

**AGENDA**

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11<sup>th</sup> Avenue South, Des Moines**

**April 24, 2014 – 7:00 p.m.**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**CORRESPONDENCE**

**COMMENTS FROM THE PUBLIC**

**BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS**

**PRESIDING OFFICER'S REPORT**

Item 1: EAGLE SCOUT RECOGNITION, SOREN PEDERSEN

**ADMINISTRATION REPORT**

Item 1: 2015 HUMAN SERVICES FUNDING LEVEL

**CONSENT AGENDA**

Page 1 Item 1: APPROVAL OF MINUTES  
Motion is to approve the minutes from the March 27, April 3 and April 10, 2014 regular City Council meetings.

Page 15 Item 2: WASHINGTON WILDLIFE AND RECREATION PROGRAM AUTHORIZING RESOLUTION  
Motion is to adopt Draft Resolution No. 14-070, authorizing the City Manager to submit a grant application for a Washington Wildlife and Recreation Program (WWRP) project to the Recreation and Conservation Office (RCO) as provided in chapter 79A.15 RCW, Acquisition of Habitat Conservation and Outdoor Recreation Lands, for grant funding in the amount of \$287,400 for the Des Moines Beach Park Restroom Project.

Page 23 Item 3: WASHINGTON STATE PARKS AND RECREATION COMMISSION CLEAN VESSEL SEWAGE DISPOSAL FACILITY GRANT  
Motion is to adopt Draft Resolution No. 14-077 authorizing the acceptance of Washington State Parks and Recreation Commission's Grant No. CV 315-110 for a new pump-out station for the Des Moines Marina, and to authorize the City Manager to sign the Washington State Parks and Recreation Commission Clean Vessel Sewage Disposal Facility Grant Agreement substantially in the form as attached.

Page 33 Item 4: ASSIGNMENT OF THE LEASE AGREEMENT BETWEEN THE CITY OF DES MOINES AND STAN WILKES AND ARLENE KNIGHT, DBA CLASSIC YACHTS TO JIM QUINN AND AMENDMENTS TO THE LEASE  
Motion is to approve the Assignment of Lease, Assumption of Lessee's Interest, and Lessor's Consent to Assignment by and between the City of Des Moines, Classic Yachts, and Jim Quinn and to authorize the City Manager to execute the Assignment, Assumption and Consent to Assignment substantially in the form as attached.

AND

Motion is to approve Amendment No. 1 for Lease for Marina Facilities (Classic Yachts) between the City of Des Moines and Classic Yachts, Inc., and to authorize the City Manager to execute the amendment No. 1 for Lease of Marina Facilities (Classic Yachts) substantially in the form as attached.

Page 59 Item 5: SURPLUS PROPERTY – VEHICLES  
Motion is to surplus the following fleet vehicle, which is over 100,000 miles; and further to authorize disposal of said equipment by auction or trade-in:

Vehicle No: P245 Year: 1993 License: 45138D VIN#: G2102D

Page 65 Item 6: NATIONAL RECREATION & PARK ASSOCIATION MEMORANDUM OF UNDERSTANDING  
Motion is to authorize entering into the Memorandum of Understanding (MOU) between the National Recreation and Park Association and the City of Des Moines for the Out-of-School Time Programs Grant and to authorize the City Manager to sign the MOU between the National Recreation and Park Association and the City of Des Moines substantially in the form as attached.

Page 81 Item 7: DES MOINES FARMERS MARKET  
Motion is to direct the City Manager to sign the attached agreement between the Des Moines Farmer's Market and the City of Des Moines, authorizing the operation of a seasonal Farmer's Market in the Marina, substantially in the form as attached.

Page 93 Item 8: LABOR NEGOTIATIONS REPRESENTATION  
Motion is to authorize the City Manager to sign the letter of engagement with the Summit Law Group to represent the City of Des Moines in upcoming negotiations with the Des Moines Police Guild and the Des Moines Police Management Association in an amount not to exceed \$45,000.

#### **NEW BUSINESS**

Page 101 Item 1: TOURISM PROMOTION AREA ILA  
Staff Presentation: Economic Development Manager  
Marion Yoshino

#### **NEXT MEETING DATE**

May 1, 2014 Regular City Council Meeting – Potentially Cancelled

#### **ADJOURNMENT**

## MINUTES

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11<sup>th</sup> Avenue South, Des Moines**

**March 27, 2014 – 7:00 p.m.**

**CALL TO ORDER**

Mayor Kaplan called the meeting to order at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

The flag salute was led by Mayor Kaplan.

**ROLL CALL**

Council present: Mayor Dave Kaplan; Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Jeanette Burrage, Bob Sheckler and Vic Pennington.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Planning, Building and Public Works Director Dan Brewer; Economic Development Manager Marion Yoshino; City Clerk Bonnie Wilkins.

**CORRESPONDENCE**

There were no correspondences.

**COMMENTS FROM THE PUBLIC**

Chad Gilbert, 24303 25<sup>th</sup> Avenue S, would like to get Title 8 Animal Code, 8.04.250, nuisance abatement updated.

**Direction/Action**

**Motion** made by Councilmember Burrage to remand the item to the May 1, 2014 Public Safety & Transportation Committee; seconded by Mayor Pro Tem Pina.

The motion passed 7-0.

**BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS**

Councilmember Pennington:

- Tough week for public safety:
  - Retired Assistant Fire Chief, Bill McTaftin passed away.
  - Longtime Des Moines resident Clark Snure passed away.
- Des Moines Fire Crews are up in Oso.

Councilmember Sheckler:

- Employee recognition:
  - Service pins to employees.
  - Congratulated City Manager Piasecki on being City Manager for over 12 years.
- Acknowledged the passing of longtime, respected resident Clark Snure and read a letter from Mr. Snure's son, Brian. Donations can be made to the Des Moines Legacy Foundation and/or Des Moines Rotary.

Councilmember Burrage:

- South County Transportation Board Meeting:
  - 5 presentations made by various Cities in our area on transportation projects going forward at the regional level.

Councilmember Pina:

- No report.

Councilmember Musser:

- Attended the second Pacific Community Collaboration Meeting:
  - Improve access to services to our Pacific Middle School and Mt. Rainier students.
- Municipal Facilities Committee:
  - Katherine Kertzman, Seattle Southside presentation on tourism and hotels.
  - Des Moines Marina floor development.
    - Off season, year round activities.
  - Dining Hall:
    - Received an \$800,000 Grant to begin work.
    - Thanked King County Councilmember, Dave Upthegrove, in helping to securing an additional \$60,000 to use towards the renovation project.
  - Redondo Parking Management Plan.
  - Welcomed new Transportation Engineer, Andrew Merges, who will be working on the project.

Councilmember Nutting:

- Senior Services Advisory Committee Meeting:
  - Take back meds program.
  - Nutrition for older adults.
  - Pier to pier senior scam:
    - Presentation at Huntington Park, April 7, 2014 @ 2:00 p.m.
- Attended the Des Moines Legacy Foundation Sports Night:
  - \$12,500 was raised for youth programs.
- Sonju Garden:
  - Seed starting party.
- Watch Dogs open gym at North Hill Elementary:
  - 80 dads and kids attended.

### **PRESIDING OFFICER'S REPORT**

- Meeting with a group of investors looking to construct student housing at Highline Community College.
- Open House at Highline Community College on development from Kent-Des Moines Road to 272<sup>nd</sup>.
- Acknowledged the passing of Clark Snure:
  - Previously acknowledged by the City with the Spirit of Des Moines Award.
  - Asked Council if they wished to donate to the Legacy Foundation.
  - Councilmember Sheckler suggested Council donate to the Des Moines Legacy Foundation from the Hearts and Flowers Fund.
- Asked Council to provide vacation/travel schedules for the upcoming months.

### **ADMINISTRATION REPORT**

- Forward Council an e-mail received from Chelsea Levy, from Sound Transit, holding tours.
- Attended the Highline Forum:
  - Chose Co-Chair, Councilmember Sheckler.
- Employee Recognition Program:
  - Recognized employees with longevity pins.
  - 500 generic pins/310 longevity pins, in various years, for \$1,400, which includes a one-time set-up charge.

- Had Dinner with Matt Chan and Omar and Christine Lee on development projects in Des Moines.
  - Attended with Economic Development Manager Yoshino and Councilmembers Sheckler, Burrage and Musser.
- Planning, Building and Public Works Director Brewer updated Council on the slide on 251<sup>st</sup> around 10<sup>th</sup> Avenue:
  - Kudos to Maintenance Crew.
  - Geo-tech Engineer out to site, currently evaluating potential cause.
  - Eastbound lane is still closed, at this point.

Item 1: ERIKA MELROY, CLEANSAPES ANNUAL REPORT  
Dan Bridges, Erika Melroy and Megan McCain, with Recology Cleanscapes gave a presentation to Council on the performance of 2013 and what's new for 2014.

### CONSENT AGENDA

- Item 1: TASK ASSIGNMENT FOR REDONDO PARKING STUDY  
Motion is to approve the Task Order Assignment 2014-02 with Parametrix for the Parking Management Plan – Redondo study in the amount of \$99,992.73, authorize a contingency in the amount of \$10,000 and further authorize the City Manager to sign said Task Order substantially in the form as submitted.
- Item 2: DES MOINES FARMERS MARKET  
Motion is to adopt Draft Resolution No. 14-038 authorizing the Des Moines Farmers Market to conduct the Market at the Des Moines Marina and Marina Center Lot on Saturdays from June through October, 2014, and other market days in concurrence with the City; and to authorize the City Manager to sign the Agreement between the Farmers Market and the City of Des Moines substantially in the form as attached.
- Item 3: DRAFT RESOLUTION NO. 14-040 AUTHORIZING DEPOSIT AND WITHDRAWAL OF FUNDS IN THE LOCAL GOVERNMENT INVESTMENT POOL (LGIP), SUPERSEDING RESOLUTION NO. 1143  
Motion is to adopt Draft Resolution No. 14-040, authorizing deposit or withdrawal of funds in the Local Government Investment Pool in accordance with the provisions of the Washington Administrative Code for the purpose of investment as stated in the Washington Administrative Code, acknowledging that the City Council and City staff responsible for overseeing or making investment decisions has received, read, and understands the prospectus, and superseding Resolution No. 1143.
- Item 4: HUMAN TRAFFICKING AWARENESS DAY  
Motion is to approve the Proclamation recognizing annually January 11<sup>th</sup> as Human Trafficking Awareness Day.
- Item 5: KING COUNTY PARKS PROPERTY TAX LEVY AGREEMENT  
Motion is to authorize entering into the Agreement with King County for the City's proportionate share of funds from the King County Parks Property Tax Levy in years 2014-2019 and to authorize the City Manager to sign the Parks Property Tax Levy Agreement between King County and City of Des Moines substantially in the form as attached.
- Item 6: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers included in the attached list and further described as follows:

Claim Checks: \$476,948.72

Payroll Fund Transfers: \$407,672.57

Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers: \$884,621.29

**Direction/Action**

Motion made by Councilmember Musser to approve the consent agenda; seconded by Mayor Pro Tem Pina.

The motion passed 7-0.

**PUBLIC HEARING/CONTINUED PUBLIC HEARING**

- 1: SUPPORT FOR KING COUNTY WIDE TRANSPORTATION DISTRICT PROPOSITION 1  
Staff Presentation: Planning, Building and Public Works Director Dan Brewer

Mayor Kaplan opened the Public Hearing at 7:50 p.m.

Planning, Building and Public Works Director Dan Brewer gave a brief power point presentation to Council on the King County Wide Transportation District Proposition 1.

Mayor Kaplan asked 3 times if anyone wished to speak; seeing none Mayor Kaplan closed the Public Hearing at 7:53 p.m.

**Direction/Action**

Motion made by Mayor Kaplan to adopt Draft Resolution No. 14-037 in support of King County Transportation District Proposition 1 for Sales and Use Tax and Vehicle Fee for Transportation Improvements; seconded by Councilmember Musser.

The motion passed 7-0.

**NEW BUSINESS**

1. MARINA DEVELOPMENT REQUEST FOR QUALIFICATIONS  
Staff Presentation Economic Development Manager Marion Yoshino

Economic Development Manager Marion Yoshino opened the presentation and introduced Steve Monkewicz, with GoodFit Development who gave a power point presentation on the future development of the Marina floor. Mr. Monkewicz introduced to Council Ed Young, Westlead Capital of Taipei, Jason Blath, an Immigration Attorney specializing in EB-5 and Matt Whittman of Whittman Estes Architecture and Landscape, who took part in the presentation.

**Direction/Action**

Motion made by Councilmember Musser to authorize staff to begin negotiations with GoodFit Development et al to create a development agreement and a ground lease contract for the Des Moines Marina; seconded by Councilmember Sheckler. The motion passed 7-0.

Motion made by Councilmember Musser to direct staff to retain representation to advise the City on contractual aspects of a ground lease and development agreement for the Des Moines Marina; seconded by Councilmember Sheckler.

The motion passed 7-0.

**NEXT MEETING DATE**

April 3, 2014, Regular City Council Meeting

**ADJOURNMENT**

Motion made by Mayor Pro Tem Pina to adjourn; seconded by Councilmember Nutting.  
The motion passed 7-0.

The meeting was adjourned at 8:56 p.m.

Respectfully Submitted,  
Bonnie Wilkins  
City Clerk



## MINUTES

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11<sup>th</sup> Avenue South, Des Moines**

**April 3, 2014 – 7:00 p.m.**

### CALL TO ORDER

Mayor Kaplan called the meeting to order at 7:00 p.m.

### PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Pennington.

### ROLL CALL

Council present: Mayor Dave Kaplan; Councilmembers Jeremy Nutting, Melissa Musser, Jeanette Burrage, Bob Sheckler and Vic Pennington. Mayor Pro Tem Pina was absent.

Councilmember Musser moved to excuse Mayor Pro Tem Pina; seconded by Councilmember Nutting.  
The motion passed 6-0.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Police Chief George Delgado; Land Use Planner Nikole Coleman-Porter; City Clerk Bonnie Wilkins.

### CORRESPONDENCE

There were no correspondences.

### COMMENTS FROM THE PUBLIC

Rikki Marohl, 22807 17<sup>th</sup> Avenue S, Des Moines – invited Council to the Des Moines Elementary School auction, April 26, 2014.

Tryg Fortun, 16019 Inglewood Road NE, Kenmore – Spoke on development of property on 226<sup>th</sup> & Marine View Drive.

### BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Pennington:

- Public Safety & Transportation:
  - Chronic Nuisance Properties.
  - Transportation Funding.
  - Marijuana Licensing.

Councilmember Sheckler:

- Attended meetings with Venture Capitalists on development by Highline Community College.

Councilmember Burrage:

- No report.

Councilmember Musser:

- No Report.

Councilmember Nutting:

- Upcoming Events:
  - Spring Eggstravaganza, April 19 from 9:00-10:00 a.m., \$5 admission.
  - Mt. Rainier Pool April Pool's Day, April 19.
    - Elected Officials to walk to plank.
  - Des Moines Elementary School Auction April 26, 5:30 p.m.

**PRESIDING OFFICER'S REPORT**

- 1<sup>st</sup> Quarter 2014 Employee Recognition Program:
  - Maintenance Worker Adam Rau; Executive Assistant Autumn Lingle; Sr. Maintenance Worker John Cozart & Senior Maintenance Worker Norm Russell; Information Systems Manager Dale Southwick & Desktop Support Technician Chris Pauk; Commander Bob Bohi; Accounting Assistant Lorraine Cottrell; Police Officer Justin Cripe; Public Works and Parks Maintenance Superintendent John Blackburn, Payroll and Benefits Specialist Jennifer Dalbec; Master Police Sergeant Patti Richards; Administrative Assistant Peggy Volin; City Clerk Bonnie Wilkins; Public Work & Engineering Staff.
- FUTURE CITY PRESENTATION
  - Students from Pacific Middle School gave a presentation of their Future City that won 1<sup>st</sup> Place in the Washington State Future City National Competition.

Mayor Kaplan asked Council for their indulgence to read the Consent Agenda before Administration Report

**CONSENT AGENDA**

Item 1: APPROVAL OF MINUTES  
Motion is to approve the minutes from the March 13, 2014 Regular City Council Meeting.

Item 2: WASHINGTON STATE FUTURE CITY REGIONAL COMPETITION PROCLAMATION  
Motion is to approve the Proclamation recognizing the achievements of the Pacific Middle School students in the Washington State Future City National Competition.

**Direction/Action**

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

Mayor Kaplan read the Proclamation for the Washington State Future City Regional Competition into the record.

**ADMINISTRATION REPORT**

Item 1: EMERGING ISSUES  
City Manager Piasecki commented on the slide on 251<sup>st</sup>. Traffic is open both ways.

Encourages all Citizens to acknowledge employees when they see them doing good things. Information on how to recognize employee can be found on our website, [www.desmoineswa.gov](http://www.desmoineswa.gov).

- Item 2: POLICE DEPARTMENT ANNUAL REPORT  
Chief Delgado gave a power point presentation on the Police Department's achievements over the past year.

**PUBLIC HEARING/CONTINUED PUBLIC HEARING**

- Item 1: APPLICATION FOR APPROVAL OF A SHORELINE VARIANCE REQUEST TO THE SHORELINE MASTER PROGRAM, (LUA2013-0025 GREG LINDSTROM)  
Staff Presentation: Land Use Planner Nikole Coleman-Porter

Mayor Kaplan opened the Public Hearing at 7:51 p.m.

Mayor Kaplan asks Council to give consideration as to whether they have:

1. A demonstrated bias or prejudice for or against any party to the proceedings.
2. A direct or indirect monetary interest in the outcome of the proceedings.
3. A prejudgment of the issue prior to hearing the facts on the record.
4. Ex parte contact with any individual, excluding Administrative staff, with regard to an issue prior to the hearing.

Mayor Kaplan asked Council if they had an ex parte contact or prejudice with this issue; seeing none Mayor Kaplan asked if anyone wished to speak.

Seeing none Mayor Kaplan invited staff to make their presentation.

Community Development Manager Denise Lathrop introduced Land Use Planner Nikole Coleman-Porter who gave a power point presentation to Council.

Mayor Kaplan asked if anyone wished to speak 3 times; seeing none Mayor Kaplan asked Council if they had any questions.

Mayor Kaplan closed the Public Hearing at 8:04 p.m.

**Direction/Action**

**Motion** made by Councilmember Sheckler to approve the shoreline variance application for LUA2013-0025, to install a cable lift tram from the edge of the high bluff down to an existing bulkhead, conduct minor bulkhead repair, and restore landscaping around the single family residence, including a new patio, a low retaining wall, and new plantings; seconded by Councilmember Musser. The motion passed 6-0.

**NEXT MEETING DATE**

April 10, 2014, Regular City Council Meeting

**ADJOURNMENT**

Motion made by Councilmember Nutting to adjourn; seconded by Councilmember Pennington. The motion passed 6-0.

The meeting was adjourned at 8:06 p.m.

Respectfully Submitted,  
Bonnie Wilkins  
City Clerk



## MINUTES

### DES MOINES CITY COUNCIL REGULAR MEETING City Council Chambers 21630 11<sup>th</sup> Avenue South, Des Moines

April 10, 2014 – 7:00 p.m.

#### CALL TO ORDER

Mayor Kaplan called the meeting to order at 7:00pm

#### PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Sheckler.

#### ROLL CALL

Council present: Mayor Dave Kaplan; Councilmembers Jeremy Nutting, Melissa Musser, Jeanette Burrage, Bob Sheckler and Vic Pennington.

Absent: Mayor Pro Tem Matt Pina was absent. A move was made by Councilmember Nutting to excuse his absence, seconded by Councilmember Musser. Passed unanimously.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Planning, Community Development Manager Denise Lathrop; Assistant City Attorney Tim George; Acting City Clerk Autumn Lingle.

#### CORRESPONDENCE

City Manager Piasecki noted that he had received a reply from the Port Commission to Mayor Kaplan's March 27 letter, regarding Des Moines Creek Business Park and the \$15.00 wage issue.

#### COMMENTS FROM THE PUBLIC

Gene Achziger, 28708 Soundview Dr. S., Mr. Achziger is the President of Des Moines Municipal Pool District. He issued an invitation to the April Pools Day Event at the Mount Rainier Pool, on Saturday, April 19, at noon and 3pm. Festivities include a life jacket raffle, marine life exhibits, "Walk the Plank" competition and more. Detailed information can be found at [www.desmoinespool.com](http://www.desmoinespool.com)

#### BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Pennington:

- No Report

Councilmember Sheckler:

- No Report

Councilmember Burrage:

- No Report

Councilmember Musser:

- Enjoyed and recommended the Breeders Theater Tolstory performance.
- Attended the Marina Tenants Association Meeting with Councilmember Nutting. Topics discussed,
  - leasehold tax refunds

- ladders
- 911 phones
- The South Sound Opening Day is at the Des Moines Yacht Club, Saturday, May 10, 11:00am-4:00pm.

Councilmember Nutting:

- Saturday, April 19, is the EGGStravaganza sponsored by Des Moines Legacy Foundations Easter egg hunt at Beach Park.
- April pools day at Mount Rainier Pool.
- Saturday, April 26, is the 1<sup>st</sup> Annual Common Good Benefit Brunch fundraiser sponsored by Destination Des Moines and Des Moines Art Commission.
- Saturday, April 26, is the annual auction at Des Moines Elementary School at Landmark Event Center.

**PRESIDING OFFICER'S REPORT**

- Brookings Institute Meeting on April 9 included information on confronting suburban poverty, promoting economic development, providing opportunities and other significant foundational information. Thanked King County Executive Dow Constantine and Representative Dave Upthegrove for helping to host this important and relevant event.

**ADMINISTRATION REPORT**

City Manager Piasecki:

- Noted that the slide on 251<sup>st</sup> has been stabilized.
- Diseased tree in Big Catch Plaza was removed and replaced with a healthy new tree.
- Editorial on fish consumption and clean water and it's local impact, was discussed with Council.

**CONSENT AGENDA**

- Item 1: APPROVAL OF VOUCHERS  
Motion is to approve for payment vouchers and payroll transfer included in the attached list and further described as follows:  
Claim Checks: \$514,117.11  
Payroll Fund Transfers: \$432,878.87  
Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers: \$946,995.98
- Item 2: DRAFT ORDINANCE NO. 13-246, AMENDMENTS TO TITLE 11 DMMC  
First Motion is to suspend Rule 26(a) in order to enact Draft Ordinance No. 13-246 on first reading.  
  
Second Motion is to enact Draft Ordinance No. 13-246, repealing chapters 11.24 and 11.28 DMMC and reenacting as new sections in chapter 11.08 DMMC.
- Item 3: APPROVAL OF LEASE WITH GEORGE POTTS & ANDREA PETERSEN, d/b/a OCEAN QUEST DIVE CHARTERS, LLC  
Motion is to approve the Lease Agreement between the City and George Potts & Andrea Petersen, d/b/a Ocean Quest Dive Charters, LLC, for the use of a slip in the Des Moines Marina, and to authorize the City Manager to sign the Lease Agreement, substantially in the form as attached.
- Item 4: TASK ORDER ASSIGNMENT WITH PARAMETRIX, INC. FOR DESIGN SERVICES FOR MARINA SOUTH PARKING LOT STORMWATER RETROFIT PROJECT

First Motion s to approve Task Order Assignment with Parametrix, Inc. for design services for Marina South Parking Lot Stormwater Retrofit Project in the amount of \$109,635.13, plus a contingency up to a maximum payable amount of \$120,000 and further authorize the City Manager or his designee to sign said Task Order Assignment, substantially in the form as submitted.

Second Motion is to remand the Marina South Parking Lot Stormwater Retrofit Project to the Municipal Facilities Committee for review and recommendations.

**Direction/Action**

Motion made by Councilmember Musser to approve the consent agenda; seconded by Councilmember Nutting.

Councilmember Musser clarified that the \$120,000 the Council authorized the City Manager to spend, is proceeds from a grant that the city received.

Councilmember Pennington brought an error to the attention of Council. In the Council Packet on Page 23, under Task 2 Survey, Goal, line 2, *west* should be replaced with *east*. It will be corrected.

Mayor Kaplan mentioned that he was pleased that a Charter Dive Company would be operating out of the Des Moines Marina.

The motion passed 6-0.

**EXECUTIVE SESSION**

At 7:18pm, Council went into Executive Session. The purpose of the Executive Session was to discuss pending litigation in accordance with RCW 42.30.110(1)(i). It concluded at 7:23pm.

No formal action was taken.

**PUBLIC HEARING/CONTINUED PUBLIC HEARING**

Item 1: Item 1: DRAFT ORDINANCE 14-011, MODIFICATION OF ZONING REQUIREMENTS REGULATING COMMERCIAL SPACE REQUIREMENT FOR MIXED USE IN THE MARINA DISTRICT  
Staff Presentation: Community Development Manager  
Denise Lathrop

Mayor Kaplan opened the Public Hearing at 7:33pm.

Community Development Manager Lathrop gave a power point presentation to Council on mixed use in the Marina District.

Mayor Kaplan asked 3 times if anyone wished to speak; seeing none Mayor Kaplan asked Council if they had any questions.

Mayor Kaplan closed the Public Hearing at 7:35pm

**Direction/Action**

Motion 1 made by Councilmember Burrage to suspend Rule 26(a) to consider Draft Ordinance 14-011 on first reading; seconded by Councilmember Musser  
The motion passed 6-0.

**Motion 2** made by Councilmember Burrage to enact Draft Ordinance No. 14-011 amending DMMC 18.115.050(9), "*Environmental performance standards*, for the D-C Downtown Commercial Zone; seconded by Councilmember Musser. The motion passed 6-0.

Mayor Kaplan read the ordinance into the record.

## NEW BUSINESS

Item 1:

PUBLIC DISTURBANCE NOISE CODE

Staff Presentation

Assistant City Attorney Tim George

### **Direction/Action**

**First Motion** made by Councilmember Sheckler to suspend Rule 26(a) in order to enact Draft Ordinance No. 14-018 on first reading; seconded by Councilmember Musser.

The motion passed 6-0.

**Second Motion** made by Councilmember Sheckler to enact Draft Ordinance No. 14-018, amending and updating chapter 7.36 DMMC entitled *Public Disturbance Noises*; seconded by Councilmember Musser.

Mayor Kaplan noted that some of these issues occurred in Mayor Pro Tem Pina's neighborhood and he thanked him for bringing this matter to Council's attention.

The motion passed 6-0.

Mayor Kaplan read the ordinance into the record.

## NEXT MEETING DATE

April 24, 2014, Regular City Council Meeting

## ADJOURNMENT

Motion made by Councilmember Nutting to adjourn; seconded by Councilmember Musser. The motion passed 6-0.

The meeting was adjourned at 7:41pm.

Respectfully Submitted,  
Autumn Lingle  
Acting City Clerk

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

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Washington Wildlife and Recreation  
Program Authorizing Resolution

FOR AGENDA OF: 4/24/2014

ATTACHMENTS:

1. Draft Resolution No. 14-070
2. CIP Request Form- Des Moines Beach  
Park Restroom Rehabilitation

DEPT. OF ORIGIN: Parks, Recreation and  
Senior Services

DATE SUBMITTED: 4/7/2014

CLEARANCES:

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

APPROVED BY CITY MANAGER  
FOR SUBMITTAL     

**Purpose and Recommendation**

The purpose of this agenda item is to request that the City Council adopt Draft Resolution No. 14-070 authorizing the submission of an application to the Washington Wildlife and Recreation Program (WWRP) for the Des Moines Beach Park Restroom Project.

**Suggested Motion**

Motion: "I move to adopt Draft Resolution No. 14-070, authorizing the City Manager to submit a grant application for a Washington Wildlife and Recreation Program (WWRP) project to the Recreation and Conservation Office (RCO) as provided in chapter 79A.15 RCW, Acquisition of Habitat Conservation and Outdoor Recreation Lands, for grant funding in the amount of \$287,400 for the Des Moines Beach Park Restroom Project."

**Background:**

The City of Des Moines is working toward the restoration of the eight remaining historic buildings in the park. The renovation of the Auditorium was completed in 2011. The renovation of the historic

Dining Hall is underway with plans to be reopened for public use in 2015. These venues combined with the Founders Lodge and park grounds create the Des Moines Beach Park Event Center drawing thousands of users each weekend between May and October. The renovation of the Restroom facilities and Picnic Shelter planned for in 2015-2016 are needed due to the high volume use of the park for community events, corporate picnics and family gatherings. The Sun Home Lodge, Cabins and Cottages located in the park are planned for in the 2014-2019 Capital Improvement Plan as funds are available.

The Des Moines Beach Park is the only remaining Swedish church camp built in the early 1900's to 1960's located on waterfront in the Puget Sound region. This distinction qualified the Covenant Beach Bible Camp Historic District to be nominated and listed on the Washington State Register of Historic Places in 1988 and on the National Register of Historic Places in 2006. The park is also a regional waterfront resource providing access for the residents of South King County to the Puget Sound.

**Discussion:**

The Des Moines Beach Park Restroom Project is identified in the City of Des Moines 2014-2019 Municipal Capital Program with proposed project funding of \$574,800. Project applications to the State Recreation and Conservation Office (RCO) Washington Wildlife and Recreation Program (WWRP) are accepted every two years. This project application is due on May 1, 2014.

State funds in the amount of \$287,400 would be used to match City funds of \$287,400. If awarded the grant funds would be available on July 1, 2015 and must be expended by June 30, 2017.

The City's share of the match will come from a portion of the 2014-2019 King County Parks Levy funding that provides approximately \$55,000 each year for six years, plus REET funds of \$12,400.

**Alternatives:**

Council may decide to postpone the Beach Park Restroom project until the 2016 Washington Wildlife and Recreation Program grant cycle. If awarded at that time, grant funds would be available on July 1, 2017 to be expended by June 30, 2019.

**Financial Impact:**

Des Moines Beach Park Restroom Project will utilize Washington Wildlife and Recreation Program Grant funds of \$287,400 to match the City's REET funds of \$12,400 and its share of King County Parks Levy funds (\$55,000 per year in 2015- 2019 totaling \$275,000). Because Levy funds are received annually, the City will have to use \$165,000 from the MCI ending fund balance in years 2015-2016 to be repaid with Levy funds in years 2017-2019.

**Recommendation/Conclusion:**

This project was approved by City Council in the 2014-2019 CIP. This resolution is required to apply for state Recreation and Conservation Office grants.

CITY ATTORNEY'S FIRST DRAFT 04/04/2014

DRAFT RESOLUTION NO. 14-070

CITY OF DES MOINES, WA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the submittal of application(s) for grant funding assistance for Washington Wildlife and Recreation Program project(s) (Development Type Projects) to the Recreation and Conservation Office as provided in chapter 79A.15 RCW, *Acquisition of habitat conservation and outdoor recreation lands*, WAC 286, and subsequent Legislative action.

Project Name: Des Moines Beach Park Restroom Project.

**WHEREAS**, our organization has approved a comprehensive parks and recreation plan or habitat conservation plan that includes this project, and

**WHEREAS**, under the provisions of the Washington Wildlife and Recreation Program (WWRP), state grant assistance is requested to aid in financing the cost of facility development, and

**WHEREAS**, our organization considers it in the best public interest to complete the project described in the application(s); now therefore,

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

(1) The City Manager is authorized to make formal application to the Recreation and Conservation Office for grant assistance.

(2) Any grant assistance received will be used for direct costs associated with implementation of the project referenced above.

(3) Our organization hereby certifies that our matching share of project funding will be derived from City of Des Moines Municipal Capital Improvement Fund and that we are responsible for supporting all non-cash commitments to this project should they not materialize.

(4) We acknowledge that the grant assistance, if approved, will be paid on a reimbursement basis, meaning we will only request payment from the Recreation and Conservation Office after eligible and allowable costs have been incurred and payment remitted to our vendors, and that the Recreation and Conservation Office will hold retainage until the project is deemed complete.

(5) We acknowledge that any facility developed through grant assistance from the Recreation and Conservation Funding Board must be reasonably maintained and made available to the general public at reasonable hours and times of the year according to the type of area or facility unless other restrictions have been agreed to by the Recreation and Conservation Office Director or the Recreation and Conservation Funding Board.

(6) We acknowledge that any facility developed with grant assistance from the Recreation and Conservation Funding Board must be dedicated for public outdoor recreation purposes, and be retained and maintained for such use for perpetuity unless otherwise provided and agreed to by our organization and the Recreation and Conservation Funding Board.

(7) This Resolution becomes part of a formal application to the Recreation and Conservation Office for grant assistance.

(8) We provided appropriate opportunity for public comment on this application.

**ADOPTED BY** the City Council of the City of Des Moines, Washington this \_\_\_\_ day of \_\_\_\_\_, 2014 and signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2014.

---

M A Y O R

APPROVED AS TO FORM:

4/16/14 9:15 AM

Resolution No. \_\_\_\_  
Page 3 of \_\_\_\_

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

ATTEST:

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





**2014 - 2019 CAPITAL IMPROVEMENT PLAN  
Municipal Capital Improvement**

**CAPITAL IMPROVEMENT PLAN  
REQUEST FORM**

|                     |                                                               |                        |       |
|---------------------|---------------------------------------------------------------|------------------------|-------|
| <b>CATEGORY</b>     | General Government                                            | <b>PROJECT NO.</b>     | _____ |
| <b>PROJECT</b>      | Des Moines Beach Park (DMBP) Restroom Building Rehabilitation | <b>PROJECT STATUS:</b> | _____ |
| <b>LOCATION</b>     |                                                               | Preliminary Estimate   | _____ |
| <b>DESCRIPTION:</b> |                                                               | Plans in Preparation   | _____ |
|                     |                                                               | P.S.E. Complete        | _____ |

Rehabilitation of the Restroom includes building a new stem wall, update mechanical, electrical and plumbing systems, fixtures, interior and exterior finishes and drainage to serve the high volume Beach Park and Des Moines Creek Trail park users.

**EXPENDITURE SCHEDULE**

| COST ELEMENTS           | TOTAL*            | FY 11 Act | FY 12 Act | FY 13 Est | FY 13 Amd | FY 14 | FY 15             | FY 16 | FY 17 | FY 18 | FY 19 |
|-------------------------|-------------------|-----------|-----------|-----------|-----------|-------|-------------------|-------|-------|-------|-------|
| ADMINISTRATION          | \$ 3,600          |           |           |           |           |       | \$ 3,600          |       |       |       |       |
| CIP PROJ MANAGEMENT     | 17,829            |           |           |           |           |       | 17,829            |       |       |       |       |
| DESIGN / ENGINEERING    | 53,486            |           |           |           |           |       | 53,486            |       |       |       |       |
| SOILS                   | 2,500             |           |           |           |           |       | 2,500             |       |       |       |       |
| BUILDINGS               | 356,578           |           |           |           |           |       | 356,578           |       |       |       |       |
| BERM IMPROVEMENTS       | -                 |           |           |           |           |       |                   |       |       |       |       |
| PROJECT ADMIN. (CONST.) | 25,616            |           |           |           |           |       | 25,616            |       |       |       |       |
| CONTINGENCY             | 71,316            |           |           |           |           |       | 71,316            |       |       |       |       |
| SALES TAX               | 33,875            |           |           |           |           |       | 33,875            |       |       |       |       |
| PERMITS & OTHERS        | 10,000            |           |           |           |           |       | 10,000            |       |       |       |       |
| EQUIPMENT               | -                 |           |           |           |           |       |                   |       |       |       |       |
| <b>TOTAL</b>            | <b>\$ 574,800</b> |           |           |           |           |       | <b>\$ 574,800</b> |       |       |       |       |

| FUNDING SOURCES                 | TOTAL*            | FY 11 Act | FY 12 Act | FY 13 Est | FY 13 Amd | FY 14 | FY 15             | FY 16       | FY 17       | FY 18       | FY 19       |
|---------------------------------|-------------------|-----------|-----------|-----------|-----------|-------|-------------------|-------------|-------------|-------------|-------------|
| REET                            | \$ 12,400         |           |           |           |           |       | \$ 12,400         | \$ -        | \$ -        | \$ -        | \$ -        |
| RCO                             | 287,400           |           |           |           |           |       | 287,400           |             |             |             |             |
| MCI                             | -                 |           |           |           |           |       |                   |             |             |             |             |
| King County Levy 2015-2019=275K | 275,000           |           |           |           |           |       | 55,000            | 55,000      | 55,000      | 55,000      | 55,000      |
| To Be Determined                | -                 |           |           |           |           |       | 220,000           | (55,000)    | (55,000)    | (55,000)    | (55,000)    |
|                                 | -                 |           |           |           |           |       |                   |             |             |             |             |
|                                 | -                 |           |           |           |           |       |                   |             |             |             |             |
| <b>TOTAL</b>                    | <b>\$ 574,800</b> |           |           |           |           |       | <b>\$ 574,800</b> | <b>\$ -</b> | <b>\$ -</b> | <b>\$ -</b> | <b>\$ -</b> |

\*Excludes FY 13 Amd



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

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Washington State Parks and  
Recreation Commission Clean Vessel Sewage  
Disposal Facility Grant.

ATTACHMENTS:

- 1. Draft Resolution No. 14-077
- 2. Grant No. CV 315-110

FOR AGENDA OF: April 24, 2014

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: April 16, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: AT

**Purpose and Recommendation**

The purpose of this Agenda Item is to request Council’s authorization to accept a grant from the Washington State Parks and Recreation Clean Vessel Program to be used to purchase another pump-out station for the Marina. The grant will cover 100% of the cost of purchasing and installing the pump-out station.

**Suggested Motion:** “I move to adopt Draft Resolution No. 14-077 authorizing the acceptance of Washington State Parks and Recreation Commission’s Grant No. CV 315-110 for a new pump-out station for the Des Moines Marina, and to authorize the City Manager to sign the Washington State Parks and Recreation Commission Clean Vessel Sewage Disposal Facility Grant Agreement substantially in the form as attached.”

**Background**

The Washington State Parks and Recreation Commission has managed the State’s Clean Vessel Program for many years. This Program is a national program with funding coming from the Federal Government and the Program’s intent is to fund and monitor the installation of sewage pump-outs on the nation’s waterways. The Marina has utilized this program to purchase three pump-outs, two of which are still in operation. Typically the Program will fund 75% of the cost of purchase and installation of a

pump-out station, but this year the program is funding 100% of the cost. The program will also fund 75% of the annual costs to operate and maintain the pump-out station.

**Discussion**

Currently the Marina has a pump-out station at the fuel dock. Typically, boaters will use the pump-out station to empty their holding tanks when they are taking on fuel, but a significant number of boaters just need to use the pump-out station. During the off-season this is not a problem, but during the busy months when boaters are waiting in line to get fuel, the wait is made longer by boaters who just need to use the pump-out station. The Marina staff will install the new pump-out station on the north float in the guest moorage area where it can be accessed by boaters at any time, which will eliminate or reduce wait times at the fuel dock during the busy season.

**Financial Impact**

The ongoing maintenance, repairs, and operating costs of the machine are partially paid by the Program, up to 75%. The Marina staff has found this generation of pumps to be very reliable with low maintenance and repair costs. The only operating expenses are electricity and sewage disposal, which are minor. The Marina staff also believes that less congestion at the fuel dock will result in more fuel sales.

**Conclusion**

The availability of another pump-out station will reduce congestion at the fuel dock and encourage boaters to dispose of their sewage properly at a small cost to the Marina.

**Recommendation**

The staff recommends that the Council adopt Resolution No. 14-077 and authorize the City Manager to sign the grant agreement as attached.

**Concurrence**

N/A

CITY ATTORNEY'S FIRST DRAFT 04/16/2014

DRAFT RESOLUTION NO. 14-077

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON,** authorizing the acceptance of Grant No. CV 315-110 from the Washington State Parks and Recreation Commission for a new pump-out station at the Des Moines Marina.

**WHEREAS,** under the provisions of the Washington State Parks and Recreation Commission Clean Vessel Sewage Disposal Facility Grant, state grant assistance was requested to aid in financing the cost of a new pump-out station, and

**WHEREAS,** an additional pump-out station at the Des Moines Marina would reduce congestion at the fuel dock and encourage boaters to dispose of their sewage properly, and

**WHEREAS,** the City Council finds it in the best public interest to accept the Washington State Parks and Recreation Grant and to complete the project described in Grant No. CV 315-110; now therefore,

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

(1) The City Council hereby accepts Grant No. CV 315-110 from the Washington State Parks and Recreation Clean Vessel Program for the purchase of a pump station at the Des Moines Marina.

(2) Any grant assistance received will be used in accordance with the Grant requirements.

(3) The City of Des Moines acknowledges that the pump-out station purchased and installed with funds from the Washington State Parks and Recreation Commission will be reasonably maintained and made available to the general public at reasonable hours and times of the year according to the type of area or facility unless other restrictions have been agreed to by the Washington State Parks Commission and Recreation Commission.

(4) The City of Des Moines acknowledges that any pump-out station purchased and installed with funding from the

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

Washington State Parks and Recreation Commission must be dedicated for public recreational boating purposes, and be retained and maintained for such use for 10 years or the usable life of the equipment, whichever is greater, unless otherwise provided and agreed to by our organization and the Washington State Parks and Recreation Commission.

**ADOPTED BY** the City Council of the City of Des Moines, Washington this \_\_\_\_ day of \_\_\_\_\_, 2014 and signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2014.

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

APPROVED AS TO FORM:

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

ATTEST:

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

**WASHINGTON STATE PARKS AND RECREATION COMMISSION  
CLEAN VESSEL SEWAGE DISPOSAL FACILITY GRANT  
PROJECT: PUMPOUT REPLACEMENT  
GRANTEE: CITY OF DES MOINES MARINA  
GRANT No. CV 315-110**

The Washington State Parks and Recreation Commission, herein referred to as Commission, and City of Des Moines, herein referred to as Project Sponsor, do hereby enter into the following Boat Sewage Disposal Facility Grant agreement.

This grant document provides funding for the installation of boat sewage disposal equipment and operation and maintenance thereto as set out in the following terms and conditions, not otherwise appearing in statutes or regulations.

Project Sponsor shall install a boat sewage disposal facility and may subsequently request funds for operations and maintenance costs of the facility in accordance with the requirements of this grant construction document and all applicable state and Federal laws.

**RESPONSIBILITY FOR PROJECT**

The project itself is the sole responsibility of Project Sponsor. Commission undertakes no responsibilities to Project Sponsor, or to any third party, other than as expressly set out in this document. Project Sponsor shall be solely responsible for the design, permitting, development, construction, implementation, operation and maintenance of the project, as those phases are applicable to this project, and solely responsible for any claim or suit of any nature by any third party related in any way to the project.

If an archaeological survey is required, the survey costs are approved as part of this project. However, the survey must be completed, and the Project Sponsor must receive approval, *in writing from the CVA Grant Manager*, before proceeding to the construction phase.

**TERM**

The term of this agreement shall be from the date last signed below for a period of two (2) years in order to accommodate the below construction activity, unless earlier terminated as provided for herein. The operations and maintenance portion of this agreement shall be for ten (10) years or the usable life of the equipment, whichever is longer.

**SCOPE OF WORK**

Activity to be completed:

- Replacement of City's marina pumpout with 100% funding from CVA funds.

Project Sponsor shall complete the approved construction activities within a twelve (12) consecutive month period as a term of the acceptance of this construction grant. If the work is not satisfactorily completed within a twelve (12) month period, but not later than June 30, 2015, Project Sponsor will be in breach and Commission may, at its discretion, rescind the grant and require repayment of any grant funds already disbursed to Project Sponsor.

Commission may extend this construction period if, in its opinion, Project Sponsor has demonstrated in writing, a satisfactory showing of extenuating circumstances. Commission has the absolute right to accept or reject any request for additional time without any appeal rights for Project Sponsor.

Work will be considered complete, only when the following conditions are met:

- The activities and facilities described in the Scope of Work and this grant document are installed, functional and ready for use;
- On-site signs are in place; and
- Appropriate proof has been provided to Commission or an inspection by Commission or designee has been made.

### **FUNDING**

Commission will reimburse Project Sponsor for eligible activities only after Commission has accepted the work. The total reimbursement from Commission shall not exceed **One Hundred percent (100%)** from all eligible construction activities which shall not exceed the award amount of **Eleven Thousand, Three Hundred Eighty-Three, and No/100ths Dollars (\$11,383.00)**. Reimbursement shall not be unreasonably withheld.

Project Sponsor agrees that as part of the O&M requirement for reimbursement, Project Sponsor shall contribute matching funds of no less than **Twenty-Five percent (25%)** of the total O&M cost.

When required matching funds provided by Project Sponsor on this grant may be in cash, in-kind, or volunteer time, but they must fall within the scope of the list of Eligible Expenses as identified below.

#### **Eligible Expenses (including but not limited to):**

- Engineering fees;
- Project administration/coordination;
- Equipment as identified above in the Scope of Work;
- All applicable taxes and freight charges;
- Costs associated with installation of signs;
- All project-related permits and inspections fees as required by local, state, and Federal regulation, and final inspection of the facility by the local health department or department with jurisdiction to approve the operation of the facility;
- Shore works, pilings, and floats;
- Other items as deemed by Commission to be necessary to complete the Project.
- Operation and Maintenance activities, which include:
  1. Staff time to operate, repair, and maintain the equipment;
  2. Administrative time;
  3. Cost of parts, supplies, and materials directly related to care of the equipment;
  4. Costs of utilities to operate and maintain the equipment or costs of removal of sewage to treatment plant;
  5. Other items as deemed by Commission to be necessary.

#### **Prior Costs**

Commission will not reimburse Project Sponsor for any costs incurred prior to the effective date of this grant except for approved:

- Environmental permits, including the Substantial Development Application;
- Permits which must be complete prior to beginning construction;
- Preliminary engineering costs to design and add a project to marina, if needed.

## **Construction and Installation**

For new construction and installation projects, Project Sponsor shall provide Commission with complete Plans and Specifications as applicable and a map showing the location of the Marina and specific latitude and longitude at the center of the Marina Harbor.

## **Cost Increases**

Cost overruns are the responsibility of Project Sponsor and must be borne by Project Sponsor. Approval of any additional fund increases to address cost increases will be awarded solely at Commission's discretion. The grant agreement must be amended in writing and signed by both parties before any reimbursements for any approved increased project costs can occur.

## **Reimbursement of Funds**

Project Sponsor may request no more often than quarterly reimbursements for qualified expenses paid. Once Commission has approved and accepted the expense, Project Sponsor shall be reimbursed for **100% (one hundred percent)** of the actual construction project costs incurred, up to the total reimbursement amount defined above, and 75% seventy-five percent of all O&M costs, as long as grant funds remain available.

Reimbursement shall take place after Project Sponsor has furnished a properly completed A-19 Invoice Voucher (provided by Commission) and provided any required supporting documentation. Supporting documentation could include, but is not limited to:

- Copies of all invoices and receipts, construction contracts, performance bonds, change orders, advertisements or other documents pertaining to construction of facility;
- Copies of SEPA documentation including permits/approvals necessary to complete the work;

## **USE AND MAINTENANCE OF PROJECT**

Project Sponsor shall operate and maintain, or cause to be operated and maintained, the property or facilities which are the subject matter of this grant document as follows:

- Any property or facilities open to the public shall be open for the use by all segments of the public without restriction and in compliance to all applicable federal and state nondiscrimination laws, regulations, and policies.
- Project Sponsor shall grant access to all recreational vessels to use boat sewage disposal facility funded under this agreement.
- Access shall be allowed during normal marina operating hours and the operating hours shall be posted in a conspicuous location on the premises.
- Project Sponsor shall operate and maintain the facilities in accordance with all applicable Federal, State and local laws, orders, regulations and permits. Project Sponsor shall be responsible for all operation, maintenance, and repair of the facilities.
- As a condition of receiving the grant funds, Project Sponsor shall actively maintain the facility for no less than **ten (10) years or the full design life** of the equipment provided from this grant, **whichever is longer**.
- In the event an equipment breakdown occurs, Project Sponsor shall notify Commission within two (2) working days of breakdown. The facility must be repaired and fully operational within ten (10) working days after the breakdown where the breakdown can be remedied with normal expected repairs for five hundred dollars (\$500) or less. For repairs greater than five hundred dollars (\$500), the facility must be fully operational within twenty (20) days after the breakdown. A written report for all breakdowns must be submitted to Commission within two (2) weeks of the breakdown describing the

problem(s), repair(s), and the cost(s).

### **Use Records**

Project Sponsor shall monitor the use of the boat sewage disposal facility by installing a use counter mechanism, flow meter, or hour meter, and shall maintain records of use numbers in a manner as approved by Commission. On a form to be provided by Commission, Project Sponsor shall report the annual gallonage use by October 31st of every year for the period of October 1st through September 30<sup>th</sup> for the previous twelve (12) months each and every year of the facility's use whether any request for reimbursement occurred or not.

### **Audits**

Project Sponsor shall maintain proper records and make them available for audits in accordance with applicable state and federal laws. Project Sponsor shall also resolve, to the satisfaction of Commission, any audit findings pertaining to funds under this grant document and shall pay Commission for all disallowed or questioned costs disclosed in the final audit report.

### **Liability Insurance**

If Project Sponsor is a private individual or company it shall provide a minimum of \$1,000,000.00 combined single limit insurance for comprehensive general liability for the duration of the grant document. Alternatively, if Project Sponsor is a public entity it shall provide a minimum of \$1,000,000.00 combined single limit insurance for comprehensive general liability under a Self-Insurance Risk Management Program, or Insurance Pool.

### **Public Information Requirements**

Project Sponsor shall install the required signage to be provided by Commission, which is to be clearly visible to direct boaters entering the facility to sewage pumpout and dump stations. In addition, Project Sponsor shall provide signs or markers indicating fees, restrictions, operating instructions and a contact name and telephone number if the facility is discovered inoperable and cooperate in any related boater environmental education program administered or approved by Commission.

### **Fees**

Project Sponsor may charge a maximum of a five-dollar (\$5.00) fee per use, with no justification, for the use of the pumpout facilities constructed with these grant funds. All fee proceeds shall be retained, accounted for, and used by the grant recipient to defray operation and maintenance costs.

### **Spill Reporting and Cleanup**

In the event of a spill or leak of materials from the boat sewage disposal facility, it shall be Project Sponsor's responsibility to promptly begin and complete a thorough cleanup of the spill area. Notwithstanding any federal, state, or local reports that are required for any spill, Project Sponsor shall notify Commission of any and all spills within 24 hours from the time the spill is discovered.

### **Ownership of Boat Sewage Disposal Facility**

Except as otherwise provided herein, Project Sponsor shall retain ownership of the boat sewage disposal facility during the term of the grant. Project Sponsor may, during the term of the grant, transfer or convey its ownership interest in the facility only if said transfer or conveyance is accompanied by an assignment of Project Sponsor's rights and obligations detailed in this grant document and only after prior written approval by the commission. Commission shall not unreasonably withhold its consent to such assignment. Project Sponsor shall not at any time

during the term of the grant convert any facility which was acquired or constructed pursuant to the grant to a use other than those for which the assistance was originally approved.

### **Assignment**

Project Sponsor may not assign this grant document, in whole or in part, without the prior written approval of Commission.

### **Project Sponsor Not an Employee of Commission**

Project Sponsor, its employees or agents performing under this grant document are not considered to be employees or agents of Commission. Project Sponsor will not hold itself out as nor claim to be an officer or employee of Commission and will not make any claim, demand, or application to or for any right or privilege.

### **Governing Law**

This grant document shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this grant document, venue shall be proper only in Thurston County. Project Sponsor acknowledges the jurisdiction of the courts of the State of Washington.

### **Severability**

If any provision of this grant document shall be held invalid, such invalidity shall not affect the other provisions of this grant document which can be given effect without the invalid provision, and to this end the provisions of this grant document are declared to be severable.

### **Termination**

This construction grant may be terminated upon 60 (sixty) days written notice from Commission to Project Sponsor in the event Project Sponsor violates any provision of this grant document, or defaults in the performance of any requirement hereof. All obligations of Commission under this grant document may be suspended or canceled, at the option of Commission, if any of the following events occur:

- Project Sponsor will otherwise be unable to complete the project, or any part of it, on time or
- Project Sponsor has failed to comply with any or all of its obligations under this grant document.

In the event this grant document is terminated by Commission, Project Sponsor shall, within 30 (thirty) days of any such termination, repay to Commission all funds disbursed to Project Sponsor by Commission for the project described herein. Interest shall accrue at the rate of twelve percent (12%) per annum from the time Commission demands repayment of funds. In lieu of repayment, Commission may require that any property acquired under this grant document become Commission property, and Project Sponsors liability, if any, to repay monies shall be reduced by an amount reflecting the fair value of such property.

### **Amendments**

This grant document may be amended only by mutual agreement of the parties in writing.

### **No Waiver by Commission**

Failure by Commission to insist upon the strict performance of any provision of this agreement shall not affect Commission's right to require strict performance of the same provision in the future or any other provision. Failure by Commission to exercise any right based upon a breach, or acceptance by Commission of performance during such breach, shall not constitute a waiver of any of its rights or remedies with respect to such breach.

**Survival**

All obligations of Project Sponsor, which arise prior to the termination of this grant document, shall continue as obligations subject to the requirements of this grant document until fully performed. All Clauses of this grant construction document which require performance beyond the termination date shall survive the termination date of this document.

Future requests for O&M reimbursement following the termination date of this document shall only be allowed when requested on the proper forms provided by Commission and that reference this agreement number and are accompanied with appropriate supporting documentation provided that grant funds remain available for this purpose.

**Authority of Project Sponsor**

Project Sponsor, by the signature of the authorized representative below, represents and warrants that this grant document is a legal, valid, and binding obligation on behalf of Project Sponsor and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, this grant document is executed by:

**City of Des Moines**

**Washington State Parks and Recreation Commission**

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

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

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

Title: Chief Financial Officer

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

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

**City of Des Moines**

Location: **22307 Dock Ave S, Des Moines, WA 98198-4627**

Mailing Address (if Different): **same**

Phone: **(206) 824-5700**

FAX: **None Given**

Email: **swilkins@desmoineswa.gov**

Federal TIN: **91-6016496**

WA State UBI Number: **600-016-906**

**Washington State Parks and Recreation Commission – Boating Program**

Location: **1111 Israel Road SW, Tumwater, WA 98504-2650**

Mailing Address (if Different): **PO Box 42650, Olympia, WA 98504-2650**

Phone: **(360) 902-8555**

FAX: **(360) 586-6603**

Email: **boatpumpouts@parks.wa.gov**

APPROVED AS TO FORM  
By: Michael Ferguson AAG /s/  
August 2009

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

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Assignment of the Lease Agreement between the City of Des Moines and Stan Wilkes and Arlene Knight, DBA Classic Yachts to Jim Quinn and amendments to the Lease.

ATTACHMENTS:

1. Assignment of Lease
2. Amendment No. 1 of Lease for Marina Facilities (Classic Yachts)
3. 2011 Lease for Marina Facilities

FOR AGENDA OF: April 24, 2014

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: April 16, 2014

CLEARANCES:

- Legal 16
- Finance N/A
- Marina 16
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works N/A
- Police N/A
- Courts N/A

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: AA

**Purpose and Recommendation**

The purpose of this Agenda Item is to request the Council’s approval for the assignment of the Lease Agreement between the City and Stan Wilkes and Arlene Knight, DBA Classic Yachts to Jim Quinn who is purchasing the business. Mr. Quinn is also requesting amendments to the existing Lease that need to be approved by the Council.

**Suggested Motions:**

1. “I move to approve the Assignment of Lease, Assumption of Lessee’s Interest, and Lessor’s Consent to Assignment by and between the City of Des Moines, Classic Yachts, and Jim Quinn and to authorize the City Manager to execute the Assignment, Assumption and Consent to Assignment substantially in the form as attached.”

AND

2. “I move to approve Amendment No. 1 for Lease for Marina Facilities (Classic Yachts) between the City of Des Moines and Classic Yachts, Inc., and to authorize the City Manager to execute the amendment No. 1 for Lease of Marina Facilities (Classic Yachts) substantially in the form as attached.”

## **Background**

Classic Yachts, a boat brokerage primarily dealing in used power boats, has been in operation in the Marina for about three decades. Stan Wilkes and Arlene Knight are the third owners of the business, having purchased it in 2006. The business is housed in a floating office at the foot of L Dock. Several slips around the office are also leased by the business to moor boats for sale on consignment.

## **Discussion**

The current owners have entered into an agreement with Jim Quinn to purchase the business and they are requesting the Council's approval of the Lease Assignment. The current Lease Agreement requires the City's written consent to assign or sublet any part of the Lease. Jim Quinn has been involved in the recreational boating industry in a variety of capacities since 1977, most of that time in boat sales.

Mr. Quinn plans to maintain the same basic business plan for the business and will keep the Classic Yachts' name. He is requesting an Amendment to the Lease that would allow him to move the floating office to the guest moorage area. This is an idea that has been discussed several times over the years with previous owners. Mooring the office in the guest moorage area would give the business more visibility and free up another slip on L dock for consignment boats. The locations being considered would not impact the Marina's guest moorage business.

The requested amendments to the Lease are:

Section 1, Paragraph 1 – Terms and Premises would be amended to delete slip L-10 from the leased premises. This slip would be converted to personal use for Stan Wilkes and Arlene Knight. The requested amendment would also add Dry Shed 05 to the leased premises. Currently Dry Shed 05 is leased to Arlene Knight for personal use.

Section 2, Paragraph 2 –Use of Other Marina Facilities would be amended to include a slip in the guest moorage area for the floating office.

Section 3, Paragraph 4 – Modification of Lease Necessitated by the Marina Master Plan would be amended by deleting the sentence which is related to mitigation required of the City if future renovations impact the access to the current location of the floating office. Since the office would be moving to the guest moorage area, this language is no longer necessary.

Section 4, Paragraph 5 – Option would be modified to add an option for a five year extension of the Lease. Currently there is an option to extend for one five year period. Assuming this option is exercised the current Lease would expire on December 31, 2020. Mr. Quinn would like to have another five year option to extend the Lease, giving him a total of two. Effectively, that would mean the Lease would be for a period of about 10 ½ years.

Section 5, Paragraph 6 – Rent would be amended to increase the monthly rent to \$1,549.40 per month to reflect the use of the additional slip in the guest moorage area and the exchange of L-10 for Dry Shed 05.

### **Financial Impact**

The financial impact for the Marina would be positive because the space being proposed for the location of the floating office in the guest moorage area is not currently used for the guest moorage business. The area is used at times to store the boarding floats from the Redondo Boat Ramp during the offseason. Any increase in boat sales at this location would increase sales tax revenues for the City.

### **Conclusion**

The staff believes that plan presented by Mr. Quinn is viable and will result in more activity in the Marina and an increase in lease and moorage revenue.

### **Recommendation**

The staff recommends that the Council approve the assignment of the current Lease to Mr. Jim Quinn and that the Council approve the requested amendments to the Lease.

### **Concurrence**

N/A



**ASSIGNMENT OF LEASE,  
ASSUMPTION OF LESSEE'S INTEREST,  
AND LESSOR'S CONSENT TO ASSIGNMENT**

This Assignment of Lease, Assumption of Lessee's Interest, and Lessor's Consent to Assignment (the "Assignment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Des Moines ("Lessor"), Classic Yachts, Inc., a Washington corporation ("Assignor") and Jim Quinn, doing business as Classic Yachts, Inc. ("Assignee").

WHEREAS, Lessor and Assignor entered into a Lease for Marina Facilities effective January 1, 2011, for certain premises located at the City of Des Moines Municipal Marina (the "Premises"); and

WHEREAS, Assignee desires to assume and be bound by the terms of the Lease as Lessee; and

WHEREAS, Paragraph 19 of the Lease permits assignment of the Lease to a new Lessee upon first obtaining consent of the City Manager of the City of Des Moines;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereby mutually agree as follows:

1. The above recitations are true and correct.
2. Effective May 1, 2014, Assignor hereby assigns, sets over and transfers to Assignee all of its rights, title and interest in the Lease.
3. All of the terms, covenants and conditions of the Lease are hereby ratified and reaffirmed by all parties hereto.
4. Assignee hereby accepts this Assignment and agrees to assume and be bound by all of the terms of the Lease and its amendments and extension, a copy of which is attached hereto as Attachment 1, and which is hereby incorporated by this reference.
5. Assignee hereby covenants to pay the rents reserved and to perform the covenants, conditions, and stipulations in said Lease to be performed by the Lessee and to keep indemnified the Assignor against all actions, claims, and damages whatsoever in respect of the said rents, covenants, conditions, and stipulations or anything relating thereto.

6. The parties acknowledge and agree that as between Assignor and Assignee, any rights to any lease deposits paid by Assignor to the Lessor are transferred to Assignee, and the Lessor may make any refund of the lease deposit to Assignee.
7. Assignor confirms that this Assignment does not release it from any liability under the Lease.
8. All notices, requests, demands, and other communications required or permitted under the Lease or Assignment must be in writing. As of the effective date, Assignor maintains its right to receive notice affecting the Lease and the Assignment. Notice will be deemed to have been duly given immediately upon being mailed with postage prepaid to respective addresses, as follows:

To Assignor at: 22222 Dock Ave. South, 2-B, Des Moines, WA 98198

To Assignee at: P.O. Box 98964, Des Moines, WA 98198

To the City at: City of Des Moines  
Attention: City Manager  
21630 11th Avenue So., Suite A  
Des Moines, WA 98198

Upon change of address, each party shall provide the updated address to all parties within ten (10) days after the effective date of the change of address. Failure to provide the updated address constitutes waiver of the right to notice under this Paragraph.

9. Lessor consents to this Assignment on the following conditions:
  - a. Assignor will provide Lessor with a current credit report and background check on the Assignee, acceptable to Lessor;
  - b. The primary purpose of the Lease is to provide a boat brokerage and sales service for customers of the Des Moines Marina, and the boating community, and, accordingly, the primary standards for approving assignment or sublease shall be as follows: the qualifications, business ability, financial capability, technical competence, and personal reputation and integrity of the proposed assignee or sublessee. The City Manager finds that Assignee meets these criteria based on the knowledge Jim Quinn has been involved in boat sales for several years and that he intends to carry on the business at the same level as before, with approximately the same number of listings but with some minor changes such as adjusting the business hours seasonally, in order to be open longer during the boating season. The City Manager also understands that Jim Quinn is

aware of the operational requirements of the Marina and will work with the Marina staff to accommodate the customers of both businesses.

- c. Assignor and Assignee acknowledge that:
- i. Assignor shall not have the right to withhold consent to any subsequent assignment of the Lease, provided however that Assignor shall be entitled to any notice of any subsequent assignment by Assignee and any subsequent assignment shall not be construed to have any effect on Assignee's obligations to Assignor;
  - ii. The Lease underlying this Assignment expires on December 31, 2015, subject to the option allowances found in Paragraph 5 of the Lease;
  - iii. Assignor and Assignee have been advised that the City's Marina Master Plan, as existing or as it may be revised by the City Council in the future, may potentially require changes in use of Marina property at this location, or in the kinds of services provided in connection with the Lease;
  - iv. Any promissory note or other obligation from the Assignee to the Assignor extending beyond the termination of the lease does not create any obligation on the City to extend the lease term or to permit the continued operation of the premises beyond the Lease termination date;
  - v. The City has made no investigation into and makes no representation regarding:
    1. The amount of income, expenses or profitability of Classic Yachts, Inc;
    2. The fairness of the purchase price being paid by the Assignee to the Assignor;
    3. The truth of the representations or warranties made by the Assignor to the Assignee; or
    4. The fairness of the terms of the purchase and assignment.
  - vi. Assignee has been advised to seek independent legal counsel and/or other independent professional advice prior to accepting and paying for the business and lease assignment. Assignor and

Assignee hereby waive and release the City from any claims or causes of action based upon this business purchase and lease assignment.

10. Assignor and Assignee warrant that all necessary business entity actions have been duly taken to permit Assignor and Assignee to enter into this Agreement, and that each undersigned officer has been duly authorized and instructed to execute this Assignment.
11. This Assignment contains the entire understanding between and among the parties hereto with respect to the terms hereof and supersedes any prior understandings and agreements among them respecting the subject matter of this Assignment.
12. This Assignment shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.
13. This Assignment shall be governed by and construed in accordance with the laws of the State of Washington.
14. This Assignment is executed in five concurrent originals.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first written above.

**ASSIGNEE:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jim Quinn, CLASSIC YACHTS, INC.

**ASSIGNOR:  
CLASSIC YACHTS, INC.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Stan Wilkes

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Arlene Knight

**LESSOR:**  
**CITY OF DES MOINES**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Anthony A. Piasecki  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Timothy A. George  
Assistant City Attorney



**AMENDMENT NO. 1  
LEASE FOR MARINA FACILITIES  
(CLASSIC YACHTS)**

**THIS AMENDMENT NO. 1 TO LEASE FOR MARINA FACILITIES (Classic Yachts)** is dated May 1, 2014, by and between the CITY OF DES MOINES ("City"), a Washington Municipal Corporation, as Owner/Lessor; and JIM QUINN, doing business as CLASSIC YACHTS INC. ("Lessee"), as the Lessee/Assignee.

**RECITALS**

- A. On or about April 1, 2014, Jim Quinn entered into an Agreement with Arlene Knight and Stan Wilkes for the purchase of Classic Yachts, Inc.
- B. Pursuant to the Lease that the City had previously entered into with Classic Yachts, Inc., Arlene Knight and Stan Wilkes assigned their interest in their lease with the City of Des Moines to Jim Quinn.
- C. The City now executes this Amendment to the assigned lease with Jim Quinn, to provide for changes requested by the Assignee and Assignor.

**AGREEMENT/AMENDMENTS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to modify and amend the Lease as follows:

**Sec. 1.** Paragraph 1 of the Lease is amended to read as follows:

(1) Terms and Premises. Lessor grants to Lessee for a term of five (5) years, commencing on the first day of January, 2011, the exclusive right to use and occupy certain real and personal property located at the Des Moines Marina for the purpose of conducting a boat brokerage and sales business. Such property shall be hereinafter referred to as "premises". The Lessor shall have the use of Slips L-01, L-03, L-08 and Dry Shed 05, and the north side of the L Dock's main walkway between L-02 and L-08 for the purposes of conducting a boat brokerage and sales business. ~~The premises are generally described as slip L-02, in which a floating sales office will be moored.~~—Owing to the difficulty of writing a legal description for the premises, the premises are schematically described on the diagram attached hereto as Exhibit "A" and by this reference incorporated herein.

**Sec. 2.** Paragraph 2 of the Lease is amended to read as follows:

(2) Use of Other Marina Facilities. In addition to the slips on L Dock, the Lessee shall have the use of a slip in the Guest Moorage area for the purpose of

~~mooring a floating office for the brokerage business. In addition to Slip L-02, the Lessor shall have the use of Slips L-01, L-03, L-08, L-10, and the north side of the L Dock's main walkway between L-02 and L-08 for the purposes of conducting a boat brokerage and sales business.~~ The following conditions shall apply to the use of the slips.

(a) The slips shall be used to moor boats that are for sale and are either owned by or consigned to the Lessee.

(b) Casual use of the slips by invitees of the Lessee, or any other use that may compete with the guest moorage business of the Lessor, is not allowed.

(c) The Lessee expects the Lessor to charge customers for the use of the slips in the regular course of the business, but long term sub-leasing is not allowed, unless such sub-leases comply with Marina Rule 4.0.

Lessee may sub-lease other slips in the Marina, subject to Marina Rule 4.0. Lessee will be charged the regular and customary rate for such sub-leases. Marina facilities other than Leased or sub-leased facilities, will be available to the Lessee at the regular posted rates ~~therefor~~.

**Sec. 3.** Paragraph 4 of the Lease is amended to read as follows:

(4) Modification of Lease Necessitated by Marina Master Plan. Lessee recognizes that implementation of the Marina improvements contemplated by the current Des Moines Marina Master Plan, or as later amended, may necessitate changes to Lessee's use of the leased premises. In the event of such changes, Lessor and Lessee reserve the right to negotiate in good faith for modification of this lease. If Lessor and Lessee are unable to reach agreement concerning such modification, the dispute shall be submitted to mediation and arbitration under the terms of Paragraph 20 of this lease. ~~During the first 5 (five) year term of this lease, as long as the tenant's sales office remains on L Dock, the City shall provide reasonable access, equivalent to that as currently enjoyed by the tenant, to the tenant's sales office in the event of present or any future renovation projects blocking the tenant's customers or potential customers from accessing the sales office or from seeing the display of boats the tenant is offering for sale.~~

**Sec. 4.** Paragraph 5 of the Lease is amended to read as follows:

(5) Option. The Lessee shall have the option to extend the Lease for ~~one~~ two additional five (5) year terms. Such option must be exercised in writing by the Lessee not later than one (1) year before the expiration date of the original term. In the event Lessee shall exercise such option, the rent for the option period shall be determined in accordance with paragraph 6 herein. In the event the parties shall be unable to agree upon such rent, the parties agree to resolve the matter using the Mediation/Arbitration process as provided in paragraph 20 below.



**Sec. 7.** All other terms of the Lease not amended by provisions herein shall remain in full force and effect.

IN WITNESS WHEREOF, Lessor and Lessee have affixed their signatures on the dates below written, signifying agreement to the terms and conditions of the foregoing Amendment to the Classic Yachts, Inc. Lease.

LESSOR

LESSEE

CITY OF DES MOINES

CLASSIC YACHTS, INC.

\_\_\_\_\_  
By: Anthony A. Piasecki, City Manager

\_\_\_\_\_  
By: Jim Quinn, Its President

APPROVED AS TO FORM:

\_\_\_\_\_  
Timothy George, Assistant City Attorney

Exhibit 1, Amendment No. 1 to Lease for Marina Facilities (Classic Yachts), P.1 of 2

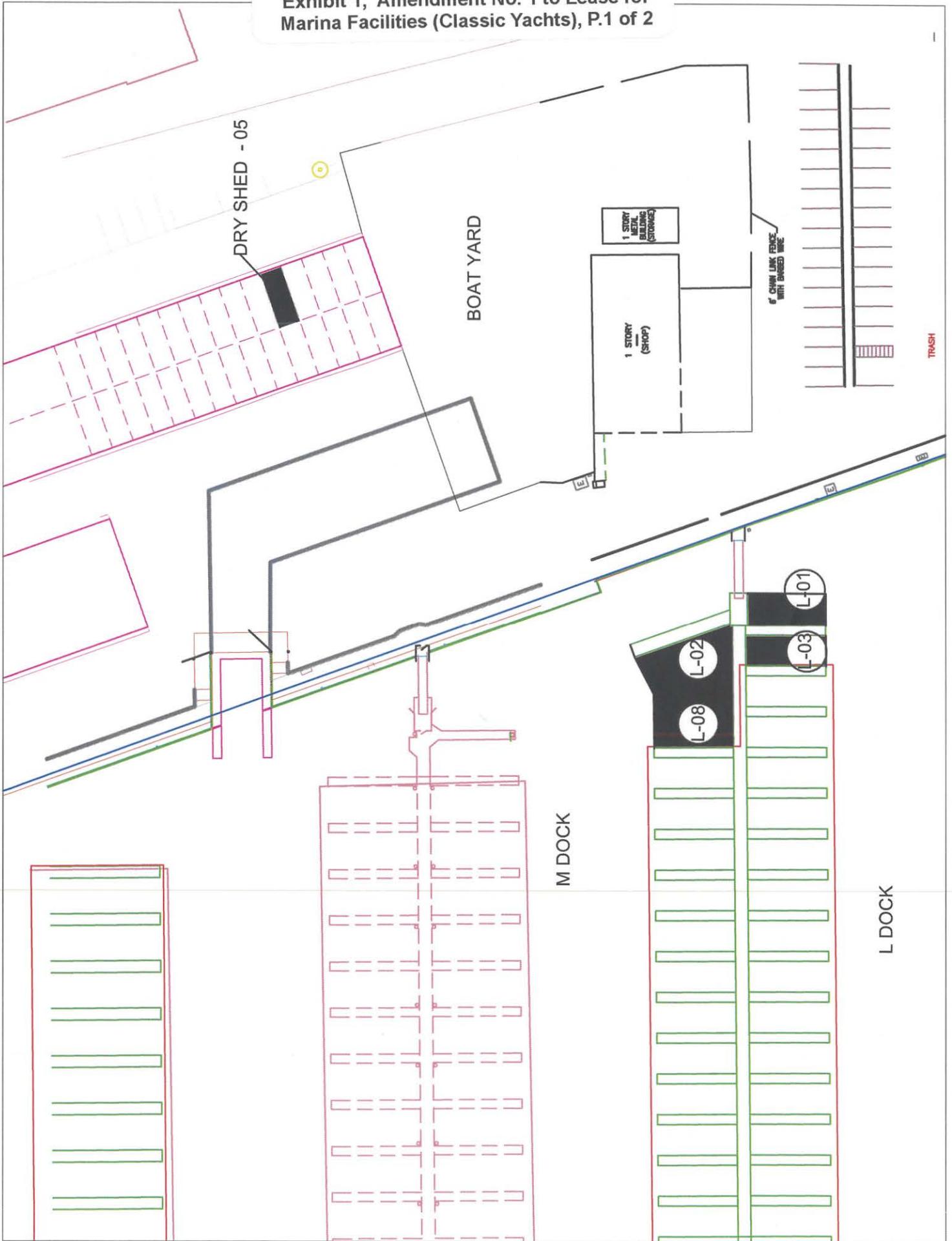
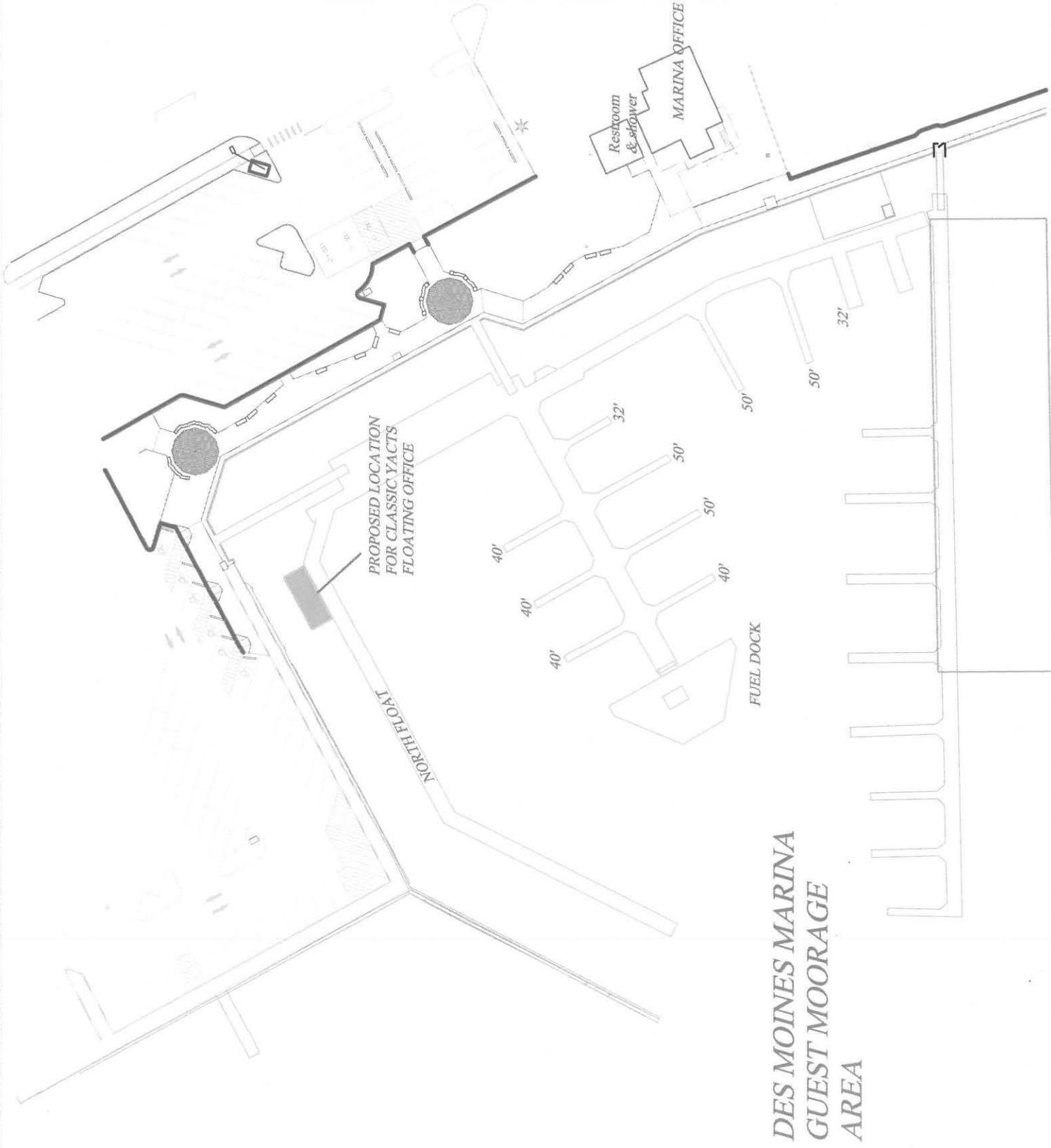


Exhibit 1, Amendment No. 1 to Lease for Marina Facilities (Classic Yachts), P.2 of 2



DES MOINES MARINA  
GUEST MOORAGE  
AREA

DE

**LEASE FOR MARINA FACILITIES**

This Lease is entered into between the CITY OF DES MOINES, a municipal corporation (hereinafter "Lessor") and CLASSIC YACHTS, Inc., a Washington corporation, and Arlene Knight and Stan Wilkes, doing business as Classic Yachts, Inc., (hereinafter "Lessee").

(1) Terms and Premises. Lessor grants to Lessee for a term of five (5) years, commencing on the first day of January, 2011, the exclusive right to use and occupy certain real and personal property located at the Des Moines Marina. Such property shall be hereinafter referred to as "premises". The premises are generally described as slip L-02, in which a floating sales office will be moored. Owing to the difficulty of writing a legal description for the premises, the premises are schematically described on the diagram attached hereto as Exhibit "A" and by this reference incorporated herein.

(2) Use of Other Marina Facilities. In addition to Slip L-02, the Lessor shall have the use of Slips L-01, L-03, L-08, L-10, and the north side of the L Dock's main walkway between L-02 and L-08 for the purposes of conducting a boat brokerage and sales business. The following conditions shall apply to the use of the slips.

(a) The slips shall be used to moor boats that are for sale and are either owned by or consigned to the Lessee.

(b) Casual use of the slips by invitees of the Lessee, or any other use that may compete with the guest moorage business of the Lessor, is not allowed.

(c) The Lessee expects the Lessor to charge customers for the use of the slips in the regular course of the business, but long term sub-leasing is not allowed, unless such sub-leases comply with Marina Rule 4.0.

Lessee may sub-lease other slips in the Marina, subject to Marina Rule 4.0. Lessee will be charged the regular and customary rate for such sub-leases. Marina facilities other than Leased or sub-leased facilities, will be available to the Lessee at the regular posted rates therefor.

(3) Additional Facilities. Lessor and Lessee reserve the right to negotiate for expansion, and/or relocation of the premises, (sales office). Lessee may also be placed on the waiting list for additional slips if the Lessee can demonstrate to the City of Des Moines that such slip(s) are necessary for the success of the business. The decision to allow the Lessee to Lease additional slips shall be at the sole discretion of the City of Des Moines.

(4) Modification of Lease Necessitated by Marina Master Plan. Lessee recognizes that implementation of the Marina improvements contemplated by the current Des Moines Marina Master Plan, or as later amended, may necessitate changes to Lessee's use of the leased premises. In the event of such changes, Lessor and Lessee reserve the right to negotiate in good faith for modification of this lease. If Lessor and Lessee are unable to reach agreement concerning such modification, the dispute shall be submitted to mediation and arbitration under the terms of Paragraph 20 of this lease. During the first 5 (five) year term of this lease, as long as the tenant's sales office remains on L Dock, the City shall provide reasonable access,

equivalent to that as currently enjoyed by the tenant, to the tenant's sales office in the event of present or any future renovation projects blocking the tenant's customers or potential customers from accessing the sales office or from seeing the display of boats the tenant is offering for sale.

(5) Option. The Lessee shall have the option to extend the Lease for one additional five (5) year term. Such option must be exercised in writing by the Lessee not later than one (1) year before the expiration date of the original term. In the event Lessee shall exercise such option, the rent for the option period shall be determined in accordance with paragraph 6 herein. In the event the parties shall be unable to agree upon such rent, the parties agree to resolve the matter using the Mediation/Arbitration process as provided in paragraph 20 below.

(6) Rent. Monthly rent shall be \$1,310.20 per month, plus State Leasehold Tax, payable in advance on or before the first day of each month of this Lease. This rate shall take effect on January 1, 2011. Beginning January 1, 2012, and effective on January 1<sup>st</sup> of each succeeding year of the original Lease period, plus the option period if necessary, the rental rate shall be established by applying the greater of:

(a) The same percentage increase that is applied to all other slips as a result of an action by the Des Moines City Council.

(b) An amount equal to the rental rate for the previous year multiplied by the Consumer Price Index, U.S. City Average, All Urban Consumers, for the 12-month period ending August 31<sup>st</sup> of the previous year. (Published by the U.S. Department of Labor, Bureau of Labor Statistics).

(7) Deposit. Lessor acknowledges receipt of a deposit in the amount of one (1) month's rent to ensure faithful performance of all provisions of this Lease. This sum shall be applied towards the last month's rent provided all provisions of this Lease are complied with.

(8) Inspection of Moorage. During business hours, the City Manager, or his designated agent, shall have the right to inspect the dock structure where the premises, (sales office), is moored. The right of inspection reserved to the City hereunder shall impose no obligation of the City to make inspections to ascertain the conditions of the premises and shall impose no liability upon the City for failure to make such inspections.

(9) Utilities. In addition to the above rent, Lessee shall be required to pay, within ten (10) days after billed, all utilities furnished to the premises, except surface water management charges and water, which are included in the monthly rent. Power rates billed to the Lessee shall be billed at the rates posted in the Marina office.

(10) Sales and Real Property Taxes. If required by law, Lessee shall be required to pay any sales tax on the rent or any property taxes or Leasehold tax, if levied.

(11) Permitted Uses.

(a) Slip L-02 - sales office for a boat brokerage business.

(b) Slips L-01, L-03, L-08, L-10, and the north side of the L Dock's main walkway between L-02 and L-08 – moorage for vessels owned or consigned to Lessee for the purpose of selling such vessels.

(12) Restrictions on use of Leased Premises.

(a) The sale of gas, diesel fuels and propane gas is prohibited except when used by Lessee to test work performed and the excess conveyed to customer.

(b) The dock structure where the premises are moored, (L-02), may be structurally modified by Lessee only after prior written consent of Lessor. All additions and modifications permanently attached to structures shall be at the expense of Lessee and shall become the property of Lessor at the termination of this Lease and any extension thereof. Any non-attached additions, lighting fixtures, furniture and trade fixtures ever added by Lessee, which are removable without injury to the premises, shall be and remain the property of Lessee. Lessee may modify slips L-01, L-03, L-08 and L-10 only after prior written consent of Lessor. Only such modifications that would normally be approved under the current Rules and Regulations of the Des Moines Marina will be allowed.

(13) Conduct of Business. Lessee shall be required to follow all City Ordinances, Federal, State and County laws and the Rules and Regulations of the Des Moines Marina. The Lessor shall have the right to restrict certain types of operations during the hours of 10 P.M. to 6 A.M. if they create a nuisance or have a detrimental effect upon adjacent residents and Marina tenants.

(14) Duties of Lessor. Lessor will at all times during the tenancy:

(a) Comply with all City ordinances, state, and federal regulations and any special provisions in this Lease related to environmental protection.

(b) Maintain the premises to substantially comply with all applicable codes, statutes, ordinances, or regulations pertaining to the Leased premises;

(c) Except where the conditions attributable to normal wear and tear, make repairs and arrangements necessary to put the premises in as good condition as it was at the commencement of the tenancy;

(d) Maintain all electrical, plumbing, heating, and other facilities in reasonably good working order;

(e) No duty shall devolve upon the Lessor to repair a defective condition where the defective condition complained of was caused by the conduct of Lessee.

(f) Not unreasonably obstruct customer access to the Classic Yachts' sales office. Further, Lessee agrees to provide a minimum of two marked reserved parking spaces in the Marina Parking lot for the use of Lessee's Customers. Lessor further agrees to work with Lessee to accommodate an upland sales office location and/or provide an area for advertising the available yachts/boats for sale in a location above the security gate and accessible to pedestrian traffic. Should Lessee opt to move its sale's office to an upland location or wish to expand its upland storage space, this Lease Agreement may be modified to reflect any agreement with regard to the additional space without affecting any of the other terms already contained herein.

(15) Duties of Lessee. Lessee accepts the premises in its present condition, and will at all times during the tenancy:

(a) Comply with all city, state, and federal regulations related to environmental protection, and any special provisions described in this Lease.

(b) Keep the Leased premises as clean and sanitary as the conditions of the premises permit;

(c) Properly dispose all solid waste, liquids, and hazardous waste in a clean and lawful manner at reasonable and regular intervals;

(d) Properly use and operate all electrical, gas, heating, plumbing and other fixtures.

(e) Not permit a nuisance or common law waste.

(f) Not allow junk or debris to accumulate on the demised premises;

(g) At the expiration of the Lease term, or any extension thereof, surrender the premises in as good condition as they were at the beginning of the term, reasonable wear and tear excepted.

(16) Minimum Hours of Operation. The parties recognize that Lessor's primary intent in granting this Lease is to provide the boating community with a service, specifically a boat brokerage and sales business and to that extent it is vital that the facilities and services be available on a regular basis throughout the year. Accordingly, Lessee agrees that the business shall remain open a minimum of eight (8) hours per day, five (5) days per week, from May 1 to July 31 of each year.

(17) Indemnification and Insurance. Lessee shall be responsible to Lessor for damages to the premises caused by Lessee, Lessee's agents, and parties using the premises with the permission of Lessee. Lessee shall keep the premises insured for fire, and other casualty. Lessee shall purchase and maintain a general liability insurance policy insuring against claims for personal injury and property damage in an amount with an annual aggregate limit of not less than two million dollars (\$2,000,000). Lessor shall be named as an additional insured under such

general liability policy. Appropriate certifications of insurance coverage shall be delivered to Lessor. Lessee agrees to save, keep, defend and otherwise hold harmless Lessor, its officers, agents, employees and volunteers, from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damage to property or personal injury received by reason of or in the course of activities involving Lessee's use and occupancy of the premises or adjacent areas, including, but not limited to, claims arising out of the condition of the premises. Lessee's indemnification is intended to apply to all claims which are occasioned by any willful or negligent act or omission of Lessee, its employees, or any party using the premises with the permission of Lessee.

(18) Sign. Lessee shall be permitted to paint or install such signs as are permitted by the Des Moines Municipal Code.

(19) Assignment. Lessee shall not assign this Lease or the rights granted hereunder or sublet the premises or any part thereof without first obtaining written consent of the City. Such consent shall not be unreasonably withheld. Lessor and Lessee recognize that the primary purpose of this Lease is to provide a boat brokerage and sales service for customers of the Des Moines Marina, and the boating community, and, accordingly, the primary standards for approving assignment or sublease shall be as follows: the qualifications, business ability, financial capability, technical competence, and personal reputation and integrity of the proposed assignee or sublessee.

(20) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under applicable rules of the American Arbitration Association. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, or upon the mutual written agreement of the parties to forgo the mediation process, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. 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.

(21) Default.

(a) Event of Default. Each of the following shall be deemed an Event of Default:

- (i) Failure to make full and timely payment of rent;
- (ii) Failure by Lessee to perform or observe any covenant or condition of this Lease which is to be performed or observed by Lessee;
- (iii) Abandonment of the premises;

(iv) The filing of execution or occurrence of:

(A) An adjudication of Lessee as a bankrupt or insolvent in the bankruptcy or equity sense, or;

(B) An assignment for the benefit of creditors, whether by trust or otherwise, or;

(C) The taking by any person of the rights hereunder upon execution or attachment or other process of law or equity.

(b) Cure of Default. Lessee may cure a default, except for failure to make full and timely payment of rent, and this Lease shall remain in effect, provided that Lessee cure such default or enters into good faith efforts with Lessor to cure such default, within fifteen (15) days of receiving written notice of default by Lessor. Lessee shall notify Lessor in writing of his intent to cure default and the amount of time required to cure the default. Subsequent failure of Lessee to cure the default under this subsection within a reasonable time shall be grounds for termination of the Lease.

(c) Termination of Lease. If Lessee fails to cure any default within the period of time described in the preceding subsection "b" herein, the Lessor may at its option, in addition to any other remedy or right given hereunder or by law,

(i) Except for failure to make full and timely payment of rent, give notice to Lessee that this Lease shall terminate upon the date specified in the notice, which date shall be no earlier than thirty (30) days after the giving of such notice, or

(ii) Immediately or at any time after occurrence of such Event of Default, and without notice or demand, enter upon the premises or any part thereof in the name of the whole, and upon the date specified in such notice or in any other notice pursuant to law, or upon such entry this Lease and the term thereof shall terminate.

(d) Repossession. Upon termination of this Lease as herein above provided, the Lessor may enter forthwith without further demand or notice and resume possession either by summary proceedings, or by action at law or in equity or by force or other-wise, as the Lessor may determine, without being liable in trespass. In no event shall such reentry or resumption of possession or reletting as hereinafter provided be deemed to be a waiver of the rights and remedies of the Lessor hereunder.

(e) Reletting. Upon termination of this Lease in any manner above provided, the Lessor shall use reasonable efforts to relet the premises. The Lessor shall be deemed to have used reasonable efforts if it Leases the whole or any part of the premises, separately or with other premises, for any period equal to or less than, or extending beyond, the remainder of the original term, for any sum or to any tenant or for any use it deems reasonably satisfactory or appropriate. Refusal to let to any person or for any use the Lessor deems objectionable, or for a use not

expressly permitted under paragraph 11 of this Lease shall also be deemed a reasonable effort to relet.

(f) Damages. Upon termination of this Lease in any manner above provided, the Lessee shall pay the Lessor forthwith without demand or notice the sum of the following:

(i) All rent accrued to the date of such termination and a proportionate part of the rent otherwise payable for the month in which such termination occurs;

(ii) The cost of making all repairs, alterations and improvements required to be made by the Lessee hereunder, and of performing all covenants of the Lessee relating to the condition of the dock structure during the term, such cost to be deemed prima facie to be that cost estimated by a reputable architect or contractors selected by the Lessor or the amounts reasonable expended or incurred thereafter by the Lessor; and

(iii) Such other damages as are proper under applicable provisions of statutory and common law.

(22) Cancellation by Lessee. Lessee shall have the right to cancel this Lease upon ninety (90) days written notice. During such ninety-(90) day period the parties shall enter into a cancellation agreement defining the rights and duties of the parties upon cancellation of this Lease. There shall be two (2) mandatory provisions contained in the cancellation agreement: (1) following the ninety (90) day notice period, Lessee shall have no further obligation to pay rent, (2) on the effective date of the ninety (90) day notice, Lessee shall vacate the premises and Lessor shall have the right to re-enter and re-let. As to any other term of the cancellation agreement, should the parties be unable to agree on any provision, it shall be submitted to arbitration as provided in paragraph 20 herein.

(23) Written Notice. All notices, requests, demands, and other communications required or permitted under the Lease must be in writing. As of the effective date, Lessee maintains its right to receive notice affecting the Lease. Notice will be deemed to have been duly given immediately upon being mailed with postage prepaid to respective addresses, as follows:

|         |                  |                                                                                                       |
|---------|------------------|-------------------------------------------------------------------------------------------------------|
| Lessee: | Mailing Address  | Classic's Yacht, Inc.<br>P.O. Box 98964<br>Des Moines, WA 98198                                       |
|         | Physical Address | 22222 Dock Ave. So., 2-B<br>Des Moines, WA 98198                                                      |
| Lessor: |                  | City of Des Moines<br>Attention City Manager<br>21630 11th Ave. So., Suite A,<br>Des Moines, WA 98198 |

Upon change of address, each party shall provide the updated address to all parties within ten (10) days after the effective date of the change of address. Failure to provide the updated address constitutes waiver of the right to notice under this section.

(24) This Lease shall be binding upon the heirs, executors, administrators, successors and assignees of the parties hereto.

(25) Conversion of Slip. If the Lessee cancels this Lease following the procedure set forth in paragraph 22, or if the Lessee assigns this Lease as part of the sale of the underlying business, or if the corporation is sold, the Lessee shall have the option to convert and retain one slip listed in this agreement for the personal use of Arlene Knight and Stan Wilkes. Should the space be converted to a liveaboard space, the rental rate will be adjusted accordingly. This condition is not subject to transfer or assignment.

(26) Entire Lease. The written provisions and terms of this Lease, 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 Lease. All of the attached documents are hereby made a part of this Lease. However, should any language in any of the Attachments to this Lease conflict with any language contained in this Lease, the terms of this Lease shall prevail.

(27) Ratification/Confirmation. Any acts consistent with the authority and prior to the effective date of this Lease are hereby ratified and confirmed.

(28) Counterparts. This Lease may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Lease.

IN WITNESS WHEREOF, Lessor and Lessee have affixed their signatures on the dates below written signifying agreement to the terms and conditions of the foregoing Lease for Marina Facilities.

LESSEE: Classic Yachts, Inc.

LESSOR: City of Des Moines

By: *Arlene Knight*  
Arlene Knight, Its President

By: *[Signature]*  
Anthony A. Piasecki, Its City Manager

Date: *Feb 4, 2011*

At the direction of the City Council by motion regularly passed in its open public meeting on December 9, 2010.

Date: *2/4/11*

By: *Stan Wilkes*  
Stan Wilkes

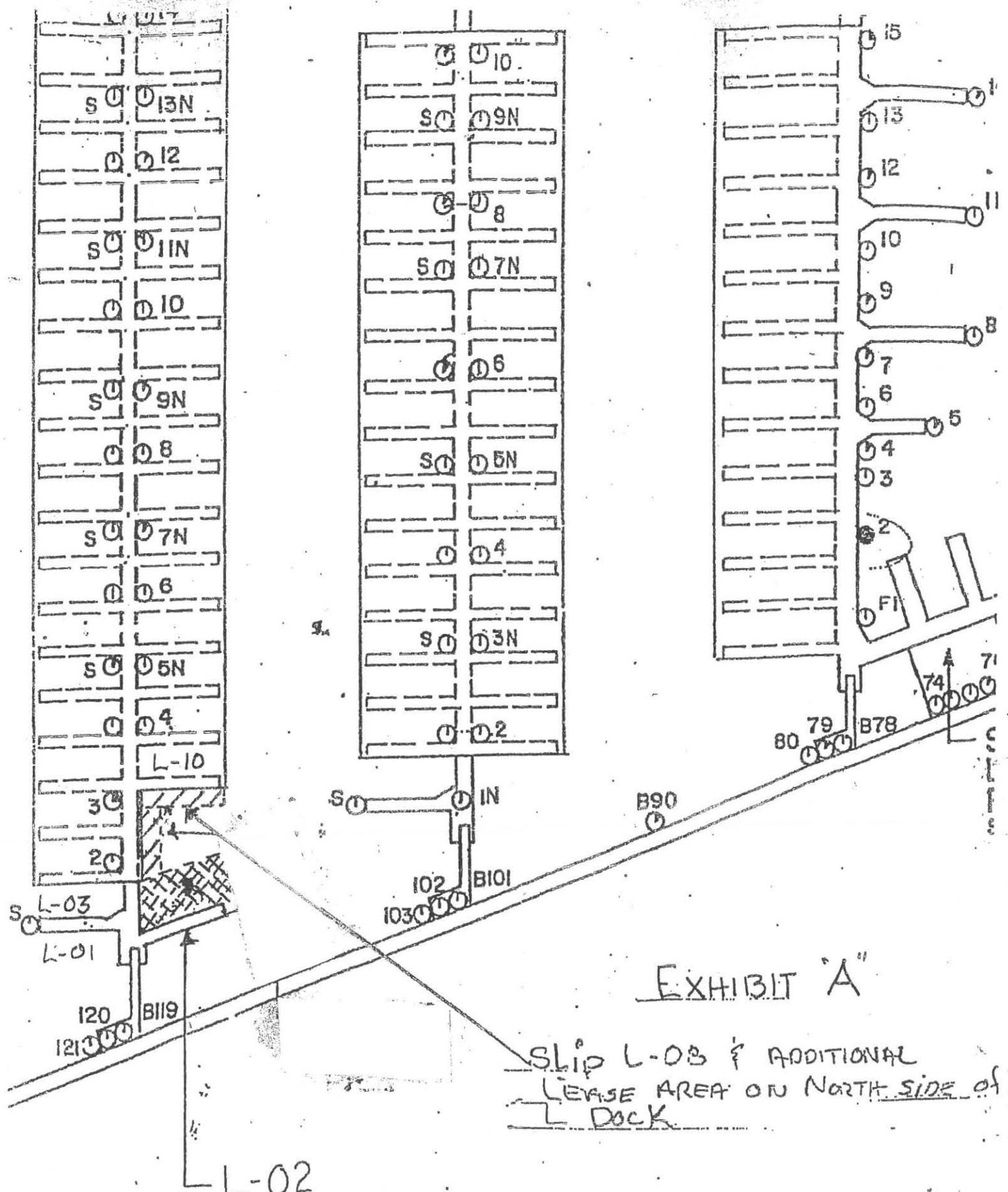
APPROVED AS TO FORM:

Date: *Feb 4, 2011*

*[Signature]*  
Timothy A. George, WSBA No. 40076

L Dock

M Dock



# EXHIBIT "A"

SLIP L-03 & ADDITIONAL LEASE AREA ON NORTH SIDE OF L DOCK

LOCATION OF FLOATING SALES OFFICE FOR CLASSIC YACHTS



**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Surplus Property - Vehicles

AGENDA OF: April 24, 2014

DEPT. OF ORIGIN: Planning, Building & Public Works

ATTACHMENTS:

1) Draft Resolution 14-058

DATE SUBMITTED: April 14, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: [Signature]

**Purpose and Recommendation:**

The Planning, Building and Public Works Department recommends that the following vehicle be declared surplus and disposed of as per motion listed below.

**Suggested Motion**

**Motion:** "I move to surplus the following fleet vehicle, which is over 100,000 miles; and further to authorize disposal of said equipment by auction or trade-in:

| <u>Veh.No.</u> | <u>Year</u> | <u>License</u> | <u>Vin #</u> |
|----------------|-------------|----------------|--------------|
| P245           | 1993        | 45138D         | G2102D       |

**Background:**

In May 2007, Council authorized the purchase of a used street sweeper from Alaska Airlines for \$2,500.

**Discussion:**

The street sweeper was used primarily for parking lot clean-up before and after City-sanctioned events. It was also used occasionally to augment the contracted street sweeping services. Over the years, the

maintenance costs to keep the equipment operational, have become increasingly larger; and are currently at the point where they exceed the value of the equipment.

**Alternatives:**

Council could direct staff to keep the street sweeper, and continue to maintain it. This is not recommended.

**Financial Impact:**

Keeping the equipment is not recommended due to excessive maintenance costs.

**Recommendation/Conclusion:**

Staff recommends the suggested Motion, to surplus the aforementioned item.

**Concurrence:**

Finance, Legal, and Planning, Building and Public Works are in agreement.

CITY ATTORNEY'S FIRST DRAFT 4/1/2014

DRAFT RESOLUTION NO. 14-058

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON,** declaring certain City vehicles surplus and authorizing disposal of surplus vehicles by auction or trade-in.

**WHEREAS,** during regular business the City accumulates vehicles and equipment, and

**WHEREAS,** the City intends to dispose of unneeded vehicles and equipment as allowed by law as surplus, and

**WHEREAS,** the City of Des Moines typically sells surplus vehicles and equipment at public auction to the highest bidder or trades-in surplus vehicles and equipment at reputable dealerships, and

**WHEREAS,** the City desires to surplus the vehicles and equipment identified in Exhibit "A" attached to this Resolution; now therefore,

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

**Sec. 1.** The vehicles and equipment identified by Exhibit "A" are hereby declared by this Resolution to be surplus vehicles and equipment.

**Sec. 2.** The City Manager is authorized to dispose of the items identified by Exhibit "A" by auction, or trade-in.

**Sec. 3.** The City Manager is authorized to establish a minimum bid/sale amount for the property identified in Exhibit "A" as deemed to protect the City's interests.

**Sec. 4.** The City Manager is authorized to contract for professional auction services where the cost of such services does not exceed twenty-five percent (25%) of the amount bid, plus reasonable advertising fees.

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

**Sec. 5.** All net proceeds from the disposal of the surplus property identified in Exhibit "A" shall be deposited into the Equipment Rental Fund.

**ADOPTED BY** the City Council of the City of Des Moines, Washington this \_\_\_\_\_ day of \_\_\_\_\_, 2014 and signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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M A Y O R

APPROVED AS TO FORM:

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City Attorney

ATTEST:

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City Clerk





**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: National Recreation and Park Association Memorandum of Understanding

ATTACHMENTS:

1. Out-of-School Time Programs Grant Memorandum of Understanding between the National Recreation and Park Association and the City of Des Moines
2. NRPA 2014 Out-of- School Time Programs Grant Application

FOR AGENDA OF: April 24, 2014

DEPT. OF ORIGIN: Parks, Rec, & Sr. Serv.

DATE SUBMITTED: April 16, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER  
FOR SUBMITTAL AA

**Purpose and Recommendation**

The purpose of this agenda item is to request Council’s approval of the Out-of-School Time Programs Grant Memorandum of Understanding between the National Recreation and Park Association (NRPA) and the City of Des Moines. The Agreement must be executed in order for NRPA to distribute grant proceeds to Des Moines.

**Suggested Motion**

**MOTION:** “I move to authorize entering into the Memorandum of Understanding (MOU) between the National Recreation and Park Association and the City of Des Moines for the Out-of-School Time Programs Grant and to authorize the City Manager to sign the MOU between the National Recreation and Park Association and the City of Des Moines substantially in the form as attached.”

**Background**

On April 1, 2014, the City of Des Moines Parks, Recreation and Senior Services Department was notified that it had been awarded the Out-of-School Time Programs Grant by the National Recreation and Park Association (NRPA).

This grant funding in the amount of \$30,000 will support the City's out-of-school time programs. The City will also receive in-kind training materials valued at \$10,000 to implement the nutrition education program, OrganWise Guys (OWG) and a \$1,200 travel stipend for the Program Coordinator to attend a one-day training. The purpose of the grant is to:

A. Increase the number of healthy meals children in low-income communities receive through the Summer Food Service Program (SFSP) and the Child and Adult Care Food Program (CACFP) during out-of-school times.

B. Provide evidence-based, age-appropriate nutrition literacy to children that create behavior change by teaching the importance of healthy eating.

C. Implement nutrition and physical activity standards that increase access to healthier foods and increase opportunities for physical activity.

### **Discussion**

The City of Des Moines Parks, Recreation and Senior Services Department will use NRPA funding in order to expand its collaboration with the Des Moines Area Food Bank and bring meals, activities, and nutrition education to more sites in our community. Through this partnership, our department will bring the full Camp KHAOS experience directly to Midway Park and Midway Elementary School. The number of students qualifying for free and reduced lunch at Midway Elementary stands at 90%. It is difficult for children in this area to access existing programs; they are separated from programs due to program cost, distance and lack of transportation.

Proximity of Midway Elementary to the Mt. Rainier Pool will also allow us to add swimming lessons to this camp experience, very important for a community where most low-income children have never learned how to swim but live close to the waterfront. Over 90% of children attending Midway Elementary are a racial or ethnic minority.

NRPA support will allow us to continue service to these children by introducing after school programming (together with snacks) at Midway Elementary in the fall of 2014. Because the food bank is currently in the process of applying to be a Child and Adult Care Food Program (CACFP) meal sponsor, some snacks that we have formerly provided our after school programs may be upgraded to meals through the At-Risk Youth CACFP program. Having the food bank provide snacks/meals for all our after school programs will shift participation from City provided meals to federal meal programs, freeing up program funds previously budgeted for food. We estimate that this shift will result in an increase of 10,000 meals provided through the Summer Food Service Program (SFSP) and the Child and Adult Care Food Program programs in 2014.

The Des Moines Parks, Recreation and Senior Services Department has already committed to new physical activity and nutrition standards in our recreation programs. The NRPA grant will complement this effort by providing much-needed resources so that we can add effective nutrition education to all our current programs. We will utilize this curriculum not only at our after school and summer meal sites, but also at the weekly Farmers Market where the food bank currently serves summer meals.

Leveraging NRPA support through our partnership with the Des Moines Area Food Bank's provision of meals allows us to focus on our primary competency in recreational activities for children while our programs help bring children out and maximize participation in summer meals here in our community.

In 2014, a grant is enabling the food bank to develop a mobile garden trailer that will travel to summer meal sites to teach children about nutrition and growing fresh foods; this program will be a perfect match for our nutrition education efforts. Finally, support of this partnership by United Way will bring in the assistance of AmeriCorps volunteers at two meal sites this summer, helping us to reduce staff costs and stretch the effectiveness of NRPA dollars even more.

**Alternatives**

None provided.

**Financial Impact**

This Agreement provides a \$30,000 cash grant, \$1,200 travel stipend and \$10,000 in-kind materials which will cover all costs associated with the out-of-school time programs to be provided.

**Recommendation or Conclusion**

This project is in partnership with Des Moines Area Food Bank to provide CACFP and SFSP food and supplemental United Way and AmeriCorp volunteer staffing at the program sites; Midway Elementary School and Highline School District for the use of schools after school times; and Des Moines Pool Metropolitan Park District for access to swimming lessons for low income youth.





April 1, 2014

Patrice Thorell  
City of Des Moines Parks, Recreation & Senior Services  
1000 S 220th St  
Des Moines, WA 98198

Dear Patrice Thorell,

Thank you for applying for an Out-of-School Time Programs grant from the National Recreation and Park Association (NRPA). I am pleased to inform you that your agency has been selected to receive grant funding in the amount of \$30,000 to support your agency's out-of-school time programs. Your agency will also receive in-kind training materials valued at \$10,000 to implement the nutrition education program, OrganWise Guys (OWG) and a \$1,200 travel stipend to attend a one-day training.

Congratulations – we look forward to working with you to ensure as many children as possible receive nutritious meals and healthy enrichment activity during out-of-school times.

The grant agreement period is April 1, 2014 to January 31, 2015. During this period, your agency is required to:

1. Direct grant funds to:
  - A. Increase the number of healthy meals children in low-income communities receive through the Summer Food Service Program (SFSP) and the Child and Adult Care Food Program (CACFP) during out-of-school times.
  - B. Provide evidence-based, age-appropriate nutrition literacy to children that create behavior change by teaching the importance of healthy eating.
  - C. Implement nutrition and physical activity standards that increase access to healthier foods and increase opportunities for physical activity.
2. Complete the Commit to Health pledge form on NRPA's website by May 15, 2014 for each of your out-of-school time sites where you plan to implement the Healthy Eating and Physical Activity (HEPA) standards. Note that while this grant period is less than a year, Commit to Health is a five year initiative.



3. Complete the Alliance for a Healthier Generation's Healthy Out-of-School Time Inventory on their website by June 1, 2014 and again by February 1, 2015.
4. Implement the OWG program in at least 10 out-of-school time sites in summer and fall 2014.
5. If selected, administer surveys to children, caregivers and staff pre, post and 6 months post-intervention to evaluate the effectiveness of the OWG curriculum on increasing knowledge of nutrition and healthy living.
6. Submit a final report using an online survey tool provided by NRPA. This report will collect information, such as the number of healthy meals served and the number of children who participated in your out-of-school time programs. It will also collect information on how the grant funds were spent.
7. Participate in occasional conference calls with NRPA and other grantees, as requested.
8. If requested, participate in a phone interview with NRPA and a consultant to share information on your successes, challenges and lessons learned. Your information will be compiled into a case study publication which NRPA will produce as part of this initiative.
9. If requested, host a half-day site visit by NRPA staff, including local stakeholders.
10. Send at least one representative from your agency to attend a one-day training on May 14, 2014 in Reston, Virginia. NRPA will provide a travel stipend of \$1,200 to be used for travel and lodging costs.
11. Share success stories, photos, quotes, local media and other outreach information highlighting the impact of this grant. (Please forward to Marla Collum at [mcollum@nrpa.org](mailto:mcollum@nrpa.org))

**Termination for Cause:** Either party shall have the right to terminate this MOU for cause if the other party (i) materially breaches its obligations and agreements hereunder, or (ii) commits and/or demonstrates gross neglect in the conduct of its duties hereunder. In addition, NRPA retains the right to terminate this MOU, upon written notice, if it determines that continued affiliation with your agency is inconsistent with its mission and/or adversely affects its reputation. In order to terminate this MOU for cause, and as a condition to exercising such right to terminate for cause, a party shall give the other party thirty (30) days' prior written notice of such intention to terminate, specifying in detail the grounds or reasons for such termination for cause. Following any notice of termination for cause, the



# National Recreation and Park Association

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receiving party shall be permitted a reasonable opportunity to cure such claimed cause to the reasonable satisfaction of the other party.

Please acknowledge your agreement to the terms above by signing below. Upon receipt of this signed form, a check will be issued for your grant funds minus \$5,000 that will be disbursed upon completion of all grant requirements. Additionally, your OWG materials will be mailed to the address above by May 9, 2014. Please contact us immediately if an alternate address is preferred for shipping.

\_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Primary Point of Contact

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Email for Primary Contact

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Telephone for Primary Contact

\_\_\_\_\_  
EIN Number

Once signed, please scan and e-mail to Marla Collum, Manager, Grants and Partnerships at [mcollum@nrpa.org](mailto:mcollum@nrpa.org). Please do not hesitate to contact Marla directly at (703) 858-2162 should you have any questions.

Sincerely,

*Rebecca Wickline*

Rebecca Wickline  
Vice President, Business Development



# NRPA 2014 Out-of-School Time Programs Grant Application

## 2. Contact Information

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### 1. Applicant Information

**Agency Name**

City of Des Moines Parks, Recreation & Senior Services

**Federal Identification Number**

91-6016496

**Director**

Patrice Thorell

**Street Address**

1000 S 220th St

**Apt/Suite/Office**

**City**

Des Moines

**State**

WA

**Zip**

98198

**Phone Number**

(206) 870-6529

### 2. Grant Application Contact

**First Name**

Patrice

**Last Name**

Thorell

**Title**

Director

**Organization Name**

City of Des Moines Parks, Recreation & Senior Services

**Street Address**

1000 S 220th St

**Apt/Suite/Office**

**City**

Des Moines

**State**

WA

**Zip**

98198

**Email Address**

pthorell@desmoineswa.gov

**Phone Number**

(206) 870-6529

**3. Program Participants**

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**3. What is the age of participants you serve in your out-of-school time programs? (Please provide a percentage for each to total 100.)**

Infants (birth -2) : 0%  
Children (3-12) : 90%  
Teens (13-18) : 10%  
Total : 100%

**4. What race/ethnicity are the participants you serve in your out-of-school time programs? (Please provide a percentage for each to total 100.)**

American Indian/Eskimo/Aleut : 2%  
Asian or Pacific Islander : 5%  
Black or African-American : 15%  
Hispanic or Latino : 20%  
White or Caucasian : 40%  
Bi-racial or Multi-racial : 18%  
Total : 100%

**5. What special populations do you serve in your out-of-school time programs? (Please check all that apply.)**

SNAP (food stamp) recipients  
Low-income areas or neighborhoods  
WIC recipients  
Persons with disabilities

**4. Current Programs**

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**6. Does your agency currently provide meals and/or snacks to children through a USDA food service program (e.g., Summer Food Service Program, Child and Adult Care Food Program)?**

Yes

**5. Program Description**

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**7. In your own words, please describe your agency's food service program and the benefits it provides your community. What challenges exist to meeting the needs of your community?**

The City of Des Moines Parks and Recreation has been providing recreational programming for children in this Washington community for 17 years. Core programming pieces include our Before School (FORE) and After School (AFT) programs as well as School Break Camps and Summer Camp KHAOS (Kids Having an Outrageous Summer). All of these programs are designed to provide Des Moines area youth, grades K-8, with a broad range of fun and meaningful experiences fostering health and personal growth. In 1998, Parks and Recreation began providing small breakfasts with the before school program and snacks with the after school and school break programs. The department purchased healthful food and did not participate in a USDA-approved program

In recent years, need in Des Moines has risen dramatically. In 2010, the Des Moines Area Food Bank noted the lack of summer meal sites in our area and began to fill the gap with a mobile summer meal program through the USDA Simplified Summer Feeding Program. The Parks Department was invited to collaborate in this program, providing activities at one summer meal site. This partnership has continued, with the food bank providing lunches and snacks as part of our Summer Camp KHAOS and Parks and Recreation providing activities at meal sites as funding allows.

Our programs have provided much needed support in our area. The City of Des Moines is located south of Seattle in a community with vastly contrasting needs. Rich mansions with waterfront views and a strong business core surrounding SeaTac Airport contrast with pockets of poverty. Mobile home parks, multi-unit apartments, and low-rent hotels stretch along the Pacific Highway corridor and are home to thousands of low-income families and diverse ethnic communities. In elementary schools along this corridor, over 90% of children qualify for the federal meals program. Four census tracts are identified by the USDA as "food deserts" in which there is a high percentage of low-income families coupled with low access to healthful foods. According to Communities Count 2012, 18% of adults with children in the household in this region reported that household food often or sometimes did not last; this increased to 49% among Latino families with children. Our food service program and summer meals partnership with the food bank has ensured that low-income children in our community receive balanced and nutritious food throughout the day, over school breaks and over the summer months. 32,857 meals and snacks were provided to children last year (8,301 provided by the food bank at Camp KHAOS through the SSFP program).

High levels of food insecurity present one challenge in our community. At the same time, distance and lack of transportation among low-income families make it difficult for children to access programs in the community core. By expanding our collaboration with the food bank's mobile meals program, we can increase summer meals participation and bring recreational programming directly into areas of high need. In this effort, one challenge our agency faces is finding sufficient funding to provide programming for these additional sites.

## **6. Meal and Site Specifics**

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**8. How many total meals and snacks (including seconds) did your agency serve through ALL out-of-school time (before/afterschool and summer) programs in 2013?**

32857

**9. How many total children did your agency serve through ALL out-of-school time (before/after school and summer) programs in 2013?**

657

**10. At how many feeding sites did your agency operate feeding programs during out-of-school times (before/after school and summer) in 2013?**

6

**11. How will these grant funds help you increase the number of meals/snacks served through your out-of-school time programs?**

In 2014, Des Moines Parks and Recreation is seeking NRPA funding support in order to expand its collaboration with the Des Moines Area Food Bank and bring meals, activities, and nutrition education to more sites in our community. Through this partnership, our department will add two summer meal sites in the Midway area. The number of students qualifying for free and reduced lunch at Midway Elementary stands at 90%. It is difficult for children in this area to access existing programs; they are separated from programs in the city core by two miles, a major arterial, and streets that lack sidewalk access. With funding support, Parks and Recreation will bring the full Camp KHAOS experience directly to this community. Proximity of Midway Elementary to the local pool will also allow us to add swimming lessons to this camp experience, important for a community where most low-income children have never learned how to swim but live close to the ocean and public beaches. Over 90% of children attending Midway Elementary are a racial or ethnic minority.

NRPA support will allow us to continue service to these children by introducing after school programming (together with snacks) at Midway Elementary in the fall of 2014. Because the food bank is currently in the process of applying to be a CACFP meal sponsor, some snacks that we have formerly provided our after school programs may be upgraded to meals through the At-Risk Youth CACFP program. Having the food bank provide snacks/meals for all our after school programs will shift participation from Parks meals to federal meal programs, freeing up Parks funds previously budgeted for food. (We estimate that this shift will result in an increase of 10,000 meals provided through the SSFP and CACFP programs in 2014.)

In 2014, Des Moines Parks and Recreation committed to new physical activity and nutrition standards. The NRPA grant will complement this effort by providing much-needed resources so that we can add effective nutrition education to all our current programs. We will utilize this curriculum not only at our after school and summer meal sites, but also at the weekly Farmers Market, a popular place for many Des Moines families where the food bank currently serves summer meals.

We are excited to leverage NRPA support through our partnership with the food bank. The food bank provision of meals allows us to focus on our primary competency in recreational activities for children while our programs help bring children out and maximize participation in summer meals here in our community. In 2014, a grant is enabling the food bank to develop a mobile garden trailer that will travel to summer meal sites to teach children about nutrition and growing fresh foods; this program will be a perfect match for our nutrition education efforts. Finally, support of this partnership by United Way will bring in the assistance of AmeriCorps volunteers at two meal sites this summer, helping us to reduce staff costs and stretch the effectiveness of NRPA dollars even more.

## **7. New Program**

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**How will these grant funds help you start a feeding program during your out-of-school time programming?**

## **8. Nutrition Literacy Implementation**

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**12. Please describe your agency's past experience, if any, with implementing a nutritional literacy program.**

From 2010-2012, the City of Des Moines began work to support the health and well-being of its staff and citizens and to enhance the work, play, and learning environments of the community. Des Moines joined a regional coalition of cities, school districts, and Seattle-King County Public Health as a participant in the CPPW (Communities Putting Prevention to Work) effort. The CPPW initiative was followed in 2013 by participation in the Communities Transformation Grant (CTG2), a continued cooperation between Des Moines and the local school district, community health partners, and a multi-city collaboration aimed at reducing the prevalence of obesity in kids and families.

As a result of the city's work with these initiatives over the past three years, Des Moines adopted nutritional standards as well as activity standards for its city programs. These standards are being implemented through a pilot project in January, 2014. A nutritional literacy curriculum was also developed as part of the CPPW & CTG2 grants. Some nutrition education was engaged through the summer meals program funded by the NRPA in 2012, but the Parks and Recreation Department currently has no materials to support further implementation of the nutritional literacy piece.

**13. Please describe your agency's capacity and willingness to implement the OWG curriculum in at least 10 out-of-school time sites in Summer 2014 AND Fall 2014.**

Des Moines Parks and Recreation is committed to implementing the OWG curriculum in conjunction with its current FAB 5 fitness curriculum in ten sites. The agency currently provides before and after school programming in five of the six elementary schools in the City of Des Moines. With NRPA funding support, the agency will add before and after school programming to the sixth elementary school starting in Fall, 2014. In addition, the agency will provide food, physical activities, and OWG nutrition education at four summer meal sites.

**14. If your agency does not have 10 out-of-school time sites, how many sites could you implement the OWG curriculum?**

15. How many children do you anticipate reaching through implementation of the OWG curriculum?

900

16. NRPA will be conducting an intensive evaluation to measure the level of increase in knowledge of nutrition and healthy living as a result of nutrition literacy training being implemented through the OWG curriculum.

If selected for grant funding, is your agency willing to administer surveys to children, caregivers, and staff pre, post and 6 months post-intervention?

Yes

## 9. Nutrition and Physical Activity Standards Pledge

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17. Please describe your agency's experience, if any, with the adoption of healthy eating and/or physical activity standards for out-of-school time programming.

Over the 2010-2012 biennium, the City of Des Moines joined a regional coalition of cities, school districts, and Seattle-King County Public Health as a participant in the CPPW (Communities Putting Prevention to Work) effort. This initiative sought to educate civic leaders on the importance of healthful eating and active living and to engage in policy development supportive of lifestyle changes in the area. As part of this effort, the City of Des Moines adopted a Healthy Des Moines Element to their Comprehensive Plan with goals, policies and strategies to offer nutritious food and beverage options (across departments) at City-sponsored meetings, programs, and in City-owned and operated facilities. A "Nutritional Standards Implementation Guide" was developed with the participation of Patrice Thorell, Director of the Parks, Recreation & Senior Services Department. These implementation standards seek to encourage healthful portions, provide nutritious beverage and food options at all events and in all city-sponsored programs, while also considering cultural needs.

The CPPW work was built on in 2013 through the Communities Transformation Grant (CTG2), a continued collaboration between Des Moines, the Highline School District, Seattle-King County Public Health, SeaMar Community Health Services, and "I" CANN (Community Activity Nutrition Network). A key culmination of this work last year was adoption of the Des Moines "K-Fit" program. This pilot program represents a commitment on the part of Des Moines Parks and Recreation to implement activity standards and to improve nutrition, nutrition education, and physical activity in City-run programs. The K-Fit pilot project began implementation in January, 2014 through before and after school programs in five local elementary schools.

18. NRPA is asking agencies as part of this grant to pledge to implement a set of nutrition standards in your out-of-school time programs. Specifically, NRPA would like your agency to work towards implementation of at least five of the nutrition standards [linked here](#) that your agency has not currently implemented.

Is your agency willing to work towards implementation of at least five of the nutrition standards referenced in the above linked document at a minimum of 10 of your out-of-school time sites?

Yes

19. List the five nutrition standards you would adopt at your 10 out-of-school time sites during the grant period.

Des Moines Parks and Recreation and its meal sponsor partner, the Des Moines Area Food Bank, commit to the following nutrition standards:

1. Serve only packaged snacks or frozen desserts that meet USDA Smart Snack in School nutrition standards;
2. Provide plain potable water at all times at no cost to youth and staff;
3. Serve only plain low-fat milk, plain or flavored non-fat milk or milk alternative limited to 8 fluid ounces per day for elementary students and 12 fluid ounces per day for middle and high school students;
4. Serve only 100% fruit or vegetable juice with no added sweeteners or 100% juice diluted with water with no added sweeteners;
5. Serve no soda, sports drinks or juice drinks to elementary school or middle school students;
6. Serve no full-calorie soda or full-calorie sports drinks, but may serve diet soda, low-calorie sports drinks or other low-calorie beverages to high school students; and
7. Serve only non-caffeinated beverages.

In addition, Parks and Recreation and the food bank commit to make every effort to serve foods with no artificial trans fat, to serve whole-grain rich products, to serve lean meats, and to serve a fruit or vegetable at every meal and at most snacks.

20. NRPA is asking agencies as part of this grant to pledge to implement a set of physical activity standards in your out-of-school time programs. Specifically, NRPA would like your agency to work towards implementation of at least two of the physical activity standards [linked here](#) that your agency has not currently implemented.

Is your agency willing to work towards implementation of at least two of the physical activity standards referenced in the above linked document at a minimum of 10 of your out-of-school time sites?

Yes

**21. List the two physical activity standards you would adopt at your 10 out-of-school time sites during the grant period.**

Des Moines Parks and Recreation commits to the following physical activity standards:

1. Dedicate at least 20% or at least 30 minutes of morning or afterschool program time to physical activity and at least 60 minutes for a full-day program;
2. Provide physical activities in which youth are moderately to vigorously active for at least 50% of physical activity time;
3. Ensure physical activity takes outdoors whenever possible; and
4. Limit digital device time to less than one hr per day and digital device use is limited to homework or activities that engage youth in moderate to vigorous intensity physical activity.

**22. What do you anticipate will be some of the biggest challenges to implementing these nutrition and physical activity standards in your out-of-school time programming?**

Two key challenges have been identified by the Parks and Recreation department. First, given a working environment in which many part-time and temporary employees participate, it is a challenge to keep qualified leaders who are trained to run these programs. A second challenge in adding new sites to the Midway area will be outreach to children and their families in order to ensure a good participation rate, particularly as language barriers do exist.

School staff members at Midway Elementary, while excited by the prospect of bringing Parks and Recreation after school programming to their campus, believe that transportation for children going home will be a challenge. However, they note that 300 children live within walking distance of the school so transportation barriers will not preclude program success.

**23.**

**NRPA will require your agency to pledge to adopt these standards at 10 of your out-of-school time sites. As part of this commitment you will be asked to fill out the Alliance for a Healthier Generation's Out-of-School Time Inventory (a survey) once at the beginning of the grant cycle (by June 1, 2014) and once at the end of the grant (by February 1, 2015). For more information about the inventory, please visit <https://host.healthiergeneration.org>.**

**Are you willing to complete the inventory for all of your out-of-school time sites twice during the grant period?**

Yes

## **10. Nutrition and Literacy Summit**

---

**24. Are you able and willing to send a representative to the Nutrition Literacy and Training Summit that will be hosted by NRPA in May 2014 in the Washington DC/Baltimore area? (NRPA will provide a travel stipend.)**

Yes

## **11. Budget**

---

**25. What is the total amount of cash grant funding you are requesting? Cash grant awards will typically range from \$25,000 to \$35,000 plus additional in-kind nutrition literacy materials.**

\$35,000.00

26. List itemized anticipated expenses to reflect how the amount of funding requested above would be implemented for your out-of-school time programs. Please be sure that the total of expenses equals the amount requested above.

|         | Dollar Amount | Description                                                                            |
|---------|---------------|----------------------------------------------------------------------------------------|
| Expense | \$29,025      | Personnel (Farmers Market nutrition ed, Midway summer Camp KHAOS, Midway After School) |
| Expense | \$1,000       | Marketing/Outreach                                                                     |
| Expense | \$2,750       | Supplies (arts, after school, camp shirts, employee shirts)                            |
| Expense | \$1,000       | Equipment (PE equipment)                                                               |
| Expense | \$525         | Transportation (staff, transporting children to swimming lessons)                      |
| Expense | \$700         | Administrative (background checks, tracking & reporting)                               |
| Expense |               |                                                                                        |
| Expense |               |                                                                                        |
| Expense |               |                                                                                        |

**12. Final page**

27. Thank you for completing an application for a grant from NRPA. We will contact you if additional information is needed. Are you ready to submit your application?

Yes



**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Des Moines Farmers Market

FOR AGENDA OF: April 24, 2014

ATTACHMENTS:

DEPT. OF ORIGIN: Marina

1. Amended Agreement between City of Des Moines and the Des Moines Farmers Market
2. Previously adopted Resolution No. 1255

DATE SUBMITTED: April 17, 2014

CLEARANCES:

- Legal 16
- Finance N/A
- Marina 17
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works N/A
- Police N/A
- Courts N/A

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: [Signature]

**Purpose and Recommendation**

The purpose of this item is to provide an amended agreement to the Council between the City and the Des Moines Farmer’s Market which removes the requirements for individual vendors at the Market to obtain a City business license.

**Suggested Motions:**

**MOTION:** “I move to direct the City Manager to sign the attached agreement between the Des Moines Farmer’s Market and the City of Des Moines, authorizing the operation of a seasonal Farmer’s Market in the Marina, substantially in the form as attached.”

**Background**

On March 27, 2014, the City Council approved Resolution No. 1255 which authorized the Des Moines Farmers Market to operate a seasonal Farmers Market in the Marina. The Council also directed the City Manager to sign a proposed agreement with the Market substantially in the form as was presented at the March 27, 2014 meeting. The approved agreement required each individual vendor at the Market to obtain a Des Moines Business License. The approved Resolution did not address business licenses.

### **Discussion**

The Farmer's Market has subsequently asked that the City remove from the Agreement the requirement that each individual vendor obtain a City Business License. Instead the Market would obtain a single license which would allow all vendors to operate under the "umbrella" of the Market's license. This is the method that has been used in the past for licensing of the Market.

The original motion made by the Council on March 27, 2014, allowed the City Manager to sign the agreement substantially in the form as was attached in the packet. Staff has determined that the current proposed change is substantial and therefore would need Council approval. The Resolution that was adopted previously does not address business license issues and therefore would not need to be modified.

### **Financial Impact**

The City would receive \$75 from the Farmer's Market for the cost of a single license. The City would not receive any money for licenses for individual vendors. The City will receive sales tax from qualified sales of individual vendors.

### **Recommendation**

None.

**AGREEMENT**  
**between**  
**THE CITY OF DES MOINES**  
**and**  
**DES MOINES FARMERS MARKET**  
**for**  
**2014 DES MOINES FARMERS MARKET**

*THIS AGREEMENT* is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter “City”), a municipal corporation of the State of Washington, and **DES MOINES FARMERS MARKET** (hereinafter “DES MOINES FARMERS MARKET”), a Washington non-profit corporation, regarding the 2014 Des Moines Farmers Market.

**WHEREAS**, the City Council finds that the Des Moines Farmers Market enhances the quality of life for residents of the City of Des Moines and wishes to permit it to operate at the Des Moines Marina property on Saturdays from June through October, and other market days throughout the year in concurrence with the City, and

**WHEREAS**, Des Moines Farmers Market, a 501(c)(4) non-profit organization, was created to operate the Des Moines Farmers Market, and

**WHEREAS**, the City Council wishes to have Des Moines Farmers Market manage the Des Moines Farmers Market pursuant to certain terms and conditions; now therefore,

*IN CONSIDERATION* of the mutual benefits and conditions listed below, the parties agree as follows:

(1) Des Moines Farmers Market agrees as follows:

(a) Des Moines Farmers Market shall conduct the 2014 Des Moines Farmers Market in compliance with the conditions outlined in City of Des Moines Resolution No. 1255, a copy of which is attached hereto and incorporated by this reference, and will comply with all federal, state, and local statutes, ordinances, and regulations.

(b) The prime leadership of all Des Moines Farmers Market activities shall be non-City personnel and it is clearly understood that assistance by City personnel is advisory to Des Moines Farmers Market.

(c) Des Moines Farmers Market shall defend, indemnify, and hold the City of Des Moines, 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 conduct of the event or its associated activities, except for injuries and damages caused by the sole negligence or intentional conduct of the City, its officers, agents, and employees. In the event that any suit based upon such claim, injury, damage, or loss is brought against the City, Des Moines Farmers Market shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees, or any of them, or jointly against the City and Des Moines Farmers Market and their respective officers, agents, and employees, or any of them, Des Moines Farmers Market shall satisfy the same.

(d) Des Moines Farmers Market will provide, at minimum, financial support for the Des Moines Farmers Market in the amount as proposed in the 2014 Des Moines Farmers Market Budget and will pay for expenses such as the Market Manager, portable sanitary facilities, advertising and/or promotional banners associated with the event. Des Moines Farmers Market shall provide adequate paid and/or volunteer staff, trained in courteous, efficient service to patrons of the Farmers Market. Des Moines Farmers Market shall ensure that persons handling and vending food and beverage products shall comply with all necessary health regulations.

(e) Des Moines Farmers Market will pay the City the amount of \$3,000.00 for the 2014 season (21 days) for the Market's use of the Des Moines Marina Central Lot. This rental fee entitles the Market to use of the Marina Center Lot, and includes all necessary power and water.

(f) Des Moines Farmers Market will provide and pay for its own garbage utility service.

(g) Des Moines Farmers Market will be allowed to have associated retail sales of food or merchandise as identified in the Des Moines Farmers Market 2014 Application Requirements. Des Moines Farmers Market shall not use the Des Moines Farmers Market premises for any purpose other than herein specifically designated without prior written consent of the City.

(h) Des Moines Farmers Market will ~~require that all vendors~~ obtain a City of Des Moines Business License ~~with the City~~ prior to conducting business at the Farmers Market. The Farmers Market business license will allow all individual Market vendors to conduct business during approved Market hours at the approved Market location. A separate Des Moines business license will be required for any vendor who conducts business in Des Moines outside of approved Farmers Market events.

(i) Des Moines Farmers Market shall provide general liability insurance in the minimum amount of two million dollars (\$2,000,000) aggregate to cover the Des Moines

Farmers Market. The City of Des Moines shall be named as additional insured. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. The City shall be furnished with original certificates evidencing the insurance requirements thirty (30) days prior to the event.

(j) Des Moines Farmers Market will be permitted to erect such special signage as is appropriate and in compliance with the Des Moines Municipal Code in the thirty (30) days prior to and during the event. All such signage shall be removed within ten (10) days after the event.

(k) Des Moines Farmers Market will be allowed to solicit booth fees, a percentage of sales and/or charge an admission fee to vendors of the Des Moines Farmers Market to recover the cost of the community event. Des Moines Farmers Market shall bear responsibility for all collection, accounting, and reporting of any funds collected. The City grants this privilege based upon the promoter's agreement that any funds collected in amounts greater than the cost of the event, including, but not limited to costs associated with overhead, staff, promotion and security, will be reinvested, as Des Moines Farmers Market deems fit, in the Des Moines Farmers Market for the benefit of the Des Moines community. Des Moines Farmers Market shall maintain an accounting system meeting the City's approval and agrees to permit the City and its agents and representatives at reasonable intervals at any and all times during usual business hours, to inspect all books, records and accounts of the Des Moines Farmers Market showing gross sales and inventories.

(l) Des Moines Farmers Market agrees to take whatever reasonable measures are necessary to prevent damage to the Marina facility and to be responsible for any damage that may occur as a result of Des Moines Farmers Market's or its vendors' action taken in the conduct of the Des Moines Farmers Market.

(m) A Des Moines Police Department command officer and/or the Fire Marshall of South King Fire District will have the authority to close the Des Moines Farmers Market down at any time should it be necessary, following assessment of any security issue.

(2) The CITY agrees as follows:

(a) Upon execution of this Agreement, the City Manager is authorized to grant permission to Des Moines Farmers Market to use and occupy, for the purpose of the Des Moines Farmers Market in 2014, City facilities and property at the Des Moines Marina.

(b) The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any City marketing costs will be paid to the City of Des Moines by Des Moines Farmers Market and

must be approved by Des Moines Farmers Market's Board of Directors in writing before incurred.

(c) The City Manager is authorized to provide City assistance to the Des Moines Farmers Market, which may include all necessary power and water utilities; services by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, Marina area traffic control, parking lot management and pedestrian safety. Any City operational costs will be paid to the City of Des Moines by Des Moines Farmers Market and must be approved by Des Moines Farmers Market's Board of Directors in writing before incurred. The City Manager shall provide a report to the City Council on services provided and costs thereof.

(d) The City retains the right from time to time during the term hereof to change the location or use of areas designated for the Des Moines Farmers Market. If such relocations or adjustments are required, the parties shall cooperate so that such changes shall not unnecessarily interrupt the quality and quantity of services rendered by the Farmers Market.

(3) Independent Accounting. A true accounting of all receipts and disbursements shall be maintained by Des Moines Farmers Market and shall be made available for review and audit by the City at the discretion and expense of the City. Records of gross sales and receipts are to be kept for each revenue source and Des Moines Farmers Market is responsible for submittal of all taxes due in the ordinary course of operating the Des Moines Farmers Market.

(4) Duration of Agreement. The term of this Agreement shall be for one (1) year upon final execution of this Agreement.

(5) Termination. Either party may terminate this Agreement with or without cause with ninety (90) days prior written notice.

The terminating party shall be liable for its share of financial obligations entered into on its behalf prior to termination, including but not limited to, printing costs and media buys.

(6) Discrimination Prohibited. Des Moines Farmers Market shall not discriminate against any employee, applicant, vendor, or any person seeking to participate in the Des Moines Farmers Market on the basis of race, color, religion, creed, sex, national origin, marital status, sexual orientation, or presence of any sensory, mental, or physical handicap.

(7) Assignment. This Agreement may not be assigned by Des Moines Farmers Market except with written approval of the City to another non-profit organization with similar goals and purposes. Des Moines Farmers Market will provide prior written notice to the City of any assignment of this Agreement to another non-profit organization. Upon assignment, the assignee will be bound by the terms and conditions of this Agreement as Des Moines Farmers Market was.

(8) Entire Agreement. This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. Either party may request changes in the Agreement. Proposed changes mutually agreed upon will be incorporated by written amendments to this Agreement.

(9) Governing Law. The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(10) Mediation/Arbitration. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. 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.

(11) Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional conditions may be authorized during the term of this Agreement upon the mutual written consent of the parties.

(12) Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

(13) Waiver. The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

(14) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(15) Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(16) Concurrent Originals. This Agreement may be signed in counterpart originals.

(17) Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

*IN WITNESS WHEREOF*, the parties have caused this Agreement to be executed on the dates written below.

**CITY OF DES MOINES**

**DES MOINES FARMERS  
MARKET**

\_\_\_\_\_  
Anthony A. Piasecki  
Its City Manager  
At the direction of the Des Moines City  
Council by Adoption of Resolution No. 1255  
In an Open Public Meeting on

\_\_\_\_\_  
By Wayne Corey  
Its President

Date \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

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

RESOLUTION NO. 1255

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing Des Moines Farmers Market, a 501(c)(4) non-profit organization, to conduct the Des Moines Farmers Market at the Des Moines Marina and Marina Center Lot on Saturdays from June through October and other market days throughout the year in concurrence with the City, listing conditions under which such permission is granted and superseding Resolution No. 1180.

WHEREAS, the City Council finds that the Des Moines Farmers Market is a community event that enhances the quality of life for residents of the City of Des Moines, and

WHEREAS, Des Moines Farmers Market wishes to sponsor and conduct the Des Moines Farmers Market as a community event on Saturdays from June through October, and other market days throughout the year in concurrence with the City, and

WHEREAS, the City of Des Moines wishes to permit the Des Moines Farmers Market event and, at the same time, be held harmless from any liability arising from such activity; now therefore,

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

Sec. 1. Permission is granted to Des Moines Farmers Market to conduct the Des Moines Farmers Market on Saturdays from June through October, 2014, and other market days throughout the year in concurrence with the City as to applicable dates, subject to the following conditions:

(1) Des Moines Farmers Market shall defend and hold the City of Des Moines harmless from liability which may result from the conduct of the Des Moines Farmers Market.

(2) Des Moines Farmers Market will pay the City the agreed upon rental amount listed in the written Agreement and will provide, at minimum, financial support for the Des Moines Farmers Market in the amount as proposed in the 2014 Farmers Market Budget and will pay for expenses such as the Market Manager, portable sanitary facilities, advertising, garbage

utility fees, and/or promotional banners associated with the event.

(3) The prime leadership of the Des Moines Farmers Market activities shall be non-City personnel and it shall be clearly understood that assistance by City personnel is advisory to Des Moines Farmers Market.

(4) Des Moines Farmers Market shall provide general liability insurance in the minimum amount of two million dollars (\$2,000,000) aggregate to cover the event. The City of Des Moines shall be named as additional insured. Proof of such insurance must be delivered to the City thirty (30) days prior to the event.

(5) The Des Moines Farmers Market will be permitted to erect such special signage as is appropriate during the thirty (30) days prior to and during the event. All such signage shall be removed within ten (10) days after the event.

(6) An authorized official of Des Moines Farmers Market shall execute a written agreement, on behalf of Des Moines Farmers Market, acknowledging its responsibilities for the conduct of the Des Moines Farmers Market and accepting such limitations as are contained in this resolution in addition to such limitations as may be imposed by the City Council or City Manager, including, but not limited to:

(a) Des Moines Farmers Market agrees to take whatever reasonable measures are necessary to prevent damage to the Marina facility and to be responsible for any damage that may occur as a result of Des Moines Farmers Market or its vendors' actions in the conduct of the Des Moines Farmers Market; and

(b) A Des Moines Police Department command officer and/or the Fire Marshall of South King Fire & Rescue will have the authority to close the Des Moines Farmers Market down at any time should it be necessary, following assessment of any security issue.

**Sec. 2.** The Des Moines Farmers Market will be allowed to have associated retail sales of food or merchandise.

**Sec. 3.** Upon execution of a written agreement incorporating all the terms and conditions of this resolution, the City Manager is authorized, at his discretion, to grant permission to the Des Moines Farmers Market to use and occupy, for the purpose of the Des Moines Farmers Market, City facilities and property at the Des Moines Marina and Marina Center Lot.

**Sec. 4.** The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the Des Moines Farmers Market. The Des Moines Farmers Market understands that fees to cover City expenses may be charged for this use.

**Sec. 5.** Des Moines Farmers Market will be allowed to solicit booth fees, a percentage of sales and/or charge an admission fee to vendors of the Des Moines Farmers Market to recover the cost of the community event. Des Moines Farmers Market shall bear responsibility for all collection, accounting, and reporting of any funds collected. The City grants this privilege based upon the promoter's agreement that any funds collected in amounts greater than the cost of the event including but not limited to costs associated with overhead, staff, promotion, and security will be reinvested in the Des Moines Farmers Market for the benefit of Des Moines residents.

**Sec. 6.** The City Manager is authorized to provide City assistance to the Des Moines Farmers Market, which may include, without limitation, services by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, downtown and Marina area traffic control, road closures and parking lot management, boater safety, and pedestrian safety. Application Requirements and Market Day Rules for the Des Moines Farmers Market will be created and approved in writing by the City Manager and Des Moines Farmers Market prior to the event. Any City operational costs incurred in the support of the Des Moines Farmers Market will be the responsibility of the Des Moines Farmers Market and must be approved by Des Moines Farmers Market Board of Directors in writing before incurred. The City Manager shall provide a

report to the City Council on services provided and costs thereof at the end of the 2014 Des Moines Farmers Market season.

**Sec 7.** The City Manager and the Des Moines Farmer Market Board will determine dates that the Des Moines Farmers Market may operate outside of its usually June - October timeframe. All dates of operation outside the June - October timeframe will be with the consent of the City such that operations in the Marina Center Lot are not disrupted.

**ADOPTED BY** the City Council of the City of Des Moines, Washington this 27th day of March, 2014 and signed in authentication thereof this 27th day of March, 2014.

  
MAYOR

APPROVED AS TO FORM:

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

ATTEST:

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

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Labor Negotiations Representation

FOR AGENDA OF: April 24, 2014

ATTACHMENTS:

DEPT. OF ORIGIN: Executive

- 1. Letter of Engagement with the Summit Law Group

DATE SUBMITTED: April 18, 2014

CLEARANCES:

- Legal *[Signature]*
- Finance N/A
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works N/A
- 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 retain the services of the Summit Law Group to represent the City in upcoming contract negotiations with the Des Moines Police Guild and the Des Moines Police Management Association.

**Suggested Motion**

**Motion: I move to authorize the City Manager to sign the letter of engagement with the Summit Law Group to represent the City of Des Moines in upcoming negotiations with the Des Moines Police Guild and the Des Moines Police Management Association in an amount not to exceed \$45,000.**

**Background**

The Collective Bargaining Agreements of the Des Moines Police Guild and the Des Moines Police Management Association expire on December 31, 2014. The City will, therefore, need to negotiate a new contract with each union.

## **Discussion**

In previous years, the City Manager has represented the City and negotiated agreements with these two unions, as well as all other employee unions/groups. Generally, however, organizations do not have their CEO's represent them at the bargaining table. Therefore, it would be more appropriate for the City to have someone other than the City Manager negotiate new contracts on its behalf.

The Summit Law Group, and Bruce Schroeder in particular, have represented public sector management clients for many years and are regarded as one of the pre-eminent firms in their field. The attached letter of engagement outlines the terms and fees for their services.

## **Alternatives**

Council could direct that another firm/individual be engaged to provide these services to the City or direct that City Manager represent the City at the bargaining table as he has in the past.

## **Financial Impact**

The Summit Law Group will charge the City \$300 per hour for Mr. Schroeder's time and slightly lower hourly fees for other attorneys in the firm. Per the terms of his engagement letter, total fees will be capped at \$45,000, unless extended by the City Council. Funds are available in the General Fund fund balance and will be appropriated via budget amendment the next time an amendment is placed before the Council for consideration.

## **Recommendation or Conclusion**

Staff recommends approval of the letter of engagement with the Summit Law Group.



SUMMIT  
LAW GROUP

*a professional limited liability company*

BRUCE L. SCHROEDER

DID: (206) 676-7052

EMAIL: [bruces@summitlaw.com](mailto:bruces@summitlaw.com)

315 Fifth Ave S Suite 1000

Seattle, Washington 98104

phone · 206.676.7000

fax · 206.676.7001

April 18, 2014

Tony Piasecki  
City Manager  
City of Des Moines  
21630 11th Ave. S., Suite A  
Des Moines, WA 98198

**Re: Engagement of Summit Law Group**

Dear Tony:

Thank you for hiring Summit Law Group to represent the City of Des Moines with regard to labor matters. We will represent your interests vigorously and do our very best to be prompt, thoughtful and practical in everything we do on your behalf.

If you have not yet had an opportunity to view the background of Summit Law Group, please take a moment to view our website ([www.summitlaw.com](http://www.summitlaw.com)). Summit Law Group was founded on the principles that the market for legal services has dramatically changed and that a modern firm should be leaner, more efficient and more customer-responsive. We want to form productive working partnerships with our customers, delivering a better product at greater value.

***Fee Arrangements.*** We will build a working partnership with you to enable you to maintain control over the scope and cost of your legal work. We are especially interested in fee arrangements that provide incentives for us to be cost effective and that reward us for superior results. Unless we agree otherwise, however, we will charge for our services by the billable hour. We encourage you to consider and suggest other ways of measuring the value of our services during the course of our relationship. Whether you choose to be billed by the hour, or some other fee arrangement, we, unlike any other law firm we know of in the country, invite you to pay in accordance with your perception of the value of our legal services. To that end, within 30 days of our invoice, you are free to adjust our billed amount, upward or downward, based on your perception of the value that you have received.

At present, my current applicable hourly rate is \$300, and we have agreed to place a not-to-exceed amount of \$45,000 on this engagement. Although I will be handling the negotiations for the City, if you have a question and I am not available you may feel free to contact any of the members of our Labor and Employment Group for assistance. The billing rates and contact information of those members are included in the Appendix to this letter.

Tony Piasecki  
April 18, 2014  
Page 2

Unless otherwise agreed in writing, we will provide you with full itemized billing information on a monthly basis, including people working on your engagement, their hours and rates and a detailed description of services performed. Payment of our bill is due upon receipt of our invoice and bills not paid within thirty (30) days of the date of the invoice will accrue interest at a rate of 1% per month. We do not charge for telephone, fax, photocopying, computerized legal research, local travel, or other costs that are properly part of our cost of doing business. We charge our actual costs for out-of-town travel and meals, working meals, and other third party vendor expenses (e.g., for high volume photocopying, courier and messenger services, conference calls and other extraordinary expenses). Our billings are monthly, unless otherwise agreed.

Attached to this letter is an Appendix which includes additional terms of this engagement. Together, this letter and the Appendix shall constitute the agreement between you and us regarding our professional services. If the terms of our representation as described above and in the Appendix are acceptable, please date and sign this letter where indicated below and return it to me via mail, facsimile or electronic mail. This agreement will take effect on the date of your signature or when we first perform services, whichever is earlier.

Very truly yours,

SUMMIT LAW GROUP PLLC



Bruce L. Schroeder

AGREED AND ACCEPTED:

CITY OF DES MOINES

By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated \_\_\_\_\_

## Appendix to Engagement Letter of Summit Law Group, PLLC

The term "you" below refers to the client in this engagement. If the client is an entity, then we have addressed the accompanying engagement letter to the client's authorized representative, but the term "you" below refers to the entity client.

### **Identity of Client.**

In representing a client which is an entity, we do not thereby also separately represent affiliates or other constituents of the entity, nor do we separately represent the owners, officers, directors, founders, managers, members, partners, fiduciaries, or employees of the entity in their individual capacities or with respect to their individual affairs. We will rely upon you to inform them of this fact where appropriate. Unless we agree otherwise in writing, we do not by virtue of our representation of you also represent any entity that controls you, is controlled by you or is under common control with you. We will look to the addressee of the engagement letter for our instructions on behalf of the entity, unless you inform us otherwise in writing.

### **Scope of Engagement.**

The scope of this engagement is described in the accompanying engagement letter. The scope of our engagement may change if you ask us to provide different or additional services and we agree in writing to provide them or we actually proceed to provide them and bill you for them. If our engagement changes, the terms set out in the accompanying engagement letter and this Appendix will apply to the changed engagement, unless we enter into a further agreement modifying this one. Our engagement may be terminated by either one of us upon written notice to the other.

### **Summit Team Assigned to This Engagement.**

At Summit Law Group, we assign a team to your engagement. Your team includes the individuals listed below.

| <b>Attorney</b>      | <b>Direct Dial</b> | <b>Email</b>           | <b>Hourly Rate</b> |
|----------------------|--------------------|------------------------|--------------------|
| Peter Altman         | 676-7048           | petera@summitlaw.com   | \$225.00           |
| Kristin Anger        | 676-7012           | kristina@summitlaw.com | \$270.00           |
| Denise Ashbaugh      | 676-7094           | denisea@summitlaw.com  | \$255.00           |
| Mike Bolasina        | 676-7006           | mikeb@summitlaw.com    | \$270.00           |
| Beth Kennar          | 676-7068           | bethk@summitlaw.com    | \$270.00           |
| <i>Spokane (509)</i> | 926-2056           |                        |                    |
| Otto Klein           | 676-7034           | ottok@summitlaw.com    | \$300.00           |
| Sofia Mabee          | 676-7112           | sofiam@summitlaw.com   | \$270.00           |
| Shannon Phillips     | 676-7092           | shannonp@summitlaw.com | \$270.00           |

| Attorney        | Direct Dial | Email                | Hourly Rate |
|-----------------|-------------|----------------------|-------------|
| Bruce Schroeder | 676-7052    | bruces@summitlaw.com | \$300.00    |
| Linda Swanson   |             | lindas@summitlaw.com | \$125.00    |
| Rod Younker     | 676-7080    | rody@summitlaw.com   | \$295.00    |

### **Billing and Payment.**

We review and make changes to our hourly rates from time to time, usually on an annual basis. Changes may or may not apply across the board to all timekeepers.

Timely payment in full is a condition to our continuing provision of services. You agree that we may suspend or terminate our services and may withdraw from this engagement in the event our fees and other charges are not timely paid, subject to applicable rules governing attorney withdrawal. In extreme cases, we may pursue recovery of unpaid fees through collection actions or litigation. If our engagement is terminated by either you or us for any reason, you will remain obligated to pay us all fees and other charges properly incurred up to the termination date.

Although on occasion we will in good faith attempt to estimate in advance the fees and costs of an engagement, we are not bound by any such estimate unless agreed in writing. Also, we are not obligated to revise, amend or correct any such estimate if subsequent developments make it inaccurate.

If we have more than one client in this engagement, then each is jointly and severally obligated to pay us unless we agree otherwise in writing. Any outside arrangements you may have for allocation, reimbursement, insurance, indemnification or the like will not relieve you of your obligation to pay amounts due.

### **Conflict Check.**

At the beginning of each engagement we conduct a review of potential conflicts of interest to ensure compliance with the Rules of Professional Conduct, using names that you have provided. As we move forward, please be sure to immediately provide us with any new or different names of adverse or interested parties so that we may update our conflict check.

### **Return of Files.**

After this engagement has ended, you may request the return of your files. If you do not do so and you would like us to keep your files, then we will do this. Depending on the size of the files, we may charge you for the cost of continued storage.

### **Dispute Resolution and Arbitration.**

If you become dissatisfied with any aspect of our relationship, including the quality or adequacy of our representation, you agree to bring that to our attention, and we each agree to negotiate in good faith to resolve the matter. If we cannot reach agreement, we each agree to

comply with any mandatory dispute resolution procedures that apply to any such dispute. If such applicable mandatory dispute resolution procedures have been completed or waived, and a dispute still exists between us, we each agree that the dispute will be submitted for mediation in Seattle, Washington, under the rules of JAMS. If such mediation fails, and a dispute still exists between us, we each agree that the dispute will be submitted to binding arbitration in Seattle, Washington, under the rules of JAMS. In arbitration, there is no right to a trial by jury and the arbitrator's legal and factual determinations are generally not subject to appellate review.

By signing the engagement letter to which this is attached, you acknowledge that the agreement to arbitrate results in a waiver of your right to a court or jury trial for any fee dispute or malpractice claim. This also means that you are giving up your right to discovery and appeal. If you later refuse to submit to arbitration after agreeing to do so, you may be ordered to arbitrate pursuant to the provisions of Washington law. You acknowledge that before signing this agreement and agreeing to binding arbitration, you are entitled to, and have been given, a reasonable opportunity to seek the advice of independent counsel.



**AGENDA ITEM**

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

SUBJECT: A Resolution to execute an Interlocal Agreement with the cities of SeaTac and Tukwila for the establishment of a Tourism Promotion Area (TPA).

FOR AGENDA OF: April 24, 2014

DEPT. OF ORIGIN: Economic Development

DATE SUBMITTED: April 18, 2014

**ATTACHMENTS:**

1. Draft Resolution No. 14-085
2. Interlocal Agreement for the Joint Establishment of a TPA

**CLEARANCES:**

- Legal 
- Finance N/A
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works N/A
- Police N/A
- Economic Development Manager 

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: 

**Purpose and Recommendation**

This Resolution authorizes the City Manager to execute an Interlocal Agreement for the establishment of a Tourism Promotion Area within the boundaries of the Cities of SeaTac, Des Moines and Tukwila.

**Suggested Motion**

**Motion:** "I move to adopt Draft Resolution No. 14-085 authorizing the City Manager to execute an Interlocal Agreement for the establishment of a Tourism Promotion Area within the boundaries of the Cities of SeaTac, Des Moines and Tukwila."

**Background**

Tourism Promotion Areas ("TPA") were created by State statute (chapter 35.101 RCW) with the purpose of furthering additional positive impacts for tourism spending in local communities. The TPA statute allows the legislative authority of the TPA to impose a charge on certain lodging of up to \$2.00 per room, per night. The charge is not a tax on the sale of lodging - it is a self-imposed special assessment collected by certain lodging businesses from guests in hotels within the participating municipalities. In King County the establishment of a TPA requires the participation of two or more local governments through an Interlocal Agreement ("ILA"). The proposed TPA will be a joint effort

between the cities of SeaTac, Des Moines, and Tukwila. TPA formation is initiated when the operators of lodging business in the proposed TPA who would pay 60% or more of the proposed self-assessments submit a formation petition to the designated legislative authority. The purpose of the ILA is (a) to appoint a legislative authority to accept the petition and fulfill the requirements set forth in the TPA statute, and (b) to memorialize the agreement among the participating cities with regard to the proposed TPA. The planning for the TPA was initiated in 2011 after requests to City of SeaTac staff by the Lodging Tax Advisory Committees of the participating cities.

The Interlocal Agreement specifies that the self-assessment will apply to hoteliers who have 90 or more rooms. However, the City of Des Moines does not have currently any hoteliers who meet this threshold. When the Artemis (Sheraton) Hotel is finished in 2015 it will be Des Moines' first hotel to qualify to participate in the self-assessment. The investor group Yareton LLC and their representative have been kept apprised of the progress of the TPA formation and have explicitly expressed their support for this Interlocal Agreement.

The City of SeaTac adopted a resolution approving the attached Interlocal Agreement on March 11<sup>th</sup> 2014. It was approved by the City of Tukwila on April 7<sup>th</sup> 2014.

## **Discussion**

### **Proposed Structure:**

- Summary -- The proposed structure involves replacing the existing interlocal agreements that stipulate the investments of lodging taxes from the cities to Seattle Southside Visitor Services (SSVS) and the delivery of tourism promotion services. The new ILA among the cities of Tukwila, SeaTac, and Des Moines, forms a tourism promotion area, and begins the process of establishing a public development authority to receive the TPA-generated revenue and provide tourism related services currently provided by SSVS.
  
- The purpose of the new ILA is to:
  - Appoint the SeaTac City Council as the legislative authority of the proposed TPA for the purpose of accepting the petition and fulfilling the requirements under chapter 35.101 RCW.
  - Designate the jurisdictional boundaries of the proposed TPA to the incorporated boundaries of the participating cities.
  - If the petition is submitted to the legislative authority and the TPA is formed under chapter 35.101 RCW, the legislative authority will impose an additional charge on the furnishing of lodging under RCW 35.101.050 in an amount not to exceed \$2.00 per night of stay.
  - Require each participating city to direct and remit any TPA assessment revenue received by such city to the legislative authority or public development authority.
  - Maintain Lodging Tax support for the new entity as provided for in the ILA and as approved by the individual City Councils after recommendation by the jurisdiction's Lodging Tax Committees and enter into service contracts with the public development authority.
  
- The City of SeaTac will charter a public development authority under chapter 35.21 RCW named the Seattle Southside Regional Tourism Authority (the "SSRTA"). The SSRTA will be a separate legal entity formed for the purpose of receiving and managing Lodging Tax and TPA assessment revenue and providing tourism promotion services currently provided by SSVS. Consideration and formation of the SSRTA will be by separate action of the SeaTac City Council at a later date.

- The SSRTA will be governed by a Board of Directors. Board Members will generally be representative of the hospitality industry and may be drawn from existing advisory committees.
- The ILA provides that each participating city shall defend, indemnify and hold one another harmless from any and all claims arising out of the performance of the ILA and the SSRTA, except to the extent that the harm complained of arises from the sole negligence of one of the participating cities. Any loss or liability resulting from the negligent acts errors or omissions of the Board of Directors, staff, or employees of the SSRTA, while acting within the scope of their authority shall be borne by the SSRTA exclusively.
- The interlocal agreements among the participating cities with respect to SSVS will terminate only upon the full operational capacity of the SSRTA.

### **Financial Impact**

Additional revenue of between \$2 - \$2.5 million will be generated annually for tourism promotion to augment and significantly expand the current services provided through SSVS. This will result in greater promotional opportunities for Des Moines businesses and destinations. There will be no administrative or other costs to the City of Des Moines, except that the City will continue to forgo hotel/motel tax revenues as it has with SSVS.

### **Alternatives**

The Council could choose not to pass the resolution.

### **Recommendation or Conclusion**

Staff recommends that the Resolution be passed.



ECONOMIC DEVELOPMENT FIRST DRAFT 04/16/14

DRAFT RESOLUTION NO. 14-085

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON,** authorizing the execution of an Interlocal Agreement for the Joint Establishment of a Tourism Promotion Area, and certain matters related thereto.

**WHEREAS,** the City of Tukwila, Washington ("Tukwila") currently administers Seattle Southside Visitors Services ("SSVS"), a tourism promotion program funded by lodging taxes imposed and collected within Tukwila, SeaTac, and Des Moines, and remitted to SSVS in exchange for tourism promotion services, and

**WHEREAS,** the tourism industry is a vital and substantial component of the region's economy and tourism promotion increases the number of visitors to the region which in turn increases regional sales supporting the local economy, and

**WHEREAS,** the Legislature of the State of Washington has recognized the importance of tourism promotion in the State of Washington and in 2003 passed Engrossed Substitute Senate Bill No. 6026, codified as chapter 35.101 RCW (the "TPA Act"), authorizing counties with a population greater than forty thousand but less than one million, and any city or town within such a county, to establish a tourism promotion area for the purpose of imposing special assessments on the furnishing of lodging to be expended exclusively on tourism promotion, and,

**WHEREAS,** in 2009 the Legislature amended the TPA Act to allow two or more cities located in a county with a population of one million or more acting jointly under chapter 39.34 RCW (the "Interlocal Cooperation Act") to form a tourism promotion area for such purpose, and

**WHEREAS,** to form a tourism promotion area an initiation petition satisfying the terms of the TPA Act must first be presented to the legislative authority having jurisdiction of the area in which the proposed tourism promotion area is to be located and a public hearing must be held after providing proper notice, and

**WHEREAS,** the promotion of the region to increase tourism will also provide economic benefit to retail, restaurant, entertainment and cultural industries that are closely connected

to the hotel industry and critical to the health of the local economy, and

**WHEREAS**, the City now desires to enter into the Interlocal Agreement for Joint Establishment of a Tourism Promotion Area, by and among the City, Tukwila, and SeaTac for the purpose of appointing a legislative authority to receive the initiation petition and otherwise carry out the terms of the TPA Act in order to help facilitate the formation and operation of the Seattle Southside TPA as set forth therein; now therefore,

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

**Sec. 1. Approval of Interlocal Agreement for the Joint Establishment of a Tourism Promotion Area.** The City Council hereby approves the Interlocal Agreement for the Joint Establishment of a Tourism Promotion Area, by and among the City, Tukwila and SeaTac, substantially in the form as attached hereto as Exhibit A and incorporated herein by this reference (the "Interlocal Agreement"). The City Manager is hereby authorized and directed to execute the Interlocal Agreement, substantially in the form attached hereto. The City Manager and other appropriate officers of the City are authorized and directed to take any and all such additional actions as may be necessary or desirable to accomplish the terms of the Interlocal Agreement and the formation of the Seattle Southside TPA.

**Sec. 2. Appointment of Legislative Authority.** The City Council hereby appoints the City of SeaTac as the Legislative Authority of the Seattle Southside TPA for purposes of the Interlocal Agreement and the TPA Act.

**ADOPTED BY** the City Council of the City of Des Moines, Washington this \_\_\_\_ day of April, 2014 and signed in authentication thereof this \_\_\_\_ day of April, 2014.

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

APPROVED AS TO FORM:

\_\_\_\_\_

Resolution No. \_\_\_\_  
Page 3 of \_\_\_\_

City Attorney

ATTEST:

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City Clerk



**INTERLOCAL AGREEMENT  
FOR THE JOINT ESTABLISHMENT OF A  
TOURISM PROMOTION AREA**

THIS INTERLOCAL AGREEMENT FOR THE JOINT ESTABLISHMENT OF A TOURISM PROMOTION AREA (this "Agreement") dated this \_\_\_ day of \_\_\_\_\_, 2013, is made and entered into by and among the CITY OF SEATAC ("SeaTac"), the CITY OF TUKWILA ("Tukwila"), and the CITY OF DES MOINES ("Des Moines"), each being a municipal corporation organized under the laws and statues of the State of Washington, for the purpose of establishing a joint tourism promotion area pursuant to chapter 35.101 of the Revised Code of Washington ("RCW").

**RECITALS:**

WHEREAS, Tukwila currently administers Seattle Southside Visitors Services ("SSVS"), a tourism promotion program funded by lodging taxes imposed and collected within Tukwila, SeaTac, Des Moines, and the City of Kent and remitted to SSVS in exchange for tourism promotion services; and

WHEREAS, the tourism industry is a vital and substantial component of the region's economy and tourism promotion increases the number of visitors to the region which in turn increases regional sales supporting the local economy; and

WHEREAS, the Legislature of the State of Washington has recognized the importance of tourism promotion in the State of Washington and in 2003 passed Engrossed Substitute Senate Bill No. 6026, codified as chapter 35.101 RCW (the "TPA Act"), authorizing counties with a population greater than forty thousand but less than one million, and any city or town within such a county, to establish a tourism promotion area for the purpose of imposing special assessments on the furnishing of lodging to be expended exclusively on tourism promotion; and

WHEREAS, in 2009 the Legislature amended the TPA Act to allow two or more cities located in a county with a population of one million or more acting jointly under chapter 39.34 RCW (the "Interlocal Cooperation Act") to form a tourism promotion area for such purpose; and

WHEREAS, other Washington counties and cities, including Pierce County, the Tri-Cities, Spokane County, and Clark County, have established tourism promotion areas and have dedicated such funds for tourism promotion; and

WHEREAS, the operators of lodging businesses located in southwest King County are preparing to initiate the formation of a tourism promotion area pursuant to the TPA Act within the jurisdictional boundaries of Tukwila, SeaTac and Des Moines (the "Seattle Southside TPA"); and

WHEREAS, depending on the rates of the assessments, the proposed Seattle Southside TPA is projected to provide approximately \$2.5 million of additional revenue for tourism promotion each year; and

WHEREAS, the additional revenue stream is expected to help the tourism promotion program currently administered by SSVS remain competitive with other destination marketing organizations in the State of Washington, bring more visitors to the area, bolster hotel occupancy, protect current jobs, create new jobs, increase business at restaurants and retail stores, and increase patronage at arts, cultural and sporting venues in an ever increasingly competitive marketplace; and

WHEREAS, assessments received from the proposed Seattle Southside TPA will be remitted to a public development authority chartered by SeaTac pursuant to chapter 35.21 RCW; and

WHEREAS, if formed, the Seattle Southside TPA is expected to provide needed resources to increase tourism, which will increase hotel occupancy among participating hotels within the defined area; and

WHEREAS, the promotion of the region to increase tourism will also provide economic benefit to retail, restaurant, entertainment and cultural industries that are closely connected to the hotel industry and critical to the health of the local economy; and

WHEREAS, SeaTac, Tukwila, and Des Moines (referred to herein as the “Parties”) currently fund certain basic operations and media expenses of SSVS with lodging tax revenues and desire to have that work continue. As set forth herein, the Parties intend to commit certain lodging tax revenues to fund regional tourism marketing by contracting with the public development authority, or successor entity, for such services; and

WHEREAS, it is paramount that SeaTac and Tukwila continue to operate SSVS in its current form until such time that the public development authority can assume all duties and obligations of SSVS; and

WHEREAS, to form a tourism promotion area an initiation petition satisfying the terms of the TPA Act must first be presented to the legislative authority having jurisdiction of the area in which the proposed tourism promotion area is to be located and a public hearing must be held after providing proper notice; and

WHEREAS, the Parties now desire to enter into this Agreement for the purpose of appointing a legislative authority to receive the initiation petition and otherwise carry out the terms of the TPA Act in order to help facilitate the formation and operation of the Seattle Southside TPA;

NOW THEREFORE, it is hereby agreed and covenanted among the undersigned as follows:

**Section 1. Definitions.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

“Agreement” means this Interlocal Agreement for the Joint Establishment of a Tourism Promotion Area by and among SeaTac, Tukwila and Des Moines, entered into pursuant to the TPA Act and the Interlocal Cooperation Act, as it may be amended from time to time.

“Annual Budget” means the budget approved pursuant to Section 7 of this Agreement.

“Des Moines” means the City of Des Moines, a municipal corporation organized under the laws and statutes of the State.

“Interlocal Cooperation Act” means chapter 39.34 RCW as the same may be amended from time to time.

“Legislative Authority” means the legislative authority of the Seattle Southside TPA appointed pursuant to Section 2 of this Agreement, as the same shall be duly and regularly constituted from time to time.

“Lodging Business” means a business located within the Seattle Southside TPA that furnishes lodging taxable by the State under chapter 82.08 RCW that has 40 or more lodging units. Lodging facilities with fewer than 40 rooms are not considered “Lodging Businesses” for the purpose of this Agreement and are exempt from any fees imposed under chapter 35.101 RCW.

“Operating Agreement” means the agreement(s) for the operation and management of the Seattle Southside TPA.

“Operator” or “Operator of a Lodging Business” means an operator of a Lodging Business, whether in the capacity of owner, general manager, lessee, sublessee, mortgagee in possession, license or any other similar capacity.

“Petition” means the initiation petition delivered to the Legislative Authority pursuant to the TPA Act.

“SeaTac” means the City of SeaTac, a municipal corporation organized under the laws and statutes of the State.

“SeaTac City Council” means the City Council of SeaTac as the general legislative authority of SeaTac, as the same shall be duly and regularly constituted from time to time.

“Seattle Southside Tourism Promotion Area” means the geographic area identified in the Petition.

“Seattle Southside TPA” means the Seattle Southside Tourism Promotion Area.

“Special Assessment” means the levy (charge) imposed by the Legislative Authority on the Operators of Lodging Businesses within the Seattle Southside TPA and subsequently passed on to the guests of the Lodging Business, under the authority of the TPA Act, for the purpose of providing funding of tourism promotion in the boundaries of the Seattle Southside TPA.

“SSRTA” or “Seattle Southside Regional Tourism Authority” means the public development authority chartered by SeaTac pursuant to chapter 35.21 RCW.

“SSRTA Board of Directors” means the Board of Directors of SSRTA, as the general legislative authority of SSRTA, as the same shall be duly and regularly constituted from time to time.

“SSVS” means Seattle Southside Visitors Services, a tourism promotion program currently administered by Tukwila.

“State” means the State of Washington.

“Tourism Promotion” means domestic and international tourism promotion, advertising, sales and marketing activities intended to encourage tourism in the Seattle Southside TPA in order to increase area hotel occupancies. “Promotion, advertising, sales and marketing activities” include, but are not limited to, strategic planning, market research, creative development, media placement, sales activities, hosting tourism industry events relating to promotion and marketing, and administrative and management support for such services, and creating and maintaining a standing limited reserve, as such reserve may be specified in the Annual Budget, to fund any such activities.

“Transient Basis” means the rental of a room or rooms for dwelling, lodging, or sleeping purposes by the Operator of a Lodging Business for a period of 30 consecutive calendar days or less, counting a portion of a day as a full calendar day.

“Tukwila” means the City of Tukwila, a municipal corporation organized under the laws and statutes of the State.

“Zone” or “Zones” means the distinct geographic subarea or subareas within the Seattle Southside TPA as established by resolution of the Legislative Authority.

**Section 2. Purpose of this Agreement; Appointment of Legislative Authority.**

(a) *Purpose of this Agreement.* The purpose of this Agreement is (1) to promote tourism in the boundaries of the Seattle Southside TPA by appointing a legislative authority for the purpose of accepting an initiation Petition for the formation of the Seattle Southside TPA pursuant to the TPA Act in the jurisdictional boundaries of SeaTac, Tukwila and Des Moines, which when and if created, will permit collection of Special Assessments from Lodging Businesses to fund Tourism Promotion, and (2) to memorialize the agreement among the Parties hereto relating to the Seattle Southside TPA.

The Petition must describe the boundaries of the proposed tourism promotion area, the proposed uses and projects to which the proposed revenue from the charges shall be used and the total estimated costs, the estimated rate for the charge with a proposed breakdown by class of Lodging Businesses (if such classification is to be used), and the signatures of the persons who Operate Lodging Business in the proposed area who would pay sixty percent or more of the proposed charges.

(b) *Appointment of Legislative Authority.* The SeaTac City Council is hereby appointed as the Legislative Authority of the Seattle Southside TPA for purposes of this Agreement and the TPA Act. References to the “Legislative Authority” herein shall mean the SeaTac City Council serving in its capacity as the Legislative Authority of the Seattle Southside TPA.

(c) *Understanding of the Parties.* It is hereby understood and agreed by the Parties that the SeaTac City Council, serving in its capacity as the Legislative Authority, shall, after receiving the Petition, proceed with adopting a resolution of intent to establish the “Seattle Southside Tourism Promotion Area” designated to include the jurisdictional boundaries of SeaTac, Tukwila and Des Moines, and hold a public hearing after providing proper notice under the terms of the TPA Act.

It is understood and agreed to by the Parties hereto that the purpose of forming the Seattle Southside TPA is to provide an additional source of revenue to be used exclusively to fund Tourism Promotion within the boundaries of the Seattle Southside TPA which will benefit the tourism industry and the Operators of Lodging Businesses located in the boundaries of the Seattle Southside TPA and the Parties hereto.

(d) *Termination of Proceedings.* Notwithstanding anything herein to the contrary, if the Seattle Southside TPA is not formed by March 31, 2015, this Agreement shall terminate and shall no longer be in force and effect.

### **Section 3. Legislative Authority; Meetings; Powers.**

(a) *Officers of the Legislative Authority.* The Chair of the SeaTac Lodging Tax Advisory Committee, or his or her designee, shall serve as Chair of the Legislative Authority. On matters decided by the Legislative Authority, the signature of the Chair alone is sufficient to bind the Legislative Authority.

(b) *Meetings of the Legislative Authority.* Regular meetings of the Legislative Authority shall be held at the times and locations set forth in a meeting schedule approved by the Legislative Body. There shall be at least one meeting of the Legislative Authority each year, and not less than fifteen days’ notice shall be given to all members of the Legislative Authority and the Parties hereto prior to any such meeting. Other meetings (including special meetings) may be held upon request of the Chair or any other members. All meetings shall be open to the public to the extent required by chapter 42.30 RCW. Each member of the Legislative Authority shall have an equal vote and voice in all decisions of the Legislative Authority. Unless otherwise provided, the City of SeaTac City Council Administrative Procedures and Robert’s Revised

Rules of Order (newly revised) shall govern all procedural matters relating to the business of the Legislative Authority.

(c) *Powers of the Legislative Authority.* The Parties hereto acknowledge and agree that the SeaTac City Council is being appointed solely to serve as the “legislative authority” for purposes of the TPA Act. The day to day operations of the Seattle Southside TPA, including but not limited to the management and expenditure of Special Assessments, shall be managed by SSRTA as manager and operator of the Seattle Southside TPA. The SeaTac City Council, when acting in its capacity as Legislative Authority, shall have the authority to:

1. Receive the Petition, adopt a resolution of intent to form the Seattle Southside TPA, hold a public hearing as required by the TPA Act, and otherwise carry out the terms of the TPA Act;
  2. Form the Seattle Southside TPA, establish rates of Special Assessments and levy Special Assessments pursuant to the terms of this Agreement, the Petition, and the TPA Act;
  3. Adopt an Annual Budget;
  4. Conduct regular and special meetings as may be designated by the Legislative Authority;
  5. Enter into agreements with third parties as necessary to fully implement the purposes of this Agreement;
  6. Enter into Operating Agreements with SSRTA for the operation of the Seattle Southside TPA, the management and expenditure of Special Assessments and other revenues, and other services as determined to be necessary from time to time;
  7. Enter into agreements with and receive funds from any federal, state or local agencies and to distribute such funds to SSRTA;
  8. Receive and account for all funds allocated to the Seattle Southside TPA;
- and
9. Engage in any and all other acts necessary to further the goals of this Agreement.

**Section 4. Levy of Assessments on Lodging Businesses within the Seattle Southside TPA.**

(a) The Legislative Authority will levy Special Assessments on the Operators of Lodging Businesses within the Seattle Southside TPA in accordance with the Zones and levels of Special Assessments as set forth in the Petition and resolution of the Legislative Authority. The Parties acknowledge that, unless otherwise provided for in the Petition, Special Assessments shall not be imposed on rooms (1) where the occupant has stayed 30 or more days and are not otherwise on a Transient Basis, (2) that are provided by an Operator of a Lodging Business to

guests without charge for promotional purposes, (3) available exclusively to members or guests of members of a private member-owned clubs or its reciprocal clubs, or (4) contracted with airline crews.

(b) The Legislative Authority shall contract with the State Department of Revenue for the administration and collection of the Special Assessments pursuant to RCW 35.101.090. Special Assessments shall be deposited into the local tourism promotion account created in the custody of the State Treasurer under RCW 35.101.100. It is understood and agreed that in accordance with RCW 35.101.100, the State Treasurer has the authority to distribute the revenue from the tourism promotion account allocable to the Seattle Southside TPA to the Legislative Authority, or directly to the SSRTA, on a monthly basis. SeaTac shall act as fiscal agent to the Seattle Southside TPA and shall be responsible for receiving Special Assessments from the State Treasurer and holding such funds in a segregated account(s) until remitted to SSRTA pursuant to Section 7 of this Agreement.

(c) Any change in the Special Assessment rates for any Zone as set in the resolution of the Legislative Authority shall be made only by amendment of the resolution by the Legislative Authority and only upon written request by the persons who Operate Lodging Business in the proposed area who would pay sixty percent or more of the proposed charges and with the approval and consent of the SSRTA Board of Directors. No increase in the Special Assessment rates for any Zone or the boundaries of any Zone shall be made by the Legislative Authority except after receipt of the written request of persons who Operating Lodging Businesses as identified in the preceding sentence and upon the affirmative approval of the SSRTA Board of Directors.

(d) It is understood and agreed by the Parties hereto that the Special Assessments imposed in the Seattle Southside TPA are not a tax on the "sale of lodging" for the purposes of chapter 82.14 RCW and are not applicable to temporary medical housing exempt under chapter 82.08 RCW.

(e) It is understood and agreed by the Parties that the Special Assessments imposed under this Agreement are in addition to the special assessments that may be levied under chapter 35.87A RCW.

**Section 5. Use of Special Assessment Revenue.** All of the revenues from Special Assessments collected by the State Department of Revenue from Lodging Businesses within the Seattle Southside TPA shall be remitted by the Legislative Authority to SSRTA and shall be used exclusively for Tourism Promotion as defined herein, and for no other purpose, in accordance with the Annual Budget. The revenue derived from the Special Assessments shall be used only for the following purposes:

(a) The general promotion of tourism within the Seattle Southside TPA as specified in the business plan of the SSRTA;

(b) The marketing of convention and trade shows that benefit local tourism and the Lodging Businesses in the Seattle Southside TPA;

(c) The marketing of the Seattle Southside TPA region to the travel industry in order to benefit local tourism and the lodging businesses in the Seattle Southside TPA;

(d) The marketing of the Seattle Southside TPA region to recruit sporting events in order to promote local tourism and to benefit the Lodging Businesses and tourism industry within the Seattle Southside TPA; and

(e) Direct administration, operation, formation, and start-up costs associated with the Seattle Southside TPA and the ongoing management and maintenance of the Seattle Southside TPA program, including but not limited to staff costs, public notice advertising, legal costs, accounting and auditing (including audits of the Parties and the SSRTA as they relate to this Agreement), as approved by the SSRTA Board of Directors, provided no funds will be used for costs not directly related to operation of the Seattle Southside TPA, this Agreement, or the SSRTA.

**Section 6. Lodging Taxes.** The Parties intend to commit lodging tax revenues to fund regional tourism marketing by contracting with the SSRTA, or successor entity. The Parties intend the minimum annual funding levels to be set according to the following table:

| <b>Annual Commitment of Lodging Tax to the SSRTA*</b> |               |                |                                      |
|-------------------------------------------------------|---------------|----------------|--------------------------------------|
| <b>Year</b>                                           | <b>SeaTac</b> | <b>Tukwila</b> | <b>Des Moines</b>                    |
| 2014                                                  | \$835,000     | \$712,000      | 100% of monthly lodging tax receipts |
| 2015                                                  | \$460,000     | \$405,000      | 100% of monthly lodging tax receipts |
| 2016                                                  | \$383,333     | \$337,500      | 100% of monthly lodging tax receipts |
| 2017                                                  | \$306,666     | \$270,000      | 100% of monthly lodging tax receipts |
| 2018 and beyond                                       | \$230,000     | \$202,500      | 100% of monthly lodging tax receipts |

\* The exact amount of funding for 2014 will be pro-rated based upon the actual date of establishment of the SSRTA.

Notwithstanding the foregoing, the Parties acknowledge and agree that the final allocation, uses, and level of lodging tax revenue is subject to the provisions of chapter 67.28 RCW. Recognizing that RCW 67.28.1816 requires that the annual expenditures of the respective City's lodging tax be approved by the respective city council (based on a recommendation from its respective lodging tax advisory committee) this Agreement provides no guarantee that future city councils will approve future funding.

The Parties further recognize that Tukwila has financial obligations in place to operate SSVS. Tukwila may, at its sole discretion and absolute authority, reduce the annual payment to the SSRTA in order to meet obligations and liabilities associated with the operation of SSVS, including, but not limited to, labor, lease costs, payment of utilities, and other contracts executed in support of SSVS by Tukwila.

**Section 7. Management of Seattle Southside TPA; Annual Budget; Reporting Requirements.**

(a) The Legislative Authority shall contract with the SSRTA pursuant to one or more Operating Agreements for the management and operation of the Seattle Southside TPA.

(b) The Parties hereto acknowledge and agree that SeaTac is chartering the SSRTA for the purpose of serving as a separate legal entity formed to advise and make recommendations to the Legislative Authority on all matters related to the Seattle Southside TPA and to carry out its purposes as set forth in its formation documents. The Parties agree to execute agreements with the SSRTA for tourism promotion services and for the transfer of assets, equipment, and intellectual property (including the SSVS "brand") used by SSVS to accomplish the purposes of the SSRTA, as determined to be necessary by the SSRTA to accomplish its purposes. The Parties hereto agree to use best efforts to assist in the transition of such services, assets, equipment, and property at no cost to the SSRTA.

(c) SSRTA shall be responsible for administering the activities and programs of the Seattle Southside TPA and preparing an Annual Budget for the Seattle Southside TPA.

(d) The Legislative Authority shall approve an Annual Budget for the use of Special Assessments and shall provide a copy of the Annual Budget to the Parties hereto. The Annual Budget shall consist of:

1. A list of the Lodging Businesses subject to Special Assessments and an estimate of the revenue to be received from all such Lodging Businesses; and
2. A statement of the proposed budget for all Seattle Southside TPA activities and programs to be funded from Special Assessments during the ensuing fiscal year.

(e) SSRTA, as manager of the Seattle Southside TPA, shall agree to comply with all applicable provisions of state and federal law, including but not limited to, the TPA Act, and with all applicable county or city resolutions and ordinances, and with all regulations lawfully imposed by the State Auditor or other state agencies, and the applicable provisions of this Agreement.

(f) All Special Assessments received by SeaTac, as fiscal agent for the Seattle Southside TPA, from the State Department of Revenue and any interest thereon shall be deposited by SeaTac in a special account and thereafter transferred to SSRTA within thirty days following receipt. Provided, however, no Special Assessment shall be transferred in any fiscal year until after the adoption of that year's fiscal Annual Budget.

(g) Legislative Authority shall submit a statement of actual revenues and expenditures to the SSRTA Board of Directors and the Parties hereto.

(h) The Parties acknowledge and agree that revenue derived from the Special Assessments is intended to enhance, supplement, and extend existing tourism marketing efforts of the Parties.

**Section 8. Initial Duration; Withdrawal and Termination.**

(a) *Initial Term.* The initial duration of this Agreement shall be for a period of twenty years from its effective date.

(b) *Withdrawal from Agreement; Termination by the Parties.* Any Party to this Agreement may withdraw its participation in this Agreement and in the Seattle Southside TPA by providing written notice and serving that notice to the Legislative Authority as provided herein. No Party is permitted to withdraw until this Agreement has been in force at least four years from the effective date. Once this Agreement has been in force for four years, any Party may withdraw by providing at least one year notice of its intent to withdraw.

The Party giving notice of intent to withdraw may revoke its notice by giving written notice of revocation to the Legislative Authority. Within 90 days after receiving proper notice as provided in this section, the Legislative Authority shall adopt a resolution of intention (i) identifying the Party that has given notice of withdrawal, (ii) stating that Seattle Southside TPA may be modified or terminated, as applicable, (iii) describing the change or changes proposed, or indicate that it is the intention to revise the boundaries or disestablish the Seattle Southside TPA, and (iv) providing the time and place of a public hearing to be held by the Legislative Authority on the proposed action; provided, the public hearing shall be at least 15 days prior to consideration of the proposed action. The Legislative Authority may, by ordinance, revise the boundaries or disestablish the Seattle Southside TPA after conducting a hearing to receive public comment regarding the boundary revision or disestablishment of the Seattle Southside TPA. Unless the written notice of withdrawal has been revoked by the withdrawing Party and accepted by the Legislative Authority, the revision or disestablishment shall become effective on the date specified by the Legislative Authority.

(c) For the sake of clarity, it is the intention of the Parties hereto that this Section 8 provides for a method of withdrawal and/or termination of this Agreement that is initiated solely by a Party to this Agreement. This Section 8 is intended to be in addition to the method of modification and/or disestablishment of the Seattle Southside TPA as provided in Section 9 below.

**Section 9. Modification or Disestablishment of the Seattle Southside TPA.**

(a) The Legislative Authority may modify the provisions of the resolution or ordinance establishing the Seattle Southside TPA, revise the boundaries of the Seattle Southside TPA, or provide for the disestablishment of the Seattle Southside TPA, after adopting a resolution of intention to such effect. Such resolution of intention shall describe the change or changes proposed, or indicate that it is the intention to revise the boundaries or disestablish the Seattle Southside TPA, and shall state the time and place of a public hearing to be held by the

Legislative Authority to consider the proposed action; provided, the public hearing shall be at least 15 days prior to consideration of the proposed action.

(b) Additionally, upon receipt of a petition indicating a desire to revise the boundaries or disestablish the Seattle Southside TPA, with the signatures of the persons who Operate Lodging Businesses in the Seattle Southside TPA who pay 50% or more of the total Special Assessments, the Legislative Authority shall adopt a resolution of intention to revise the boundaries or disestablish the Seattle Southside TPA, and shall state the time and place of a public hearing to be held by the Legislative Authority to consider the proposed action; provided, the public hearing shall be at least 15 days prior to consideration of the proposed action.

(c) After conducting the public hearing to take public comment on the proposed action as required under Section 9(a) or (b), the Legislative Authority may, by ordinance, revise the boundaries or disestablish the Seattle Southside TPA. Notwithstanding the foregoing, if at a hearing held pursuant to Section 9(a) or (b) a petition objecting to the boundary revision or disestablishment is presented, with the signatures of the persons who Operate Lodging Businesses in the Seattle Southside TPA who pay 50% or more of the total Special Assessments, the Seattle Southside TPA shall not be altered or disestablished. If such petition objecting to the boundary revision or disestablishment is not presented at the hearing, the Legislative Authority shall proceed to revise the boundaries or disestablish the Seattle Southside TPA.

(d) Notwithstanding anything to the contrary in this Agreement, in no case shall the Parties hereto be obligated to satisfy the outstanding obligations of the Seattle Southside TPA or the SSRTA from such Party's moneys, funds, or other sources of revenue unless it otherwise agrees to in writing.

#### **Section 10. Miscellaneous Provisions.**

(a) *Waiver.* No officer, employee, or agent of SeaTac, Tukwila or Des Moines has the power, right, or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement by SeaTac, Tukwila or Des Moines shall be held to be a waiver of any other or subsequent breach. Failure of SeaTac, Tukwila or Des Moines to enforce any of the provisions of this Agreement or to require performance of any of the provisions herein, shall in no way be construed to be a waiver of such conditions, nor in any way effect the validity of this Agreement or any part hereof, or the right of SeaTac, Tukwila or Des Moines to hereafter enforce each and every such provision.

(b) *Records.* All records prepared, owned, used or retained by SSRTA in conjunction with operating or administering the activities and programs of the Seattle Southside TPA as provided for under the terms of this Agreement shall be made available by the SSRTA upon request to SeaTac, Tukwila or Des Moines.

(c) *Property and Equipment.* The SSRTA shall be the owner of all property and equipment purchased in furtherance of this Agreement from Special Assessment revenue. Provided, however, in the event of the termination of the Operating Agreement with the SSRTA, the SSRTA shall agree to make the property and/or equipment available to the successor

manager for its use in conjunction with providing similar services. Provided further, in the event of disestablishment of the Seattle Southside TPA, all property and equipment purchased by the SSRTA from Special Assessment revenue shall be retained by SeaTac and used for any lawful purpose.

(d) *Integration.* This Agreement contains all of the terms and conditions agreed upon by SeaTac, Tukwila or Des Moines concerning the establishment of the Seattle Southside TPA and the collection of Special Assessments from Operators of Lodging Businesses. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto. The Parties have read and understand all of this Agreement, and now state that no representation, promise, or agreement not expressed in this Agreement has been made to induce the officials of SeaTac, Tukwila or Des Moines to execute this Agreement.

(e) *Severability.* In the event any provision of this Agreement shall be declared by a Court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, in any way, be effected or impaired thereby.

(f) *Hold Harmless; No Liability.* SeaTac shall indemnify and hold harmless Tukwila and Des Moines and their agents, employees, and/or officers, from any and all costs, claims, judgments, or awards of damages arising out of the acts or omissions of SeaTac, its officers, employees or agents and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against Tukwila or Des Moines arising out of, in connection with, or incident to this Agreement and/or SeaTac's performance or failure to perform any aspect of this Agreement.

Tukwila shall indemnify and hold harmless SeaTac and Des Moines and their agents, employees, and/or officers, from any and all costs, claims, judgments, or awards of damages arising out of the acts or omissions of Tukwila, its officers, employees or agents and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against SeaTac or Des Moines arising out of, in connection with, or incident to this Agreement and/or Tukwila's performance or failure to perform any aspect of this Agreement.

Des Moines shall indemnify and hold harmless Tukwila and SeaTac and their agents, employees, and/or officers, from any and all costs, claims, judgments, or awards of damages arising out of the acts or omissions of Des Moines, its officers, employees or agents and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against Tukwila or SeaTac arising out of, in connection with, or incident to this Agreement and/or Des Moines' performance or failure to perform any aspect of this Agreement.

The SSRTA shall be an independent legal entity exclusively responsible for its own debts, obligations and liabilities. All liabilities incurred by the SSRTA shall be satisfied exclusively from the assets and credit of the SSRTA. No creditor or other person shall have any

recourse to the assets, credit, or services of the Parties hereto on account of any debts, obligations, liabilities, acts, or omissions of the SSRTA, unless otherwise agreed in writing by such Party.

(g) *Filing of Agreement.* This Agreement shall become effective immediately after it is duly adopted and executed by the City Council of SeaTac, the City Council of Tukwila, and the City Council of Des Moines and shall be filed and/or posted as required in the Interlocal Cooperation Act.

(h) *Notice.* Any formal notice or communication to be given among the Parties to this Agreement shall be deemed properly given, if delivered either in physical or electronic means, or if mailed postage prepaid and addressed to:

City of SeaTac  
4800 S. 188th Street  
SeaTac, WA 98188  
Phone: 206.973.4800  
Attn: City Manager

City of Tukwila  
6200 Southcenter Blvd.  
Tukwila, WA 98188  
Phone: 206.433.1800  
Attn: City Mayor

City of Des Moines  
21630 11th Ave. S., Suite A  
Des Moines, WA 98198  
Phone: 206.878.4595  
Attn: City Manager

(i) *Amendment.* This Agreement may be amended by the mutual consent of the Parties hereto. No additions to or alterations of the terms of this Agreement shall be valid unless made in writing, formally approved and executed by duly authorized agents of all Parties.

(j) *Operation of SSRTA.* Each Party hereto further authorizes SeaTac to operate the SSRTA within the corporate limits of such city to accomplish the purposes of and pursuant to the terms of this Agreement.

(k) *Counterparts.* This Agreement may be executed in any number of counterparts, each of whom shall be an original, but those counterparts will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

[signature blocks]