Top Drum		Ea	\$ 60.00
95 Gallon Poly Overpack	Ea	\$ 185.00	
Safety Equipment	Cotton Glove Liners	Pair	\$ 2.00
	Petroflex Rubber Glove	Pair	\$ 5.00
	Overboot, Disposable	Pair	\$ 6.00
	Rain Gear, 2 Piece	Ea	\$ 20.00
	Tyvek, Disposable	Ea	\$ 11.00
	Tyvek, Saranex	Ea	\$ 30.00
	Work Glove	Pair	\$ 10.00
	Half-Face Respirator	Ea	\$ 38.00
	Full-Face Respirator	Ea	\$ 45.00
	Respirator Cartridge, O/V	Ea	\$ 36.00
	Floatation Suit/Jacket	Day	\$ 30.00
	Floatation Vest	Day	\$ 5.00
	Hard Hat	Ea	\$ 18.50
	Safety Glasses	Ea	\$ 9.00
	Safety Goggles	Ea	\$ 9.00
	Rubber Boots	Ea	\$ 35.00
	Level C (Modified) PPE	Initial/Day	\$ 48.00
	Change	\$ 25.00	
Level D PPE	Initial/Day	\$ 25.00	
Miscellaneous Supplies	Caution Tape, 1000'	Roll	\$ 25.00
	Duct Tape	Roll	\$ 10.00
	Flagging Tape	Roll	\$ 6.00
	1/4" Poly Line, 600'	Spool	\$ 50.00
	1/4" Manila Line, 1200'	Spool	\$ 92.00
	3/8" poly Line, 600'	Spool	\$ 95.00
	1/2" Poly Line, 600'	Spool	\$ 126.00
	3/4 " Poly Line, 600'	Spool	\$ 295.00
	Marine Cleaner (Citrus Based)	Gal	\$ 32.00
	Simple Green	Gal	\$ 18.00
	Hand Cleaner	Gal	\$ 32.00
	Rags, 25#	Bag	\$ 25.00
	Cubic Yard Box	Ea	\$ 126.00

Notes:

- 1 Protective gear category descriptions:
 - Level D PPE: Work Boots, Safety Glasses, Hard Hat, Work Gloves, Floatation Vest (if required)
 - Level C (Modified) PPE: Includes (Level D) plus Raingear, Rubber Boots, and Rubber Gloves
- 2 Respirator Cartridges not listed are cost + 20%.
- 3 Materials not listed in price list will be billed out at cost + 20%

**WORK AUTHORIZATION**

CONTRACTOR	CUSTOMER
GLOBAL DIVING & SALVAGE, INC. 3840 West Marginal Way S.W. Seattle, Washington 98106 (206) 623-0621 (206) 932-9036 Contact: Kristofer Lindberg	Company : City of Des Moines Marina Address : 22307 Dock Ave S City, State, Zip : Des Moines, WA 98198 Telephone : 206-624-5700 Email : jdusenbury@desmoineswa.gov Name : J. Dusenbury
COST	
Name: Recover sunk 28' vessel. Location: Des Moines Marina, Des Moines, WA	Total: \$3500.00 Rough order of magnitude based on Global Tariff rates and projected plan to use lift bags to refloat sunken 28', fire damaged vessel.
SCOPE OF WORK	
Global Diving & Salvage will mobilize a three man dive team and materials to lift a 28' fire damaged vessel from the marina breakwater. The crew will deliver the vessel to the Marina travel lift to be turned over directly to the marina staff.	

Customer hereby employs GLOBAL DIVING & SALVAGE, INC., (HEREINAFTER "GLOBAL") for services as requested by and at the direction of Customer to be paid per scope of work (or other attached document).

Customer agrees to pay in full the amount of the invoice without deduction to GLOBAL within thirty (30) days after the date of mailing of said invoice by GLOBAL to customer. Charges shall bear interest from the date of invoice at the highest legal rate, if not paid within the 30 day period. Customer agrees to pay any and all legal fees for any collection action taken by GLOBAL against customer for the recovery of invoiced charges past due.

Customer agrees to indemnify and hold harmless GLOBAL, their officers and employees, from all claims, suits, loss, damage, injury, liability, costs, and expenses of whatsoever kind or nature, including loss of use and other consequential damages and attorney's fees, howsoever the same may be caused, except with respect to loss, damage, or expense solely, directly, and proximately caused by GLOBAL's negligence. Customer agrees to obtain from its insurers a waiver of all rights of subrogation against GLOBAL.

Execution of this work authorization agreement also constitutes acceptance by each party of the terms and conditions set forth in this agreement. The person signing on behalf of the customer warrants his authority to bind customer to this agreement.

By signing below, Customer accepts and agrees to be bound by all of the terms of this Work Authorization and attached documentation.

Date: 6-24-13

Contractor:
Global Diving & Salvage, Inc.

Customer:
Des Moines Marina

Signature: _____

Kristofer Lindberg, Salvage Officer

Signature: *Larri A. Eucari*
acting City Manager



CONSULTANT SERVICES CONTRACT between the City of Des Moines and

MOFFATT & NICHOL

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and MOFFATT & NICHOL organized under the laws of the State of Washington, located and doing business at 600 University Street, Suite 610, Seattle, WA 98101 (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

Consultant shall perform the following services for the City in accordance with the following described plans and/or specifications:

Engineering Support Services for J Dock Fire Damage Rehabilitation Project - As Described in Exhibit A Attached

Consultant further represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I in a timely manner.

III. COMPENSATION.

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed \$18,785.00 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit A for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

- B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant 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.

IV. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Consultant 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.

V. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Consultant determines, for any reason, that a change order is necessary, Consultant must submit a written change order request to the person listed in the notice provision section of this Contract, section XVI(C), within fourteen (14) calendar days of the date Consultant 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 Consultant'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 Consultant on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Consultant shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Consultant fails to require a change order within the time specified in this paragraph, the Consultant waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Consultant disagrees with the equitable adjustment, the Consultant must complete the change order work; however, the Consultant may elect to protest the adjustment as provided in subsections A through E of Section VI, Claims, below.

The Consultant accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Consultant 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.

VI. CLAIMS. If the Consultant disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Consultant may file a claim as provided in this section. The Consultant 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 Consultant 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 Consultant unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Consultant'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 Consultant'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 Consultant is asserting a schedule change or disruption.
- B. Records. The Consultant 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 Consultant'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. Consultant's Duty to Complete Protested Work. In spite of any claim, the Contractor 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 Consultant 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 Consultant completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

VII. LIMITATION OF ACTIONS. CONSULTANT 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 CONSULTANT'S ABILITY

TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

VIII. 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. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

IX. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor 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.

X. INDEMNIFICATION. Consultant 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 resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

XI. INSURANCE. The Consultant 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 the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

No Limitation. Consultant's maintenance of insurance as required by the Contract shall not be construed to limit the liability of the Consultant to the coverage

CONSULTANT SERVICES CONTRACT 4

(Various)

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. Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

Minimum Amounts of Insurance: Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

B. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

D. Verification of Coverage Consultant 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 Consultant before commencement of the work.

XII. EXCHANGE OF INFORMATION. The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to Consultant for the purpose of completion of the work under this Contract.

XIII. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City. All records submitted by the City to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to the City upon the City's request. The City's use or reuse of any of the documents, data and files created by Consultant for this project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

XIV. 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.

XV. WORK PERFORMED AT CONSULTANT'S RISK. Consultant 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 Consultant's own risk, and Consultant 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.

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.

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 agreement 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 X 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 this 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 Consultant.

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 Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant'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>CONSULTANT:</p> <p>By: <u>Thomas J. McCollough</u> (signature)</p> <p>Print Name: <u>Thomas J. McCollough</u> Its <u>Vice President</u> (Title)</p> <p>DATE: <u>7/2/2013</u></p>	<p>CITY OF DES MOINES:</p> <p>By: <u>Anthony A. Piasecki</u> (signature)</p> <p>Print Name: <u>Anthony A. Piasecki</u> Its <u>City Manager</u> (Title)</p> <p>DATE: <u>6/27/13</u></p> <p>Approved as to form: <u>[Signature]</u> City Attorney</p> <p>DATE: <u>6/26/13</u></p>
<p>NOTICES TO BE SENT TO:</p> <p>CONSULTANT:</p> <p>MICHAEL HEMPHILL, Project Manager Moffatt & Nichol 600 University Street, Suite 610 Seattle, WA 98101 206-622-0222 (telephone) 206-622-4764 (facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Anthony A. Piasecki, City Manager City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-878-4595 (telephone) 206-870-6540 (facsimile)</p>



600 University Street
Suite 610
Seattle, WA 98101

Tel: (206) 622-0222
Fax: (206) 622-4764

June 25, 2013

City of Des Moines
22307 Dock Avenue South
Des Moines, WA 98198

Attn: Joe Dusenbury

Subject: J Dock Fire Damage Rehabilitation Project
Proposal for Engineering Support Services
File: 6513

Dear Joe:

As we discussed on Monday, below is a loose scope and fee estimate to get started on evaluating the fire damage and assessing the short-term and long-term scenarios for repair/replacement of the burned slips on J-Dock. The basic assumption is that we are not 100% certain what will actually need to be performed at this time and the scope outline below will get us started to assist the City with addressing the constructability issues and cost implications associated with the repairs. We will also allot Margret Schwertner (Moffatt & Nichol) some time to assist with permit issues as they arise in the coming days. We understand this is a fast track response to an emergency situation and getting the remainder of J Dock up and running as quickly as possible is a top priority.

TASKS:

1. Review as-built plans and write up brief description on how it was designed. The information gleaned from these drawings will provide a basis for the design repairs in the future.
2. Site visit – tomorrow w/structural engineer. We will verify as-built drawings with field observations take measurements, photographs and define the limits of replacement versus repair as well as extent of roof removal due to soot on underside of the aluminum roof panels.
3. Meeting – tomorrow w/insurance and others to assist City in describing the constraints and complications with repairs/replacement scenarios. We will discuss ideas and solicit new ideas from the group to assess and evaluate.
4. Short-term option – Will evaluate scenario to keep the dock open and operational through the summer.
5. Long-term option – Will evaluate scenario to replace damaged docks with similar configuration, this autumn.
6. Conceptual level cost estimates for construction of the rehabilitation options will be prepared.

EXHIBIT A

Joe Dusenbury
 City of Des Moines
 Subj: J Dock Fire Damage Rehabilitation
 June 25, 2013
 Page 2 of 2



7. Permit support – Will assist with immediate emergency permit issues as well as coordinate and discuss replacement implications.
8. Coordination with Wood Harbinger for the temporary electrical replacement work is included. Taking out the fingers versus repairing the fingers will be considered. The differences in cost of complete demolition now versus partial demolition with final demolition in the fall will be evaluated.
9. Project Management – maintain high level of contact with City and team to ensure quick delivery of project memorandums and recommendations.

DELIVERABLES:

A summary memo will be prepared to document observations and present options.

FEE

Work will be completed on a time and material basis in accordance with our Standard Rate Schedule, with a Not to Exceed amount of \$18,785 without written prior authorization. A breakdown of our fee proposal is attached.

ASSUMPTIONS:

- No new analyses is included for the rehabilitation options.
- No Cadd work – everything will be shown with hand sketches on copies of existing as-built drawings.
- Only one meeting scheduled for June 26, 2013.
- City will provide cost for in-house labor to repair docks if necessary.
- No asbestos or other hazardous materials are on site.
- The work does not obtain or apply for permits, but rather helps identify future permit needs.

If there are questions regarding this proposal, please contact me at 206-622-0222, or by email at mhemphill@moffattnichol.com.

Sincerely,

MOFFATT & NICHOL

Project Manager

Enclosure: Fee Proposal



**CITY OF DES MOINES
J DOCK FIRE DAMAGE REHABILITATION PROJECT
ENGINEERING SUPPORT SERVICES
FEE PROPOSAL**

MOFFATT & NICHOL

TASK NO	DESCRIPTION	Super. Engineer \$224	Senior Engineer \$203	Engineer III \$191	Engineer II \$169	Engineer / Scientist I \$147	CADD Support \$125	Admin. Assistant \$95	Contract Admin \$76	Total
1	Review As-Built Drawings	2		2					1	\$906.00
2	Site Visit and Meeting (6/26/13), incl travel time	5		5						\$2,075.00
3	Short-Term Rehabilitation Plan	4		4						\$1,660.00
4	Long-Term Rehabilitation Plan	4		8	16					\$5,128.00
5	Cost Estimates	4		4	16					\$4,364.00
6	Permit Support	4				12				\$2,660.00
7	Coordination w/Wood Harbinger	4								\$896.00
8	Project Management	4								\$896.00
TOTAL HOURS		31	0	23	32	12	0	0	1	99
TOTAL LABOR		\$6,944	\$0	\$4,393	\$5,408	\$1,764	\$0	\$0	\$76	\$18,585
SUBCONSULTANTS		AMT	MARKUP	TOTAL	DIRECT EXPENSES					
A		0	0	\$ -	Mileage					
B		0	0	\$ -	Reproduction / Plotting / Printing					
C		0	0	\$ -	Postage / Courier					
D		0	0	\$ -	Travel (airfare, lodging, meals)					
E		0	0	\$ -	Telephone / Fax					
F		0	0	\$ -	Photographic Processing					
G		0	0	\$ -	Miscellaneous / Other					
TOTAL EXPENSES					\$200					
TOTAL SUBCONSULTANTS					\$0					
PROJECT TOTAL					\$18,785					



CONSULTANT SERVICES CONTRACT between the City of Des Moines and

WOOD HARBINGER

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Wood Harbinger organized under the laws of the State of Washington, located and doing business at 3009 112th Ave NE, Suite 100, Bellevue, WA 98004, (425) 628-600, (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

Consultant shall perform the following services for the City in accordance with the following described plans and/or specifications:

Consultant services for partial repairs of Marina Dock J electrical service due to fire damage, as provided in Attachment A – Scope Summary and Fee Breakdown, Attachment C – Electrical Scope of Work and Electrical Engineering Services Task/Hour Breakdown spreadsheet.

Consultant further represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I within ninety (90) days.

III. COMPENSATION.

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed \$23,232.00, which includes labor fees, sub-consultants and anticipated reimbursable expenses for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Attachments A and C for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

- B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant 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.

IV. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Consultant 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.

V. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Consultant determines, for any reason, that a change order is necessary, Consultant must submit a written change order request to the person listed in the notice provision section of this Contract, section XVI(C), within fourteen (14) calendar days of the date Consultant 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 Consultant'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 Consultant on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Consultant shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Consultant fails to require a change order within the time specified in this paragraph, the Consultant waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Consultant disagrees with the equitable adjustment, the Consultant must complete the change order work; however, the Consultant may elect to protest the adjustment as provided in subsections A through E of Section VI, Claims, below.

The Consultant accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Consultant 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.

VI. CLAIMS. If the Consultant disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Consultant may file a claim as provided in this section. The Consultant 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 Consultant 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

CONSULTANT SERVICES CONTRACT 2
(Various)

the Consultant unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Consultant'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 Consultant'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 Consultant is asserting a schedule change or disruption.
- B. Records. The Consultant 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 Consultant'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. Consultant's Duty to Complete Protested Work. In spite of any claim, the Contractor 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 Consultant 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 Consultant completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

VII. LIMITATION OF ACTIONS. CONSULTANT 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 CONSULTANT'S ABILITY

CONSULTANT SERVICES CONTRACT 3
(Various)

TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

VIII. 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. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

IX. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor 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.

X. INDEMNIFICATION. Consultant 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 resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

XI. INSURANCE. The Consultant 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 the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

No Limitation. Consultant's maintenance of insurance as required by the Contract shall not be construed to limit the liability of the Consultant to the coverage
CONSULTANT SERVICES CONTRACT 4
(Various)

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. Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
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Minimum Amounts of Insurance: Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
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B. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

CONSULTANT SERVICES CONTRACT 5
(Various)

D. Verification of Coverage Consultant 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 Consultant before commencement of the work.

XII. EXCHANGE OF INFORMATION. The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to Consultant for the purpose of completion of the work under this Contract.

XIII. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City. All records submitted by the City to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to the City upon the City's request. The City's use or reuse of any of the documents, data and files created by Consultant for this project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

XIV. 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.

XV. WORK PERFORMED AT CONSULTANT'S RISK. Consultant 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 Consultant's own risk, and Consultant 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.

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.

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 agreement of the parties to waive mediation, any unresolved controversy or claim

CONSULTANT SERVICES CONTRACT 6
(Various)

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 X 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 this 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 Consultant.

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 Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

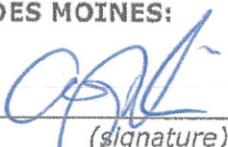
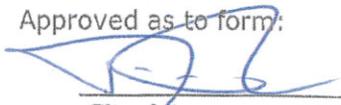
CONSULTANT SERVICES CONTRACT 7
(Various)

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>WOOD HARBINGER</p> <p>By: <u></u> (signature)</p> <p>Print Name: <u>Bruce G. Alward</u></p> <p>Its <u>Vice President, Electrical Engineering</u> Department</p> <p>DATE: <u>7/2/13</u> (Title)</p>	<p>CITY OF DES MOINES:</p> <p>By: <u></u> (signature)</p> <p>Print Name: <u>Anthony A. Piasecki</u></p> <p>Its <u>City Manager</u> (Title)</p> <p>DATE: <u>7/2/13</u></p> <p>Approved as to form: <u></u> City Attorney</p> <p>DATE: <u>7-2-13</u></p>
<p>NOTICES TO BE SENT TO:</p> <p>CONSULTANT:</p> <p>Bruce G. Alward Wood Harbinger 3009 112th Ave NE, Suite 100 Bellevue, WA 98004 425.628.6000 (telephone)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Joe Dusenbury, Harbormaster City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206.870.6534 (telephone) 208.878.5940 (facsimile)</p>

CONSULTANT SERVICES CONTRACT 8
(Various)



3009 112th Ave NE, Suite 100
 Bellevue, WA 98004
 425.628.6000
 woodharbinger.com

July 2, 2013

Joe Dusenbury, Harbormaster
 City of Des Moines Marina
 22307 Dock Avenue South
 Des Moines, Washington 98198-4627

Project Name: City of Des Moines Marina, Dock J Repairs
 Project No. WH 130xx

Subject: City of Des Moines Marina, Dock J Repairs - Consulting Fee
 Proposal

Dear Joe:

Thank you for inviting Wood Harbinger to propose consulting services for Dock J Repairs. This letter and its attachments serve as our proposal for the following consulting disciplines:

- Electrical Engineering

Our proposal is based upon your Request for Proposal (RFP) and subsequent site visit and telephone conversations.

We have put together a great project team that will be led by Bruce Alward as Principal-in-Charge and Peter Lekhakul as Project Manager. Our team is ready to start and attend meetings upon your request.

We propose to perform the services listed within our proposal for a grand total of \$23,232, which includes labor fees, sub-consultants and anticipated reimbursable expenses. The basis of our labor fee billing is time and material (not to exceed). Please see the attachments to this letter for our scope definition by discipline, along with our fee breakdown.

We truly appreciate the opportunity to team with you on this exciting project. We believe we have captured the essential needs of our consulting services to the best of our interpretation of the requirements.

Joe Dusenbury
7/2/2013
Page 2

It is our foremost goal that this project is of the highest success for the City of Des Moines, you and the project team. If you require any additional information or have any questions, please do not hesitate to contact me at (425) 628-6050.

Sincerely,

Accepted by:

WOOD HARBINGER

CLIENT NAME



Bruce G. Alward
Vice President,
Electrical Engineering Department

Joe Dusenbury
Harbormaster,
City of Des Moines Marina

Date Accepted:

Enclosures: Attachment A - Summary Scope and Fee Breakdown
Attachment B - Not Used
Attachment C - Electrical Services
Engineering Services Task/Hour Breakdown

cc: Vicky Sheckler, vsheckler@desmoineswa.gov



Attachment A -- Scope Summary and Fee Breakdown

Proposal Date: July 2, 2013

I. Project Description Summary

The scope of this project is the partial repairs of Dock J electrical service due to the damage caused by the recent boat fire incident. This includes:

1. Replacement of existing panelboard and associated lighting controls near dock entrance.
2. Replace existing shore power boxes associated with first panelboard with new.
3. Replacement of damaged light luminaires and reconnect existing luminaires to new lighting control panel.
4. Provide new conduit pathway for cable television and connect to existing pathway past Slip 24 (Conduit Only).

We currently don't know the Owner's Total Construction Cost (TCC) for this project. The project delivery type is design-bid-build.

II. Estimated Project Schedule

Phase	Start	End
Design	July 2013	Aug 2013
Bidding	Aug 2013	Sept 2013
Construction	Sept 2013	Dec 2013

III. Basic Services Labor Fee Breakdown

Grand total fee of \$23,232 comprised of the following:

Wood Harbinger Provided Services

Phase	Electrical	Totals
Design & Bid	\$17,215	\$17,215
Construction	\$6,017	\$6,017
<i>Totals</i>	<i>\$23,232</i>	<i>\$23,232</i>

Attachment A – Summary Scope and Fee Breakdown

IV. Contractual Agreement

Wood Harbinger requires a contract for services within thirty (30) days of official written Notice to Proceed (NTP). We will begin work on a limited basis during this time. Form of Contract will be based on AIA C141. Should a contract not be provided within thirty (30) days; this proposal and its attachments will serve as the Contract for our services.

V. General Assumptions

A. CADD

- Where 2D drawings are required, our proposal is based on preparing deliverables in AutoCad v2012 where the client has requested 2D drawings for deliverables.
- Client will provide us backgrounds in .dxf or .dwg format.
- Client will provide background updates within a mutually agreeable schedule.
- In order to allow sufficient time for quality control procedures, our expectation is that we will receive background updates not later than three (3) business days prior to a scheduled deliverable. Updates received after this period will be processed as soon as reasonably possible, or at the next submittal.
- Client will provide us with a PDF copy of the updated backgrounds with background changes clouded; this is so that we can validate that the file received has the correct information.

B. Construction Administration

- Construction administration services and site observation visits are limited to those defined within this proposal.
- A one-year follow up site observation is included in our Basic Services.

C. Design

- Wood Harbinger will be provided with a space program for the project.
- Our basic services proposal does not include design of temporary utilities during construction.
- Cost estimates provided are based on RS Means with the appropriate geographic adjustment factor.

D. Insurance Coverage Limits

- Professional Liability Limits – \$5 million.

Attachment A - Summary Scope and Fee Breakdown

- Insurance coverage over our standard insurance limits (listed above), or a project insurance policy can be provided as an additional cost plus a 10% mark up.
- E. Payment Terms
- Wood Harbinger will invoice fees and expenses to on a monthly basis with the expectation that the Client will process our invoices within thirty (30) days of the date of our invoice.
 - Outstanding invoices over ninety (90) days old will accrue interest at a rate of 1% per month (12% per annum).
- F. Schedule
- Our proposal is based upon a single design phase and a single phase of construction unless specifically noted otherwise in this proposal.



City of Des Moines Marina
Dock J Repairs

Attachment C – Electrical Scope of Work

Proposal Date: July 2, 2013

I. Basic Services Design

The following are systems that we understand to be core elements and requirements of The Project and are included in our Basic Electrical Scope of Work:

Systems and Studies

Communication

- Cable Television raceway infrastructure

Lighting

- Exterior pathway lighting

Power Systems

- Dock branch power distribution

II. Deliverables

Phase	Deliverables
90% Design Review Sets	<ul style="list-style-type: none"> ▪ Electrical load calculations (In progress draft) ▪ Lighting Energy Code Calculation (Building Permit submittal only) ▪ Estimate of Probable Electrical Construction Cost ▪ Plan Drawings <ul style="list-style-type: none"> – Symbol & Abbreviation Plan – Demolition Plans – Electrical Site Plan – Power Plans – Lighting Plans – Signal and Communication Plans – Power & Lighting Diagrams – Electrical Details – Panel Schedules ▪ Specification – Division 26 (Electrical) ▪ Specification Division 27 (Communications)

Attachment C – Electrical Systems Basic Scope of Work

Proposal Date: July 2, 2013

Phase	Deliverables
Final Design	<ul style="list-style-type: none"> ▪ Final Construction Documents plan drawings and specifications (digital PDF format). ▪ Final Estimate of Probable Electrical Construction Cost.
Bidding	<ul style="list-style-type: none"> ▪ Addenda (where required to clarify Construction Documents).
Construction Administration	<ul style="list-style-type: none"> ▪ Request for Information (RFI) responses related to WH scope of work. ▪ Posted Construction Drawings (from manually posted information provided by owner, architect or contractor). ▪ Product Submittal Reviews (2 iterations) ▪ Site Observation Reports ▪ Final punch list and back punch
Post Construction	<ul style="list-style-type: none"> ▪ Review contractor Record Drawings. ▪ Incorporate contractor's red-lined as-built contract drawing mark-ups and issue drawings.

III. Meetings Budget

Phase	Number of Meetings
Design	5
Bidding	(1) (to attend pre-bid meeting)
Construction	(1) for attendance at Pre-Construction meeting (2) for attendance at construction meetings (1) visits for Observation Reports (1) visits for Punch List Preparation (1) visits for Punch List back check

IV. Assumptions

- Client will provide a programming document indicating user required locations for receptacles and equipment connections.
- WH will be provided with catalog cuts for all equipment requiring an electrical connection; with the specific voltage and phase, amperage draw, circuit size (in amps) and NEMA outlet configuration.
- WH will work collaboratively with the Client for selection of light fixtures with selection of fixture types based on mutual agreement; and with a minimum of two manufacturers per fixture type, except if special requirements of the project require a sole sourced solution.
- For all signal and low voltage systems, WH will provide device layouts, or typical room device layouts with a bidder design performance specification with final design, system calculations, including final device counts as the sole responsibility of the successful system provider.
- WH will provide deliverables in digital Adobe PDF format for printing by Client.

V. Electrical Basic Services Fee

Basic Services – Design & Bidding	\$17,215
Basic Services – Construction	\$6,017
Total Labor Fees	\$23,232
Estimated Reimbursable Expenses	\$0

VI. Electrical Additional Service Fees

Additional Per Trip Site Observations	\$560
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3009 112th Ave NE, Suite 100
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 woodharbinger.com

ATTACHMENT - ENGINEERING SERVICES TASK/HOUR BREAKDOWN											
Job Name: Des Moines Marina - J Dock Repairs										WH Project: 130xx	
Subject: Electrical Engineering Services Task/Hour Breakdown - Basic Services										By: NPL	
										Date: 7/2/2013	
										Rev 0: Total = \$23,232	
										Rev: Total =	
										Rev: Total =	
Basic Services - Task Breakdown					Staff Effort - Hours						
No.	No. Dwg	Description	Start Date	End Date	Principal	Project Manager	Senior Engr II	Specs Writer	CAD Draft	Admin	Total Hrs
Design											
1		Client Design Coordination Mtgs (4hr/Mtg)				4	4			1	9
2		Site Investigation (3hrs/Visit)					6				6
3		Cost Estimate					4				4
4		Interdiscipline Coordination Mtgs (4hrs/Mtg)				4	4			1	9
5		Lighting Energy Code Calculations					2				2
6		Load Calculations					4				4
7		Meetings (3hrs/Mtg)					3			1	4
8		Project Management				4					4
9		Quality Control Reviews - External					4				4
10		Quality Control Reviews - Internal			2		4			1	7
Drawings											
11	1	Legend, Symbols, Abbreviations and General Notes					1		1		2
12	1	Demolition Plans					2		2		4
13	1	Electrical Site Plan					2		2		4
14	1	Power Plans					16		8		24
15	1	Lighting Plans					2		2		4
16	1	Signal and Communication Plans					1		2		3
17	1	Power & Lighting Diagrams					4		4		8
18	1	Electrical Schedules					2		2		4
19	1	Electrical Details					4		4		8
Specifications											
20		Division 26 - Electrical					4	8		4	16
9		Subtotal - Design			2	12	73	8	27	8	130
Bidding											
21		Addenda Preparation					1				1
22		Pre-Bid Meeting (4hrs/Mtg)					4			1	5
		Subtotal - Bidding					5			1	6
Construction Administration											
23		Back Punchlisting					2				2
24		Construction Meeting attendance (3hrs/Mtg)					6			1	7
25		Punchlisting					4			1	5
26		Requests for Information (RFI)					4			1	5
27		Review Contractor Pay Requests				2					2
28		Shop Drawing Reviews					4		1	1	6
29		Site Observations & Reports (4hrs/Trip)					4			1	5
		Subtotal - Construction Administration				2	24		1	5	32
Post Construction											
30		Review Contractor As-Built Drawings				1	4		4	1	10
31		Review O & M Manuals				1	4			1	6
		Subtotal - Post Construction				2	8		4	2	16
Total Hours					2	16	110	8	32	16	184
Labor Rates (\$/hr)					180.00	159.00	110.00	140.00	85.00	68.00	184
Engineering, Bidding and Construction Services Fees					\$360	\$2,544	\$15,400	\$1,120	\$2,720	\$1,088	TOTAL: \$23,232

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