

AGENDA

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

April 10, 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

ADMINISTRATION REPORT

CONSENT AGENDA

- Page 1 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
- Page 3 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.
- Page 9 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.

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

Page 47 Item 1: DRAFT ORDINANCE 14-011, MODIFYING COMMERCIAL SPACE REQUIREMENTS
FOR MIXED-USE DEVELOPMENTS IN THE MARINA DISTRICT
Staff Presentation: Community Development Manager
Denise Lathrop

Page 61 Item 1: PUBLIC DISTURBANCE NOISE CODE
Staff Presentation: Assistant City Attorney Tim George

April 24, 2014 Regular City Council Meeting

ADJOURNMENT

CITY OF DES MOINES
Voucher Certification Approval

10-Apr-14

Auditing Officer Certification

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

As of **April 10, 2014** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the attached list and further described as follows:

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

Claims Vouchers:		Numbers				Amounts
Total A/P Checks/Vouchers		139002	-	139126	125	482,029.96
Electronic Wire Transfers	4	DEPT OF REV, BOA VISA, DEPT LIC/FIREARMS				32,599.65
Subtotal for this Council Packet						514,629.61
Voided Claim Checks this check run:						0.00
Voided Claim Checks from previous check runs		136045/138862			2	(512.50)
Total Claims/Wire Transfers/Voids					131	514,117.11
Payroll Vouchers:		DISBURSED 04/04/14				Amounts
Payroll Checks		18450	-	18455	= 6	8,928.03
Direct Deposit		140001	-	140149	= 149	267,929.32
Payroll Taxes						57,878.63
Wage/Garnishments						1,066.91
Voids					0	0.00
Electronic Wire Transfers						97,075.98
ICMA 401 Forfeitures						0.00
Total Claims						432,878.87
Total certified Wire Transfers,Voids, A/P & Payroll vouchers for April 10, 2014						946,995.98

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendments to Title 11 DMMC

ATTACHMENTS:

1. Draft Ordinance No. 13-246

FOR AGENDA OF: April 10, 2014

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: March 18, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL AA

Purpose and Recommendation

The purpose of this agenda item is to revise Title 11 DMMC in order to bring uniformity and organization to the Title. Staff recommends approval of the suggested motions whereby two chapters, 11.24 and 11.28 DMMC, are repealed and relocated as a new section under chapter 11.08 DMMC as well as update references to previously amended Titles. There are no substantive changes with the proposed Ordinance.

Suggested Motions

FIRST MOTION: "To suspend Rule 26(a) in order to enact Draft Ordinance No. 13-246 on first reading."

SECOND MOTION: "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."

Background

In order to bring uniformity to the City Code and to make it easier for searching, the City Attorney is seeking to make certain amendments to the City Code, specifically Title 11 DMMC. The purpose of the amendments is to provide consistency within the DMMC and not to make substantive or policy changes.

Discussion

Staff is proposing the two stand alone chapters entitled “Stormwater Pollution Prevention Manual – Adopted by Reference” and “Supplemental Storm Water Standards” be relocated as new sections under Chapter 11.08 – “Stormwater Management Program”. Staff has determined that having two separate chapters for supplemental drainage standards is unnecessary and should reorganized to be included in chapter 11.08 DMMC for search purposes.

Alternatives

None.

Financial Impact

None.

Recommendation or Conclusion

Staff recommends the proposed motion.

Concurrence

Legal and Planning, Building and Public Works Departments concur.

CITY ATTORNEY'S FIRST DRAFT 2/20/2014**DRAFT ORDINANCE NO. 13-246**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to Utilities, repealing chapters 11.24 DMMC, "Stormwater Pollution Prevention Manual - Adopted by Reference" and 11.28 DMMC "Supplemental Storm Water Standards", and reenacting both as new sections in chapter 11.08 DMMC.

WHEREAS, following the amendments made to Titles 12, 13, 14, 16, 17, and 18 DMMC, additional chapters were found to need updating to coordinate with the reorganization of the DMMC and with referenced RCW chapters, and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety, and general welfare to establish comprehensive, uniform, and current provisions for the City's Utilities Code; now therefore,

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

Sec. 1. Chapter 11.24 DMMC and section 3 of Ordinance No. 1463 are repealed and replaced as a new section in chapter 11.08 DMMC entitled "Stormwater Pollution Prevention Manual - Adopted by Reference" as follows:

Stormwater Pollution Prevention Manual - Adopted by Reference. The King County "Stormwater Pollution Prevention Manual" is adopted by reference pursuant to RCW 35A.12.140 as though fully set forth in this chapter, as presently constituted or as it may be subsequently amended. Not less than one copy of this manual, suitably marked to indicate amendments and additions, is filed in the office of the Des Moines City Clerk for public inspection.

Sec. 2. Chapter 11.28 DMMC and sections 4 and 5 of Ordinance No. 1463 are repealed and replaced as a new section in chapter 11.08 DMMC entitled "Supplemental Storm Water Standards" as follows:

Draft Ordinance No. 13-246.1
11/05/2013

Ordinance No. ____
Page 2 of 4

(1) **Purpose.** The purpose of this chapter is to supplement the King County Surface Water Design Manual, adopted by reference in DMMC ~~18.86.330~~ 16.10.350, as the City Storm Water Standards.

(2) **Impervious surface percentage exemption.** Under Core Requirement No. 3 for Flow Control, of the King County Surface Water Design Manual, the impervious surface percentage exemption exempting threshold drainage areas that result in no more than four percent total impervious surface and no more than 15 percent pervious surface is not allowed.

(3) **Soil quality preservation.** Reference 4-A of the King County Surface Water Design Manual as previously adopted in DMMC ~~18.86.330~~ 16.10.350 requires that any areas that have been cleared and graded shall have the soil moisture-holding capacity restored to the original undisturbed soil condition to the maximum extent practicable. This reference shall be applicable to the standards of performance for land grading under DMMC ~~14.24.130(3)~~ 14.20.150(3).

(4) **Drainage review.** A person who clears, grades or otherwise disturbs a site shall provide erosion and sediment control that prevents, to the maximum extent practicable, the transport of sediment from the site to drainage facilities, water resources, and adjacent properties. Erosion and sediment controls shall be applied as specified by the erosion and sediment control measures and performance criteria in the King County Surface Water Design Manual. Drainage review will be made for erosion and sedimentation control for all land filling, clearing and grading permits required under chapter 14.240 DMMC.

(5) **Storm water discharges to wetlands.**

(a) **Applicability.** The requirements below apply only to projects whose storm water discharges into a wetland, either directly or indirectly through a conveyance system using the thresholds as applied by the King County Surface Water Design Manual.

Ordinance No. ____
Page 3 of 4

(b) Discharges to wetlands shall maintain the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses. The hydrologic analysis shall use the existing land cover condition to determine the existing hydrologic conditions unless directed otherwise by a regulatory agency with jurisdiction. A wetland can be considered for hydrologic modification and/or storm water treatment in accordance with Guide Sheets 1B and 2B in Appendix I-D of the Department of Ecology Stormwater Management Manual for Western Washington (2005). Guide Sheet 1B and 2B of Appendix I-D of the Department of Ecology Stormwater Management Manual for Western Washington (2005) are adopted by reference in ~~DMMC 11.28.060~~ subsection 2(6) below and are for wetland protection in accordance to this chapter.

(6) Department of Ecology Stormwater Management Manual for Western Washington Guide Sheets 1B and 2B - Adopted by reference.

(a) The Department of Ecology Stormwater Management Manual for Western Washington (2005) Guide Sheets 1B and 2B are adopted by reference pursuant to RCW 35A.12.140 as though fully set forth in this chapter, and as presently constituted or as may be subsequently amended.

(b) Not less than one copy of each such regulation as written, and suitably marked to indicate amendments and additions, is filed in the office of the Des Moines City Clerk and is available for use and examination by the public.

Sec. 3. Severability - Construction.

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

Ordinance No. ____
 Page 4 of 4

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

Sec. 4. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines 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

Published: _____

Effective Date: _____

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Approval of Lease with George Potts
& Andrea Petersen, d/b/a Ocean Quest Dive
Charters, LLC

ATTACHMENTS:

1. Draft Lease Agreement

FOR AGENDA OF: April 10, 2014

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: March 31, 2014

CLEARANCES:

- ☒ Legal YB
- ☐ Finance N/A
- ☒ Marina 8
- ☐ Parks, Recreation & Senior Services N/A
- ☐ 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 item is to seek the Council's approval of a lease agreement between the City of Des Moines and George Potts and Andrea Petersen who would like to operate a scuba diving charter business out of the Marina.

Suggested Motion: "I move 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."

Background

In January the Marina staff was approached by George Potts and Andrea Petersen who are currently operating a scuba diving charter business in Tacoma. They believe that moving their boat to the Des Moines Marina would make some of the popular diving sites in the north sound more accessible to them which would appeal to the groups and clubs that are a significant share of their business and they requested permission to operate their business out of the Marina.

Discussion

It has been over a decade since a charter boat was based in the Marina. Typically, a charter boat business just needs a slip and a place for customers to park their vehicles. The customers for the proposed dive charter boat will have more gear to get down to the boat but significant problems are not anticipated for staff or the other tenants. The use of the Marina for the proposed charter business will need to be covered by a lease agreement because the Marina no longer has a commercial use rule and, in the case of charter boats it is necessary for risk management to have an agreement that has specific language about maintaining all of the necessary U.S. Coast Guard certifications required for vessels for hire.

The operators of the business are on the wait list for a 36-foot open slip, but in order to get them going for the upcoming season, the staff proposes that they be assigned the slip in the guest moorage area next to the dry shed launch while they are waiting for a slip to become available. This slip is under-utilized for the guest moorage business.

Financial Impact

The dive charter business operators will be paying the winter moorage monthly rate for the use of the slip. That rate is slightly higher than the regular rate for 36 foot open slips. Since the slip being proposed is under-utilized, the staff expects a small positive impact as a result of this agreement. Since many of the dive charters customers come from out of town, it is reasonable to expect a positive economic impact on the City's businesses, especially restaurants and hotels.

Conclusion

Scuba diving is becoming more popular on the Sound so staff believes that the diving charter business will be a positive addition to the Marina.

Recommendation

The staff recommends that the Council approve the lease agreement with Ocean Quest Dive Charters.

Concurrence

The City Attorney's Office concurs with this recommendation.

LEASE FOR MARINA FACILITIES

This Lease is entered into between the CITY OF DES MOINES, a municipal corporation (hereinafter "Lessor") and GEORGE POTTS and ANDREA PETERSEN, d/b/a OCEAN QUEST DIVE CHARTERS, LLC, a Washington corporation, (hereinafter "Lessee").

(1) Terms and Premises. Lessor grants to Lessee for a term of one (1) year, commencing on the first day of, 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 GM-01, In the Marina's Guest Moorage area, in which a dive charter boat 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. The following conditions shall apply to the use of the slip.

(a) The slips shall be used to moor boats that are for charter and are either owned by or leased by 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) 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 therefore.

(3) Additional Facilities. Lessor and Lessee reserve the right to negotiate for expansion, and/or relocation of the moorage. 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.

(5) Option. The Lessee shall have the option to extend the Lease for two additional one (1) year terms. Such option must be exercised in writing by the Lessee not later than 60 days before the expiration date of the original term or the subsequent 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 \$315.22 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 May 1, 2014. Beginning January 1, 2015, and effective on January 1st 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, or

(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 31st 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. , The City Manager, or his designated agent, shall have the right to inspect the dock structure where the premises, (charter boat), 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) Lessee is permitted to conduct a passenger charter service, primarily for the purpose of scuba diving charters.

(12) Restrictions on use of Leased Premises.

(a) The sale of gas, diesel fuels and propane gas is prohibited.

(b) The dock structure where the premises are moored, (GM-01), 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. 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 time 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;

(d) Maintain all electrical, plumbing, 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.

(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) Shall maintain a current Certificate of Inspection issued by the United States Coast Guard for Passenger Vessels, (inspected).

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

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

(e) Properly use and operate all electrical, plumbing and other fixtures.

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

(g) Not allow junk or debris to accumulate on the demised premises.

(h) 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.

(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 not 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 re-letting as hereinafter provided be deemed to be a waiver of the rights and remedies of the Lessor hereunder.

(e) Re-letting. Upon termination of this Lease in any manner above provided, the Lessor shall use reasonable efforts to re-let 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 re-let.

(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 reenter 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	George Potts & Andrea Petersen Ocean Quest Dive Charters, LLC 3913 SE 11 th Street Renton, WA 98058
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Lessor: Mailing Address City of Des Moines
Attention City Manager
21630 11th Ave. 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 section.

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

(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.

OCEAN QUEST DIVE CHARTERS, LLC

CITY OF DES MOINES

By: _____
GEORGE POTTS

Date: _____

By: _____
ANDREA PETERSEN

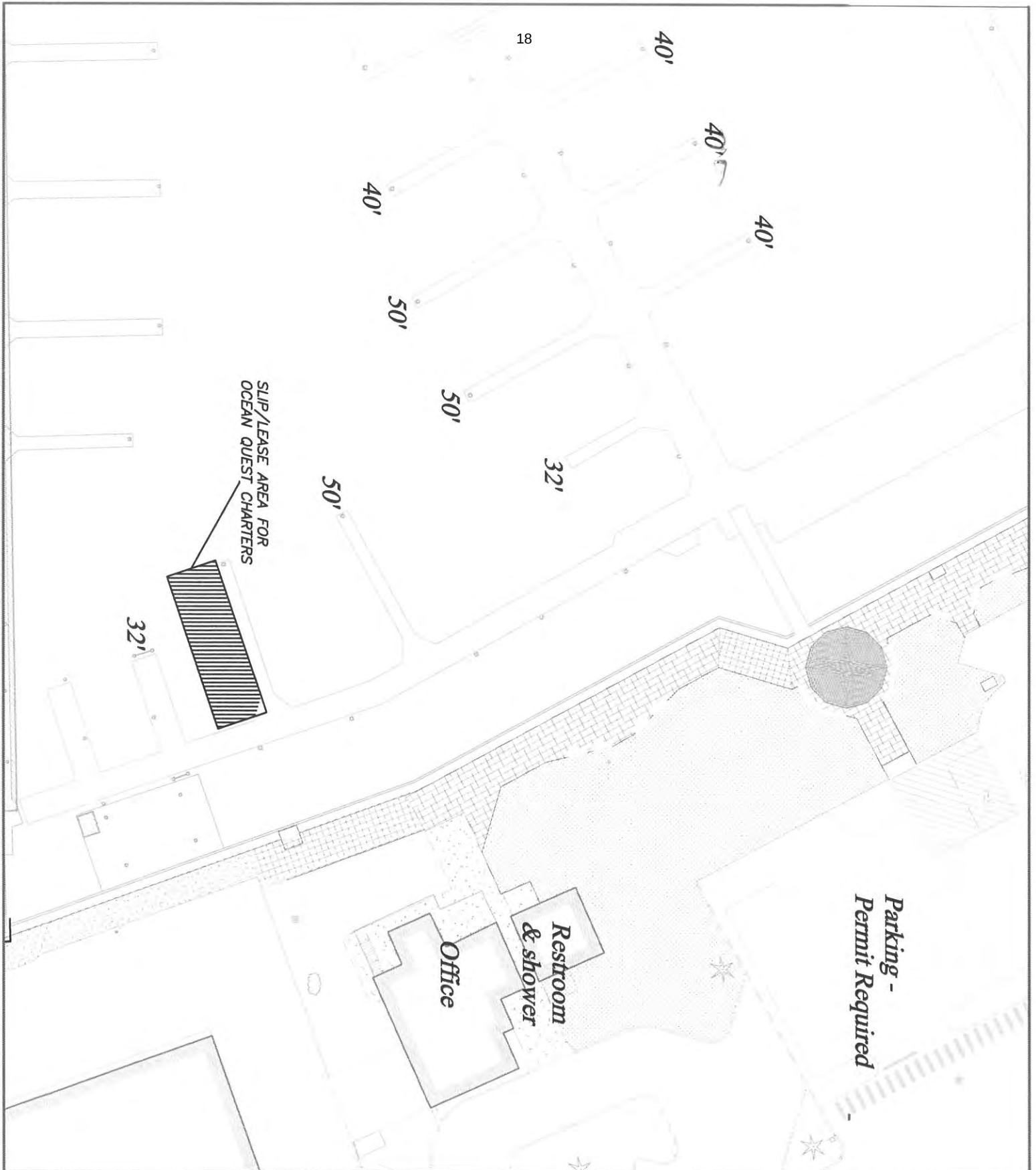
Date: _____

By: _____
Anthony A. Piasecki, Its City Manager
At the Direction of the City Council by
Motion Regularly Passed in its Open Public
Meeting on April 10, 2014.

Date: _____

APPROVED AS TO FORM:

Timothy A. George
Assistant City Attorney



***CITY OF DES MOINES MARINA
EXHIBIT "A" - SLIP/LEASE AREA
FOR OCEAN QUEST CHARTERS***

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Task Assignment with Parametrix, Inc for preparing a Design Report, 90% Level Plans, Specifications and cost estimate for grading, striping and drainage water quality retrofit in the South Marina Parking Lot.

ATTACHMENTS:

1. Formal Task Assignment Document No. 2014-03

FOR AGENDA OF: April 10, 2014

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: March 31, 2014

CLEARANCES:

- ☒ Legal JB
- ☐ Finance N/A
- ☒ Marina JB
- ☐ Parks, Recreation & Senior Services N/A
- ☒ Planning, Building & Public Works DSB
- ☐ 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 of a Formal Task Assignment Document with Parametrix, Inc, for preparing a Design Report, Plans, Specifications and cost estimates for grading, striping and water quality retrofits in the South Marina Parking Lot. The total amount payable to Parametrix, Inc. for the assignment is \$109,635.13.

Suggested Motions

First Motion: "I move to approve the 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: "I move to remand the Marina South Parking Lot Stormwater Retrofit Project to the Municipal Facilities Committee for review and recommendations."

Background

One of the projects in the Marina Master Plan is the renovation of the South Marina Parking Lot. The lot is over 45 years old and the pavement is nearing the end of its useful life. In addition the pavement has been cut and patched in several locations during previous projects like the Water Main Replacement Project.

For Fiscal Year 2014, the Department of Ecology awarded the City of Des Moines a \$170,000 grant that contained two parts: that \$50,000 be used to support NPDES permit required activities and \$120,000 to be used toward the design of a City stormwater treatment retrofit project for improving water quality from an existing site. The \$120,000 for the stormwater retrofit project is to be used for project-specific planning and design activities with the grant task requirement of a submitted and approved preliminary design and a 90% level design, to be completed no later than January 31, 2015.

Discussion

The principal goal of this design project is to provide for a method of treating storm water that will meet current and future Department of Ecology requirements. The design effort will examine passive methods of treatment like rain gardens and bio-swales to determine if they are feasible. The project will also include a new layout for the parking lot that is more efficient and secure.

Financial Impact

This design project will be funded by a grant from the Department of Ecology so there will be no immediate impact on the Marina's fund or any other City Fund. The project will be managed on behalf of the Marina by the Public Works Department so if the grant does not cover all of the administration costs for the project management it may be necessary to transfer the balance from the Marina Capital fund to the MCI. Although a contingency for the Task Order Assignment is being requested (up to the grant amount of \$120,000), it is staff's intention to utilize the contingency amount for design items that advance the project in order to fully utilize the available grant funds.

The proposed Task Assignment with Parametrix covers the estimated cost through the 90% level design. Staff does not recommend proceeding with permitting and final design of the project until construction funding has been identified.

Conclusion

The availability of this grant makes it possible to get the majority of the design work done for a future project. Before the retrofit of the South Parking lot can proceed it will be necessary to do the final phase of the electrical upgrades in the South Lot. That project will involve trenching to install a duct bank from the main switches to a transformer located near J Dock and a duct bank along the entire length of the bulkhead from L Dock south to A Dock.

Concurrence

The Planning, Building and Public Works Department and the Department of Ecology.

Formal Task Assignment DocumentTask Number 2014-03

The general provisions and clauses of Agreement On-Call Svcs. shall be in full force and effect for this Task Assignment

Location of Project: Des Moines Marina Parking LotProject Title: Marina Parking Lot Stormwater RetrofitMaximum Amount Payable Per Task Assignment: \$109,635.13Completion Date: December 31, 2014

Description of Work:

(Note attachments and give brief description)

Parametrix will provide engineering services per the attached scope of work. The budget estimate summary and detail are also attached.

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ See Letter Dated: _____

Consultant Signature:  Date: 03.10.2014

Agency Approving Authority: _____ Date: _____

ATTACHMENT A – SCOPE OF WORK

City of Des Moines Des Moines Marina Parking Lot Stormwater Retrofit

The City of Des Moines (City) has requested that Parametrix prepare a scope of work outlining services to prepare a Design Report, Plans, Specifications, and Opinion of Cost for the grading, striping, and water quality retrofit of the south parking lot of the Des Moines Marina. This project is funded by a grant from the Washington State Department of Ecology (DOE), who encourages participation by disadvantaged businesses. Parametrix is proud to present the following scope of services and estimated budget that includes two companies from the Washington State Office of Minority & Women's Business Enterprises.

TASK 1 – PROJECT MANAGEMENT AND QA/QC

Goal

Parametrix will be responsible for continuous tracking and contract administration of this project including preparing monthly invoices, coordinating work efforts with the City's project manager, and coordinating with our two subconsultants (Icicle Creek Engineers and Entitlement and Engineering Solutions). Parametrix's project manager will have routine telephone and email contact with the City's project manager on an as-needed basis with regard to scope, schedule, and budget.

This task also includes Quality Assurance/Quality Control (QA/QC). There will be an independent review of all project deliverables by a qualified and licensed professional to ensure that each project deliverable meets the standard of care for our industry.

Assumptions

- Project updates will occur monthly.
- Budget estimate is based upon completing the project in approximately 8 months (on or before December 31, 2014).

Deliverables

- Monthly invoices and progress reports.
- QA/QC review documentation (delivered upon request).

TASK 2 – SURVEY

Goal

Parametrix will complete a topographic survey of the south parking lot from 227th Avenue to the boat yard and from the bulkhead to the west property boundary (face of condos, etc.). The survey data will be used to create a triangular integrated network (TIN), electronic surface in Civil 3D format, and 1-foot contours that will be incorporated into the base map drawing provided by the City.

Approach

- A topographic survey of a parking area roughly 5 acres in size will be performed for the purpose of generating a triangular integrated network (TIN), electronic surface in Civil 3D format, and 1-foot contours that will be incorporated into the base map drawing provided by the City.
- Horizontal datum will be based on control shown on record map and vertical datum will be MLLW respectively. It will also be based on published control points as observed in the field via either GPS survey or other conventional survey techniques.

Assumptions

- Parametrix survey crews will have unrestricted access to all areas requiring surveys. Site access will be obtained prior to commencing the field survey.
- Symbols and line types will be per Parametrix drafting guidelines unless otherwise specified prior to the start of the surveying and mapping.
- Planimetric features such as curbs, retaining walls, paving limits, and existing utilities and structures will not be located. These features will be shown based upon the AutoCAD file base map delivered by the City to Parametrix.

Deliverables

- Base map in electronic AutoCAD 2014 drawing file format using Parametrix drafting standards.
- TIN surface for use during the design process in Civil 3D in AutoCAD 2014.

TASK 3 – DESIGN REPORT (EES)

Goal

Entitlement and Engineering Solutions, Inc. (EES) will provide a design report in the format of a Technical Information Report for submittal to DOE and will prepare a preliminary opinion of cost based upon the improvements included in the design report.

Approach

Subtask 3.1 – Preliminary Parking Lot Layout

EES will prepare up to three (3) parking lot layouts that maintain the current number of parking spaces and may include additional parking spaces. Each layout will also include a realigned access road designed to meet the City's desired design vehicle (fuel tanker with trailer and fire truck). Electronic (PDF) copies of the parking lot layouts will be provided to the City for selection of a preferred layout prior to proceeding to further design refinement.

Subtask 3.2 – Preliminary Design

- EES will prepare water quality designs using rain gardens and bio-retention swales to treat the parking lot layout. The design will include WWHM calculations, rain garden and bio-retention swale schematic details, coordination with the boat yard water quality system and a preliminary plan showing the parking lot layout, realigned access road, surface features such as sidewalks, and the components (above ground and below ground) of the water quality treatment system.

- EES will also prepare a preliminary opinion of cost.

Subtask 3.3 – Design Report

EES will prepare a Design Report in the format of a Technical Information Report based upon the King County Surface Water Design Manual for submittal to DOE as required by the funding grant.

Assumptions

- The Water Quality Treatment design will be based upon the requirements as stated in the *King County Surface Water Design Manual*; however, guidance may also be provided by the *2012 Puget Sound LID Manual* and *2012 Ecology Stormwater Management Manual for Western Washington*.
- The preliminary plan layout will be provided at a scale of 1"=50' H or smaller and supporting details and/or schematics will not be to scale.

Deliverables

- Preliminary parking lot layouts (up to 3) in electronic PDF format.
- Half size (11"x17") preliminary plan sheet(s) on plain paper (5 copies) and in electronic format (PDF).
- Three (3) copies of the Design Report and electronic (PDF) copy for submittal to DOE.
- Preliminary opinion of cost in MS Excel format.

TASK 4 – 90% PLANS, SPECIFICATIONS & ESTIMATE

Goal

Parametrix will prepare 90% plans, contract specifications, and opinion of cost (estimate) for review by the City based upon the improvements identified and approved by DOE in the Design Report completed in Task 3.

Approach

Anticipated plan sheets include the following:

- Cover Sheet and Legend (2 sheets)
- Demo & TESC Plans (3 sheets)
- Grading & Storm Plan (3 sheets)
- Paving & Striping Plans (2 sheets)
- Water Quality Details (1 sheet)
- Landscape Plans (3 sheets)
- Irrigation Plans (3 sheets)
- Miscellaneous Details (1 sheet)

Parametrix will prepare the contract documents to approximately a 90% level of completion and will prepare an opinion of cost based upon the work included in the plans. The City will review the

90% submittal and return written comments to Parametrix for incorporation into the final bidding documents.

Deliverables

The deliverables for Task 4 include the following:

- Five (5) copies of Draft (90%) Plans and Contract Documents (includes half-size plans) for review by the City.
- Electronic copy of the 90% opinion of cost (MS Excel format).

Assumptions

Following are the assumptions for Task 4:

- The City will provide its legal documents and contract boilerplate to Parametrix in electronic format (MS Word format assumed).
- The contract documents will be prepared using the 2014 WSDOT Standard Specifications.

TASK 5 – GEOTECHNICAL ENGINEERING (ICE)

Goal

Icicle Creek Engineering (ICE) will provide geotechnical engineering services for the project necessary to support the design of water quality facilities anticipated for the project. A detailed scope of services is attached to this scope of work that describes in detail the subsurface explorations, pilot infiltration testing, and soil characterizations that will be prepared to support the design effort.

Approach

See attached proposal from ICE.

Deliverables

- Draft geotechnical report in electronic format (PDF).
- Two (2) copies of the final geotechnical report and final report in electronic format (PDF).

TASK 6 – SEPA CHECKLIST

Goal

Upon request from the City, Parametrix will prepare a SEPA checklist for the project.

Approach

Parametrix will prepare a SEPA checklist in a format as required by City Ordinance upon request by the City. Our initial review suggests that this project is exempt from SEPA and Shoreline Management because the renovation of the parking area will not change the use of the existing facility but will rather retrofit the parking lot to provide water quality treatment.

Assumptions

- City staff will process the SEPA checklist as prepared by Parametrix.
- The project is exempt and will not require a Shoreline Permit.

Deliverables

- Three (3) copies of the SEPA checklist and electronic copy in MS Word format.

END OF SCOPE OF SERVICES


EES
**Entitlement and Engineering
Solutions, Inc**

March 5, 2014

Mr. Austin Fisher, P.E.
Parametrix
1019 39th Avenue SE, Suite 100
Puyallup, WA 98374

**Re: SCOPE OF PROFESSIONAL SERVICES FOR CIVIL ENGINEERING DESIGN SERVICES
RELATED TO PRELIMINARY DESIGN FOR THE DES MOINES MARINA PARKING LOT
STORMWATER RETROFIT**

Dear Austin:

Entitlement and Engineering Solutions, Inc. ("EES" or "the Consultant") is pleased to submit this scope of services to **Parametrix** ("the Client") for providing entitlements assistance and civil engineering design for your project. Our project understanding and scope of services are indicated below.

Project Understanding

The project is located at the south parking lot area of the Des Moines Marina. The City of Des Moines plans to reconfigure the parking within this area to gain additional parking, provide landscaping enhancements and replace the existing storm system in this area. Adjacent to the south parking lot is a boat repair yard that will also be retrofitted for primary treatment of its surface water runoff prior to discharging to Puget Sound. With the proposed project, the City would install storm water treatment facilities to treat the runoff from the south parking lot. Also, if permitted by Ecology, the City would like to connect the discharge pipe from the boat yard so that the treatment facilities would provide secondary treatment prior to discharging to Puget Sound. Depending on the timing of the boat yard project, the connection to the parking lot drainage may be done in conjunction with this project or allow by design to be done at a later date.

Scope of Services

Under this contract, EES will perform the preliminary design for the following:

1. Prelim/Schematic Design of parking lot (3 options)
2. Design of access road along east side by condos (will need to accommodate a fire truck).
3. Preliminary grading design for drainage to WQ facility (one option only)
4. Water quality design (rain garden, bioswale or storm filter options)
5. Coordination with boat yard to the north to potentially take their discharge through the new WQ system.
6. Technical Information Report (TIR)
7. Preliminary opinion of probable cost (OPC)

Assumptions and Services Not Included

In preparing this estimate, the following assumptions were made:

- Survey information will be provided to EES by Parametrix, including vertical & horizontal data.
- Geotechnical information will be provided to EES by Parametrix.
- The scope of this proposal includes handling civil responsibilities to take the proposed scope items through the required processes of the City of Des Moines, limited to the tasks specified herein.

Fees

All time spent by the Consultant on the Services will be invoiced monthly based upon the actual hours of work performed as of the invoice date. Should the following Fee Estimate be exceeded, EES shall obtain authorization from the Client prior to proceeding.

Des Moines, WA Marina	
Meetings	\$ 1,200.00
Preliminary Site Plans – 3 Options at \$2,000 each	\$ 6,000.00
Grading Plan for One Selected Alternative	\$ 3,000.00
Preliminary Water Quality Design and Technical Information Report	\$ 6,500.00
AutoTurn for Selected Design Vehicle	\$ 500.00
Opinion of Probable Cost	\$ 1,000.00
Expenses (Copies, Plots, Mileage, etc.)	\$ 500.00
TOTAL – TIME AND MATERIALS, NOT-TO-EXCEED	\$18,700.00

Schedule

EES staff is immediately available and can begin work on this project immediately upon notice to proceed by the Client.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Consulting Agreement, which are incorporated by reference. As used in the Standard Provisions, the term "the Consultant" shall refer to **Entitlement and Engineering Solutions, Inc.**, and the term "the Client" shall refer to **Parametrix**.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

ENTITLEMENT AND ENGINEERING SOLUTIONS, INC.

Amanda M. O'Connor, President

PARAMETRIX, INC.:

Agreed to this _____ day of _____, _____.

Signature: _____

Printed Name: _____

Title: _____

**Entitlement and Engineering Solutions
2014 Hourly Rate Schedule**

Category	Hourly Rate
President	\$135.00
Principal	\$130.00
Sr Project Manager	\$125.00
Project Manager	\$120.00
Sr Engineer V	\$115.00
Sr Engineer IV	\$110.00
Engineer III	\$100.00
Engineer II	\$95.00
Engineer I	\$90.00
Sr CADD Technician	\$85.00
CADD Technician	\$75.00
Administrative Support	\$60.00

Reimbursable Expenses	Billing Rate
Mileage	\$0.56/mile
B&W Plots	\$1/square foot
Color Plots	\$5/square foot
Copies (B&W) 8-1/2 x 11	\$0.10/copy
Copies (Color) 8-1/2 x 11	\$1.00/copy
Copies (B&W) 11 x 17	\$0.15/copy
Copies (Color) 11 x 17	\$1.50/copy
Outside services	Cost plus 5%
Subconsultants	Cost plus 10%

ICICLE CREEK ENGINEERS

Geotechnical, Geologic and Environmental Services

March 6, 2014

Austin Fisher, PE
Parametrix
1019 – 39th Avenue NE, Suite 100
Puyallup, Washington 98374

Scope of Services and Fee Estimate
Hydrogeologic Evaluation
Proposed Stormwater Infiltration
City of Des Moines Marina
South Lot Stormwater Treatment Project
Des Moines, Washington
ICE File No. 1082-001

INTRODUCTION

Icicle Creek Engineers (ICE) is pleased to submit our Scope of Services and Fee Estimate for a hydrogeologic evaluation of proposed stormwater infiltration sites at the City of Des Moines Marina South Lot Stormwater Treatment Project. Austin Fisher, PE of Parametrix requested that ICE provide these services to supplement the design of the stormwater infiltration facilities.

PROJECT DESCRIPTION

We understand that the South Lot will be reconfigured and includes areas for stormwater infiltration by rain gardens, bioswales or other facilities. The specific location and configuration of these facilities is not known at this time. Based on our review of the City of Des Moines website, stormwater facilities are designed in accordance with the 2009 King County Surface Water Design Manual (KCSWDM). We understand that other geotechnical information is available in the project site area that can be used by ICE to supplement our hydrogeologic evaluation.

SCOPE OF SERVICES

The purpose of our services is to review available information and complete subsurface exploration and in-situ testing as a basis for providing hydrogeologic criteria for use in the design of a stormwater disposal infiltration system. Specifically, our services include the following:

- Complete a detailed review of readily available information including geologic reports on file with the US Geological Survey, Washington State Department of Natural Resources and our in-house library and files. We will also review pertinent information provided to ICE by Parametrix, including geotechnical reports on file with the City of Des Moines.
- Evaluate subsurface soil and ground water conditions by drilling four Test Borings to depths of about 10 feet.
- Complete laboratory testing including Cation Exchange Capacity (CEC) and Grain Size Analysis. CEC testing (eight samples) will be subcontracted to a laboratory qualified for such testing. The Grain Size Analysis testing (eight samples) will be completed at ICE's in-house soils laboratory.

Austin Fisher, PE
 Parametrix
 March 6, 2014
 Page 2

- Evaluate the long-term (design) infiltration rate based on the results of the Test Borings and Grain Size analysis and our site observations, using methods described in the 2009 KCSWDM.

REPORT PRODUCT

The results of our services will be summarized in a written report including observations, test results, conclusions and recommendations. We will provide an initial draft report to you for review and comment prior to issuing the final report.

SCHEDULE

We are prepared to begin our information review and field services within two weeks following authorization to proceed, depending upon subcontractor availability. We will provide the written draft report for your review and comment within two weeks following completion our field services.

FEE ESTIMATE ASSUMPTIONS

Our fee estimate is based on the following assumptions:

- Parametrix will provide ICE with up-to-date preliminary plans describing/showing proposed stormwater infiltration methods/sites and other geotechnical information, as available.
- ICE will coordinate with Parametrix and the City of Des Moines for site access.
- At this time, we do not expect that permits will be needed for completing our field services; if a permit is required, our fee estimate will likely increase.
- ICE will prepare an Exploration Plan for review by Parametrix and the City of Des Moines. The Exploration plan will show proposed locations of the Test Borings.
- ICE plans to pre-mark the Test Boring locations for underground utility locate purposes. The "One-Call" service will be contacted for non-restricted areas. We will also contract with Applied Professional Services (APS) to complete a private utility locate. In addition, we will rely on Parametrix for assistance in locating underground utilities.
- The drilling equipment may be either trailer- or track-mounted. The trailer-mounted equipment is moved with a Ford F-350 pickup. The ICE vehicle will be a small pickup (Ford Ranger or similar). We expect that appropriate working hours are 0700 to 1700 on work-days (Monday through Friday).
- The Test Borings will require one day (up to 8-hours on site) to complete.
- Drill cuttings will be hauled off-site. The borings will be backfilled in accordance with the Washington State Department of Ecology standards. No other site restoration is planned. If our test borings require coring through pavement, the pavement surface will be repaired with a concrete plug.
- Laboratory testing will include eight Grain Size and eight CEC analyses.
- No meetings with the project team are included in our fee estimate.
- As project details become available, we will provide recommendations for additional hydrogeologic evaluation and laboratory testing, if necessary.

FEE ESTIMATE

We propose to accomplish these services on a time-and-expense basis in accordance with the rates indicated on the attached Schedule of Charges and the terms of Parametrix contract documents to be negotiated with ICE for the purpose of this project. We estimate that the fees for the scope of services described above will be \$13,600. Our estimated fees are summarized below.

Austin Fisher, PE
 Parametrix
 March 6, 2014
 Page 3

Information Review and Exploration Plan	\$ 600
Staking and Utility Locate	900
Subcontracted Private Utility Locate	600
Subcontracted Drilling Services (4 Test Borings)	2,500
ICE Field Services	2,800
Laboratory Testing	2,400
Engineering Analysis and Report	3,000
Project Scheduling and Management	<u>800</u>
Total Fee Estimate	\$13,600

We appreciate the opportunity to submit this Scope of Services and Fee Estimate. If you have any questions concerning this document, please call.

Yours very truly,
 Icicle Creek Engineers, Inc.



Kathy S. Killman LEG
 Principal Engineering Geologist

Document ID: 1082001.scopefee2
 Attachment: 2014 Schedule of Charges

Submitted via email (pdf)

ICICLE CREEK ENGINEERS

Geotechnical, Geologic and Environmental Services

2014 SCHEDULE OF CHARGES

COMPENSATION

Our compensation will be determined on the basis of time and expenses in accordance with the following schedule of charges.

Personnel Category

Principal	\$180/hour
Senior Project	\$150/hour
Project	\$120/hour
Senior Staff	\$105/hour
Staff	\$95/hour
Senior Technician	\$85/hour
Technician	\$75/hour
Support	\$70/hour

Contracted professional and technical services will be charged at the applicable hourly rates listed above. Staff time spent in depositions, trial preparation and court or hearing testimony will be billed at one and one-half times the above rates. Time spent in either local or inter-city travel, when travel is in the interest of this contract, will be charged in accordance with the foregoing schedule; when traveling by public carrier, a maximum charge of eight hours per day will be made.

Equipment

Miscellaneous geotechnical field equipment, including water measurement and sampling equipment, survey equipment, digital camera and hand auger, per equipment item, per day	\$10
Nuclear moisture-density gauge, per half-day/full-day	\$20/\$40
Lab testing equipment, per hour	\$10
Vehicle usage, per mile (or current GSA rate)	\$0.56

Specialized equipment or disposable field supplies will be quoted on a per-job basis

Geotechnical Laboratory Tests

In-house testing for geotechnical soil characteristics at current rates, list available upon request.

All rates are subject to change upon notification.

OTHER SERVICES, SUPPLIES AND SPECIAL TAXES

Charges for services, equipment, supplies and facilities not furnished in accordance with the above schedule, and any unusual items of expense not customarily incurred in our normal operations, are charged at cost. This includes shipping charges, permit fees, subsistence, transportation, printing and reproduction, miscellaneous supplies and rentals, surveying services, drilling and excavating subcontractors, construction equipment, watercraft, aircraft, and special insurance which may be required.

Client: City of Des Moines
Task: Des Moines Marina Parking Lot Stormwater Retrofit
Number: TA 2014-03

Budget Estimate Summary	Direct Salary Cost	Overhead DSC * 194.70	DSC + OH	Fee Amount DSC * 30.00	Total Including Fee	Expenses	Subconsultants	Total
PHASE: 01 DESIGN								
Task: 01 Project Management & QA/QC								
Monthly Progress Reports	900.52	1,753.31	2,653.83	270.16	2,923.99	0.00	0.00	2,923.99
Coordination	1,149.90	2,238.86	3,388.76	344.97	3,733.73	0.00	0.00	3,733.73
QA/QC	1,098.24	2,138.27	3,236.51	329.47	3,565.98	0.00	0.00	3,565.98
Task: 02 Survey								
Field Work	881.60	1,716.48	2,598.08	264.48	2,862.56	0.00	0.00	2,862.56
Prepare TIN	520.44	1,013.30	1,533.74	156.13	1,689.87	0.00	0.00	1,689.87
Task: 03 Design Report (EES)							18,700.00	18,700.00
Task: 04 90% PS&E								
90% Plans								
Cover Sheet & Legend	228.50	444.89	673.39	68.55	741.94	0.00	0.00	741.94
Demo & TESC Plan (3 Sheets)	914.00	1,779.56	2,693.56	274.20	2,967.76	0.00	0.00	2,967.76
Grading & Storm Plan (3 Sheets)	2,468.96	4,807.07	7,276.03	740.69	8,016.72	0.00	0.00	8,016.72
Paving & Striping Plan (2 Sheets)	2,468.96	4,807.07	7,276.03	740.69	8,016.72	0.00	0.00	8,016.72
Water Quality Details (1 Sheet)	2,294.40	4,467.20	6,761.60	688.32	7,449.92	0.00	0.00	7,449.92
Landscape Plans (3 Sheets)	1,759.12	3,425.01	5,184.13	527.74	5,711.87	0.00	0.00	5,711.87
Irrigation Plans (3 Sheets)	1,759.12	3,425.01	5,184.13	527.74	5,711.87	0.00	0.00	5,711.87
Misc. Details (1 Sheet)	773.72	1,506.43	2,280.15	232.12	2,512.27	0.00	0.00	2,512.27
90% Opinion of Cost	1,190.88	2,318.64	3,509.52	357.26	3,866.78	0.00	0.00	3,866.78
90% Contract Specifications	3,493.82	6,802.47	10,296.29	1,048.15	11,344.44	0.00	0.00	11,344.44
Prepare 90% Submittal to Ecology	909.56	1,770.91	2,680.47	272.87	2,953.34	0.00	0.00	2,953.34
Task: 05 Geotechnical Engineering							13,600.00	13,600.00
Task: 06 SEPA Checklist	801.16	1,559.86	2,361.02	240.35	2,601.37	0.00	0.00	2,601.37
Task: 07 Expenses						664.00	0.00	664.00
Project Totals:	\$23,612.90	\$45,974.32	\$69,587.24	\$7,083.89	\$76,671.13	\$664.00	\$32,300.00	\$109,635.13

Client: City of Des Moines
Task: Des Moines Marina Parking Lot Stormwater Retrofit
Number: TA 2014-03

Budget Estimate Detail

Burdened Rates:

Phase	Task	Description	Labor Dollars	Labor Hrs	Sam K. Nielson Sr Engineer	Darren Sandeno Sr Planner	Russell L. Pettit Designer III	Marc E. Kendall Engineer III	Michael S. Phelps Sr Planner	Cyrus M. Bullock Scientist/Bio- logist IV	Ellen E. Dorsey GIS Analyst	David A. Ironmonger Sr Surveyor	Jared M. Kernitz Sr Surveyor	Shannon T. Hunter Surveyor II	Dale A. Stafford Surveyor III	Robert J. Spiers Surveyor II	Amanda B. Knowles Publications Specialist II	Project Controls Specialist	Christy Pope Corp Finance Accountant	Project \$86.05
01	Design																			
	01	Project Management & QA/QC	\$10,223.70	58	2	8														
		Monthly Progress Reports	\$2,923.99	22	6															
		Coordination	\$3,733.73	20	10	2	8													
		QA/QC	\$3,565.98	16	16															
	02	Survey	\$4,552.43	47																
		Field Work	\$2,862.56	32																
		Prepare TIN	\$1,689.87	15																
	03	Design Report (EES)	(see below)																	
	04	90% PS&E	\$59,293.63	442	112	84	160	8												
		90% Plans	\$41,129.07	314	90	72	148	4												
		Cover Sheet & Legend	\$741.94	6	2		4													
		Demo & TESC Plan (3 Sheets)	\$2,967.76	24	8		16													
		Grading & Storm Plan (3 Sheets)	\$8,016.72	64	24		40													
		Paving & Striping Plan (2 Sheets)	\$8,016.72	64	24		40													
		Water Quality Details (1 Sheet)	\$7,449.92	56	24	8	24													
		Landscape Plans (3 Sheets)	\$5,711.87	40		32	8													
		Irrigation Plans (3 Sheets)	\$5,711.87	40		32	8													
		Misc. Details (1 Sheet)	\$2,512.27	20	8		8	4												
		90% Opinion of Cost	\$3,866.78	28	16	4	4	4												
		90% Contract Specifications	\$11,344.44	78	32	2	4													
		Prepare 90% Submittal to Ecology	\$2,953.34	22	2	4	8													
	05	Geotechnical Engineering	(see below)																	
	06	SEPA Checklist	\$2,601.37	23	1	2			2	12	4									
	07	Expenses	(see below)																	
Labor Totals:			\$76,671.13	570	67	116	92	160	8	2	12	4	2	5	8	16	16	42	15	5

SUBCONSULTANTS

Subconsultant Name	Amount
EES - Entitlement and Engineering Solutions	\$18,700.00
Icicle Creek Engineers	\$13,600.00
Subconsultant Total:	\$32,300.00

DIRECT EXPENSES:

Description	Amount
B & W 8.5 x 11	\$300.00
B & W 11 x 17	\$100.00
Mileage	\$112.00
Wa Survey Vehicle	\$50.00
Wa Survey Equipment	\$102.00
Expense Total:	\$664.00

Project Total:	\$109,635.13
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STATE OF WASHINGTON
 OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
 210 11TH AVENUE SW, SUITE 401 * PO BOX 41160 * OLYMPIA, WASHINGTON 98504-1160
 (360) 664-9750 * TOLL FREE 1-866-208-1064 * FAX (360) 586-7079

September 30, 2013

Entitlement and Engineering Solutions, Inc.
 518 17th Street
 Denver, CO 80202

File Number: **23190**

Dear Amanda O'Connor,

Congratulations! After reviewing your application, the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is pleased to certify Entitlement and Engineering Solutions, Inc. as a Disadvantaged Business Enterprise for the federal program in compliance with the U.S. Department of Transportation requirements under Title 49 Code of Federal Regulations (CFR), Part 26. The firm's Certification Identification Number is D2F0023190. Its certification anniversary date is September 30, 2014. The firm's certification is based on the following:

Business Description:

Civil engineering firm limited to site civil design, drainage design, transportation design, traffic control design, and construction management of water and sewer lines

Primary North American Industry Classification System (NAICS) Code:

541330 - Civil engineering services

Other NAICS Codes:

541320 - Urban planning services

237110 - Construction management, water and sewer line

The federal program requires the firm's owner to submit an affidavit regarding the firm's continued eligibility each year on its anniversary date. OMWBE will send the necessary forms for you to complete approximately thirty (30) days prior to their due date. If the forms are submitted by the due date, the firm will remain certified pending completion of OMWBE's review. Failure to timely submit the forms may result in removal of federal certification under 49 CFR §26.109(c).

The federal program requires the firm to notify OMWBE in writing of any changes in its ownership, control, size or activities, and provide supporting documentation describing the change(s). This information must be submitted within thirty (30) days of the change(s).

If you have any questions or need assistance, please do not hesitate to contact me at (360) 664-9750.

Sincerely,
 Edwina Arnold
 Certification Analyst

CC: Certification Supervisor, OMWBE
 John Huff, Washington State Department of Transportation
 Olga Peterman, Washington State Department of Transportation

Exhibit G-2
Subconsultant Fee Determination - Summary Sheet
(Specific Rates of Pay)
Fee Schedule

Subconsultant EES - Entitlement and Engineering Solutions, Inc.				
Discipline or Job Title	Hourly Rate	Overhead @ _____ %	Profit @ _____ %	Rate Per Hour
President				135.00
Principal				130.00
Sr Project Manager				125.00
Project Manager				120.00
Sr Engineer V				115.00
Sr Engineer IV				105.00
Engineer III				100.00
Engineer II				95.00
Engineer I				90.00
Sr CADD Technician				85.00
CADD Technician				75.00
Administrative Support				55.00

Exhibit G-3**Breakdown of Subconsultants Overhead Cost****EES****Entitlement and Engineering
Solutions, Inc**

March 6, 2014

To Whom it May Concern:

Entitlement and Engineering Solutions is a small DBE company of less than 20 people. As such, we do not have a WSDOT-approved audited overhead rate, but offer the attached letter (originated by WSDOT) as clarification for our hourly rates.

We appreciate the opportunity to be a part of this exciting project with the City of Des Moines.

Respectfully,

Amanda M. O'Connor, P.E.
President

**EES****Entitlement and Engineering
Solutions, Inc**

March 6, 2014

Washington State Department of Transportation
 PO Box 47323
 Olympia, WA 98504-7323

Subject: Hourly Rate Statement

Attention: Director, Consultant Services Office

Below are the highest anticipated hourly billing rates for the City of Des Moines Marina Stormwater Retrofit project. These rates are fully burdened and are the lowest rates charged to our clients.

Entitlement and Engineering Solutions, Inc. certifies they have an accounting system that contains separate accounts or sub-accounts for unallowable costs in accordance with FAR (48 CFR Part 31), and the capacity to track direct costs that are allocable directly to projects.

Entitlement and Engineering Solutions, Inc. also certifies that they have a labor-charging/timekeeping system that is complete and sufficiently detailed to allow for a proper determination of the consultant's direct and indirect labor costs.

**Entitlement and Engineering Solutions
 2014 Hourly Rate Schedule**

Category	Hourly Rate
President	\$135.00
Principal	\$130.00
Sr Project Manager	\$125.00
Project Manager	\$120.00
Sr Engineer V	\$115.00
Sr Engineer IV	\$105.00
Engineer III	\$100.00
Engineer II	\$95.00
Engineer I	\$90.00
Sr CADD Technician	\$85.00
CADD Technician	\$75.00
Administrative Support	\$55.00

Respectfully,

Amanda M. O'Connor, P.E.
 President



STATE OF WASHINGTON
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
210 11TH AVENUE SW, SUITE 401 * PO BOX 41160 * OLYMPIA, WASHINGTON 98504-1160
(360) 664-9750 * TOLL FREE 1-866-208-1064 * FAX (360) 586-7079

January 02, 2014

ICICLE CREEK ENGINEERS INC
 29335 NE 20TH ST
 Carnation, WA 98014

Certification Number: **W2F0020189**

Dear Kathy Killman,

Congratulations! Your business has been recertified as a Women's Business Enterprise (WBE) for the State program. Its certification anniversary date is November 02, 2016. The firm's certification is based on the following:

Business Description:

GEOTECHNICAL, GEOLOGICAL, ENVIRONMENTAL & PERMITTING CONSULTING SERVICES, CONSTRUCTION OBSERVATION, SOIL TESTING LABORATORY

Primary North American Industry Classification System (NAICS)

Code:

541330 - Geological engineering services

Other NAICS Codes:

541620 - Environmental consulting services

541380 - Soil testing laboratories or services

The state program requires the firm be reviewed for recertification every three years from the certification date. OMWBE will send the necessary forms for you to complete approximately sixty (60) days prior to their due date. If the forms are timely submitted, the firm will remain certified pending completion of OMWBE's review. Failure to timely submit the forms may result in the firm being decertified.

The state program requires the firm to notify OMWBE in writing of any changes in its ownership, control, size or activities, and provide supporting documentation describing the change(s). This information must be submitted within thirty (30) days of the change(s).

If you have any questions or need assistance, please do not hesitate to contact this office at 360-664-9750.

Sincerely,
 Jade Hudek
 Application Analyst

CC: Certification Supervisor, OMWBE

DOT 140-089 EF Exhibit E-2
8/07

45
Exhibit G-3
Breakdown of Subconsultants Overhead Cost

ICICLE CREEK
ENGINEERS

Geotechnical, Geologic and Environmental Services

March 7, 2014

Austin Fisher, PE
Parametrix
1019 – 39th Avenue NE, Suite 100
Puyallup, Washington 98374

Overhead Rate Schedule and
Fully-Burdened Hourly Rates
Hydrogeologic Evaluation
Proposed Stormwater Infiltration
City of Des Moines Marina
South Lot Stormwater Treatment Project
Des Moines, Washington
ICE File No. 1082-001

Icicle Creek Engineers (ICE) has been requested by Parametrix to provide an audited overhead rate schedule for the above-referenced project for the City of Des Moines. The purpose of this letter is to notify you that ICE does not have an audited overhead rate schedule available. As a small business, currently with five employees, our accounting structure does not readily accommodate overhead rate calculations. In lieu of the audited overhead rate schedule, we have prepared the attached letter, addressed to WSDOT, that provides clarification of our current fully-burdened hourly rates.

We appreciate the opportunity to provide hydrogeologic services to Parametrix and the City of Des Moines for this project. Please contact me if you require additional information regarding our hourly rates.

Yours very truly,
Icicle Creek Engineers, Inc.



Kathy S. Killman, LEG
President/Principal Engineering Geologist

Submitted via email (pdf)
cc: Christy Pope, Parametrix (email)

Attachment: WSDOT Hourly Rate Statement

ICICLE CREEK ENGINEERS

Geotechnical, Geologic and Environmental Services

March 7, 2014

Washington State Department of Transportation
P.O. Box 47323
Olympia, Washington 98504-7323

Subject: Hourly Rate Statement

Attention: Director, Consultant Services Office

Below are the highest anticipated hourly billing rates for the On-Call Services. These rates are fully burdened and are the lowest rates charged to our clients for contracts negotiated in 2014.

Icicle Creek Engineers (ICE) certifies they have an accounting system that contains separate accounts or sub-accounts for unallowable costs in accordance with FAR (48 CFR Part 31), and the capacity to track direct costs that are allocable directly to projects.

ICE also certifies that they have a labor-charging/timekeeping system that is complete and sufficiently detailed to allow for a proper determination of the consultant's direct and indirect labor costs.

Classification	Hourly Billing Rate
Principal	\$180
Senior Project	\$150
Senior Staff	\$105
Staff	\$95
Senior Technician	\$85
Technician	\$75
Support	\$70

Yours very truly,
Icicle Creek Engineers, Inc.



Kathy S. Killman, LEG
President/Principal Engineering Geologist

Submitted via email to Austin Fisher and Christy Pope, Parametrix
Document ID: WSDOT.HourlyRateStatement.2014

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Hearing to consider Draft Ordinance 14-011, modifying commercial space requirements for mixed-use developments in the Marina District

ATTACHMENTS:

1. Draft Ordinance No. 14-011

FOR AGENDA OF: April 10, 2014

DEPT. OF ORIGIN: Planning, Building and Public Works

DATE SUBMITTED: April 1, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AA

Purpose and Recommendation

The purpose of this agenda item is for City Council to conduct a public hearing for the consideration of Draft Ordinance No. 14-011, amending DMMC 18.115.050(9), "*Environmental performance standards, use restrictions, and general limitations*" for the D-C Downtown Commercial Zone. The City Council may move forward with the consideration of this Ordinance by passing the following motion:

Suggested Motions

Motion 1: "I move to suspend City Council Rule 26(a) to consider Draft Ordinance 14-011 on first reading."

Motion 2: "I move to enact Draft Ordinance No. 14-011 amending DMMC 18.115.050(9), '*Environmental performance standards, use restrictions, and general limitations*' for the D-C Downtown Commercial Zone."

Alternate Motion: "I move to pass Draft Ordinance 14-011 amending DMMC 18.115.050(9), Environmental performance standards, use restrictions, and general limitations, to a second reading on _____ or as soon thereafter as the matter may be heard."

Background

It has become clear that many Marina District properties are not improved to the extent presently allowed by the City of Des Moines Comprehensive Plan and the Zoning Code. This is due to a variety of factors that include zoning code regulations as well as economic factors such as the viability for mixed use development in our market area. When combined, these factors can significantly limit the ability for properties to develop to their highest and best use; thereby limiting the job, housing and revenue potential within the Marina District.

In recent months, the Finance and Economic Development Committee has heard from several property owners in the Marina District with concerns about the commercial space requirements for mixed-use developments. Because many parcels in the Downtown Commercial (D-C) Zone are small in size, particularly on 7th Avenue South, the commercial space requirements, together with the number of parking spaces required by the DMMC, can make it financially difficult to redevelop. When sites are considered in conjunction with dimensional requirements such as height limits, they may be constrained as to maximum developable square footage. Commercial space requirements per the DMMC may not leave enough available space on the site to justify redevelopment.

The City Council's continued support of the redevelopment of the Marina District as a commercially viable mixed use neighborhood is essential. Strategy 2-04-08 of the Land Use Element of the Comprehensive Plan states that the City should "encourage improvement of the Downtown Neighborhood by working with the business community and other representative organizations to achieve the goals of the City of Des Moines Comprehensive Plan".

Discussion

In response to these concerns, the Finance and Economic Development Committee asked staff to prepare a Draft Ordinance that would reduce the commercial space requirements for mixed-use developments in the Marina District for buildings that front 7th Avenue South, south of South 219th Street and north of South 227th Street from 60% to 33%. However, properties under 10,000 Square Feet would only be required to provide some commercial space.

The Finance and Economic Development Committee has reviewed Draft Ordinance 14-011 and concurs that it is ready for consideration of the full Council. The proposed modifications would remain in effect until December 31, 2015, the same expiration date for the recent extension of the Marina District parking waiver (Ordinance No.1592).

Maximizing our limited commercial land base to achieve the highest and best use of these properties is essential to creating jobs and housing in our community and maximizing City revenues. Relaxing commercial space requirements in the D-C Zone is one step the City can take to make it more economically feasible for property owners to redevelop their properties.

Alternatives

The City Council may:

1. Enact the proposed Draft Ordinance No. 14-011.
2. Amend Draft Ordinance No. 14-011 to change the percentage of commercial space required.
3. Decline to enact the Draft Ordinance No. 14-011.

Financial Impact

There are several potential projects that would benefit from the proposed modifications. If development projects are able to move forward due to the proposed modifications to the commercial space requirements, the impact is positive. New development would contribute to the revitalization of the Marina District by adding new jobs, housing and tax revenues to the City; signaling confidence in the economic potential of our downtown commercial center; and inviting others to invest in Des Moines.

Recommendation or Conclusion

Staff recommends that the City Council enact Draft Ordinance No. 14-011 as written.

CITY ATTORNEY'S FIRST DRAFT 04/02/2014

DRAFT ORDINANCE NO. 14-011

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to modifications of the zoning requirements regulating commercial space requirements for the area identified as the Marina District amending chapter 18.115 DMMC.

WHEREAS, approximately 53 acres of land area exists in the City's Marina District adjacent to Marine View Drive, 7th Avenue South, and within the City's Marina that is zoned DC, Downtown Commercial, and

WHEREAS, the Marina District neighborhood serves as the City's downtown core providing for multi-family residential, commercial and mixed use development, and

WHEREAS, the Council Finance and Economic Development Committee has determined that land in the Marina District is highly underutilized and that growth and vitality in the neighborhood is linked to providing for, accommodating, and encouraging property owners to develop to the highest and best use for, and

WHEREAS, personal service oriented commercial use and high residential density within mixed use development are both considered highest and best uses that are desired by the City, and

WHEREAS, the proposed amendments are consistent with RCW 36.70A, the Growth Management Act ("GMA"), the Comprehensive Plan, and meet concurrency requirements of the GMA.

WHEREAS, the textual code amendments proposed by this Ordinance have been processed in accordance with the requirements of SEPA, a determination of nonsignificance (DNS) was issued on March 13, 2014 by the responsible official, and the applicable SEPA comment period has concluded, and

WHEREAS, the textual code amendments proposed in this ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

Ordinance No.
Page 2 of 9

WHEREAS, pursuant to DMMC 18.20.080 amendment of the Zoning Code (Title 18 DMMC) is a legislative (Type VI) land use decision, and

WHEREAS, pursuant to DMMC 18.20.210 amendments to the Zoning Code (Title 18 DMMC) require the City Council to conduct a public hearing to receive public comment regarding this proposal, and

WHEREAS, DMMC 18.30.100(3) requires that the date of the public hearing to consider amendments to Title 18 DMMC be set by motion of the City Council, and

WHEREAS, the City Council set the date for the public hearing by Resolution No. 1253, fixing the public hearing for April 10, 2014, and

WHEREAS, notice of the public hearing was issued on March 13, 2014 in accordance with the DMMC, and

WHEREAS, a public hearing was held on April 10, 2014 and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary; now therefore,

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

Sec. 1 DMMC 18.115.050 and section 277 of Ordinance No. 1591 entitled Environmental performance standards, use restrictions, and general limitations, are amended by adding new subsections to read as follows:

(1) Every use permitted within the D-C Zone pursuant to this chapter shall conform to the following general limitations and standards:

(a) As provided by chapter 9.64 DMMC, no use, activity, or equipment shall be permitted that creates a nuisance or is offensive, objectionable, or hazardous by reason of creation

Ordinance No.
Page 3 of 9

of odors, noise, sound, vibrations, dust, dirt, smoke, or other pollutants, noxious, toxic, or corrosive fumes or gases, radiation, explosion or fire hazard, or by reason of the generation, disposal, or storage of hazardous or dangerous wastes or materials in a manner(s) inconsistent with Title 70 RCW as presently constituted or as may be subsequently amended;

(b) Accessory uses are permitted that are customarily appurtenant or incidental to the principally permitted uses;

(c) All uses shall be primarily contained within an enclosed structure except the following:

(i) Outdoor seating and dining;

(ii) Signs;

(iii) Off-street parking, drive-through facilities, and loading areas;

(iv) Motor vehicle fuel pumps;

(v) Display of merchandise sold on site; and

(vi) Play/recreation areas.

(d) In reviewing a proposed permitted use, the City Manager or the City Manager's designee may waive or include minimal conditions as may be reasonably needed to ensure that the use is consistent with the purpose of the D-C Zone, and to minimize the likelihood of adverse impacts.

(2) Home occupations shall be permitted only as an accessory use; provided, that all of the following conditions and limitations are satisfied:

Ordinance No.
Page 4 of 9

(a) The principally permitted use to which the home occupation is accessory shall be a legally permitted, constructed, and conforming residential component of a mixed use development;

(b) All conditions set forth in DMMC 18.52.010(A) are satisfied.

(3) Boat storage and repair shall be permitted only as an accessory use on property principally permitted for marina use and shall conform to the following additional limitations and standards:

(a) The size and location of all boat storage facilities shall be consistent with the council-adopted marina master plan;

(b) All out-of-water boat repair shall be within a fully secured and fenced area not accessible by the general public;

(c) All boat repair work shall have containment areas and employ disposal methods for pollutants and toxic substances consistent with Puget Sound Clean Air Agency and NPDES standards;

(d) Only those boats and similar vessels that will be immediately and actively under repair shall be moved to or placed within a designated boat repair facility.

(4) Adult entertainment facilities and adult motion picture theaters are not permitted in the D-C Zone.

(5) Nonconforming uses located in the D-C Zone shall be allowed to continue to exist, but only to the extent, size, or scale that these uses were legally authorized or licensed to operate by the City. A property containing a single business entity that is a nonconforming use shall not be allowed to add any other use components or otherwise increase the intensity or facet of the

Ordinance No.
Page 5 of 9

use unless all nonconforming use elements of the property are first completely removed from the site. A property containing multiple business entities and that has one or more nonconforming uses upon it shall not be allowed to add any other use components or otherwise increase the intensity or facet of that portion of the property or building containing uses that are nonconforming unless the addition of a new use results in the complete removal of that portion of the property or building containing a nonconforming use.

(6) Automobile repair, carwashes, automobile service stations, uses with drive-through facilities, and similar uses shall conform to the following limitations and standards:

(a) Automobile repair and the installation of automobile parts and accessories shall be wholly performed within an enclosed structure approved by the Building Official for such occupancy;

(b) Each automotive and service repair facility shall be limited to a maximum of one service bay for each 7,500 square feet of land area per business site;

(c) Service bays shall be fully utilized to store and park vehicles contracted for repair or service;

(d) The number of vehicles stored or parked outside for repair or service shall not be greater than the minimum number of required parking stalls serving the auto repair facility pursuant to chapter 18.210 DMMC;

(e) No outside parking or storage of employee vehicles, customer vehicles, or vehicles contracted for service shall occur in any area that is not designated and approved by the City as an on-site parking stall;

Ordinance No.
Page 6 of 9

(f) Motor vehicle fuel pump islands shall be set back a minimum of 15 feet from property lines;

(g) A six-foot-high, 100 percent sight-obscuring fence shall be provided along property lines that abut residentially zoned properties, unless waived by the residential property owner prior to building permit issuance.

(7) Welding repair (7692) is only permitted in an enclosed structure.

(8) Social service facilities shall conform to the following limitations and standards:

(a) Outdoor play/recreation areas for children shall be set back a minimum of five feet from property lines; and

(b) Unless specifically authorized by the City Manager or the City Manager's designee, passenger loading and unloading areas shall be provided on site.

(9) Mixed use development shall conform to the following limitations and standards:

(a) Mixed use structures shall contain area for retail trade or personal and business services, at street level as follows:

(i) Pedestrian access from the public sidewalk to the retail trade or personal and business services shall be provided, and

(ii) A minimum of 60 percent of the street level floor area shall be occupied by retail trade or personal and business services;

(iii) A minimum of 75 percent of the street level building frontage adjacent to public right(s)-of-way shall contain floor area

Ordinance No.
Page 7 of 9

for retail trade or personal and business services uses;

(iv) Building space allocated for retail trade or personal and business service uses at the street level shall have a minimum gross interior depth dimension of 55 feet measured perpendicular to the property line abutting the public street(s) serving the site.

(b) The City Manager or designee is authorized to consider and approve up to a 20% reduction of the bulk requirements specified in subsection (9)(a) of this section when a development proposal incorporates on-site parking substantially at street floor level for retail trade or personal and business service uses and the City Manager or designee determines that the proposed reduction(s) does not compromise, interrupt, or interfere with the desired functionality of the building or the continuity of City pedestrian-oriented design goals in the general area and pedestrian access to the site from the public sidewalk or right-of-way.

(c) Mixed use developments shall comply with all the requirements of chapter 18.155 DMMC, except for private recreational requirements established by DMMC 18.155.050(2).

(d) A detached structure that contains residential uses and does not meet the requirements for mixed use structures is prohibited.

(e) Except that, for buildings fronting on 7th Ave South, South of South 219th Street and north of South 227th Street, 9(a)(ii) is revised from 60 percent to 33 percent, and 9(a)(iii) through (iv) shall not apply. This exception is effective through December 31, 2015.

Ordinance No.
Page 8 of 9

(f) The exception identified in 9(e) is further modified for lots under 10,000 square feet in that 9(a)(ii) is revised to read "some of the street level floor area shall be occupied by retail trade or personal and business services". This exception is effective through December 31, 2015.

Sec. 2. Severability - Construction.

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

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

Sec. 3. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2014 and signed in authentication thereof this _____ day of _____, 2014.

M A Y O R

APPROVED AS TO FORM:

Assistant City Attorney

ATTEST:

City Clerk

Ordinance No.
Page 9 of 9

Published:

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Disturbance Noise Code

FOR AGENDA OF: April 10, 2014

ATTACHMENTS:

1. Draft Ordinance 14-018

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: April 2, 2014

CLEARANCES:

☒ Legal *JB*

☐ Finance NA

☐ Marina NA

☐ Parks, Recreation & Senior Services NA

☐ Planning, Building & Public Works NA

☒ Police *gvp*

☐ Courts NA

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *JA*

Purpose and Recommendation

The purpose of this report is to seek City Council approval of the proposed amendments to chapter 7.36 DMMC entitled Public Disturbance Noises.

Suggested Motion

FIRST MOTION: “To suspend Rule 26(a) in order to enact Draft Ordinance No. 14-018 on first reading.”

SECOND MOTION: “To enact Draft Ordinance No. 14-018, amending and updating chapter 7.36 DMMC entitled *Public Disturbance Noises*.”

Background

The Police Department requested review and amendments to chapter 7.36 DMMC following a number of noise complaints that did not fall into the current prohibitions of the Code. The City Attorney’s Office reviewed the DMMC as well as numerous codes from other cities. This draft was prepared by the City Attorney’s Office and was reviewed by the Public Safety and Transportation Committee who voted to bring it to the entire Council.

Discussion

Chapter 7.36 DMMC was adopted in 1993 and has not been amended since. Several provisions have become outdated. Additionally, the code only prohibited excessive noise coming from a structure, a motor vehicle, or portable audio equipment. A major problem the DMPD would encounter when responding to complaints was that if the noise was not coming from one of these three sources, they were unable to address the situation. This Draft Ordinance attempts to address the primary issues that have arisen with enforcement of Chapter 7.36 DMMC.

A summary of the amendments contained in the Draft Ordinance are listed below:

- *Adds a purpose section to further clarify Council's intent.
- *Amends definition of "Specific public disturbance noise" to include noise that does not originate from a structure (would now include noise coming from outdoors).
- *Eliminates outdated and unneeded language.
- *Adds content neutral language to promote equal and fair enforcement.
- *Changes penalty from \$25 fine to graduating penalty starting at \$103 and moving to potential criminal citation after 3rd violation within one year period.

These amendments are proposed to address difficulties in enforcing the code as currently written. The increased penalty provisions not only reflect the increase in staff costs for responding to noise complaints, but also would address problem properties that are consistently receiving noise complaints. Although the criminal penalty would likely rarely be used if at all, it does provide an effective enforcement tool to address habitual noise issues.

Alternatives

1. Pass as written.
2. Pass with amendments.
3. Take no action.

Financial Impact

None

Recommendation or Conclusion

The City Attorney's Office and the Police Department recommend passing this Ordinance.

CITY ATTORNEY'S FIRST DRAFT 03/07/2014

DRAFT ORDINANCE NO. 14-018

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to public disturbance noises, adding a new DMMC 7.36.005 entitled "Purpose" to chapter 7.36 DMMC, amending chapter 7.36 DMMC, and codifying a new section in chapter 7.36 DMMC.

WHEREAS, it is the policy of the City to minimize the exposure of its citizens to the physiological and psychological dangers of excessive noise and to protect, promote, and preserve the public health, safety, and welfare, and

WHEREAS, it is the express intent of the City Council to control the level of noise in a manner that promotes commerce, the use, value, and enjoyment of property, sleep, and repose and the quality of the environment, and

WHEREAS, it is the intent of the City Council that noise be prohibited when it unreasonably disturbs the peace, comfort, and repose of others; now therefore,

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 7.36 DMMC as DMMC 7.36.005, entitled "Purpose", to read as follows:

Purpose. The purpose of this chapter is to control noise in a manner which promotes commerce; the use, value, and enjoyment of property; sleep and repose; and the quality of the environment.

Sec. 2. DMMC 7.36.010 and section 1 of Ordinance No. 1072 is amended to read as follows:

Definitions.

~~(1)~~ Definitions--Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires

Ordinance No. _____
Page 2 of 4

otherwise, the words or phrases defined in this section shall have the indicated meanings.

_____~~(2)~~—"Specific public disturbance noises" means:

_____~~(a1)~~—The creation of frequent, repetitive, or continuous noise or sounds that ~~emanate from a structure that~~ unreasonably disturbs, annoys, or interferes with peace and comfort of the owners or possessors of real property, including but not limited to, sounds from musical instruments, audio sound systems, band sessions, yelling, or social gatherings;

_____~~(b2)~~—Sound from motor vehicle audio sound systems, ~~including but not limited to, tape players, radios, and compact disc players,~~ operated at volumes so as to be audible greater than 100 feet from the vehicle itself;

_____~~(e3)~~—Sound from portable audio equipment, ~~including but not limited to, tape players, radios, and compact disc players,~~ operated at a volume so as to be audible greater than 100 feet from the source, and if not operated upon the property of the operator.

Sec. 3. DMMC 7.36.020 and section 2 of Ordinance No. 1072 are amended to read as follows:

Public disturbance noises--Prohibition--Exceptions.

(1) No person shall cause, and no person in possession of real property, a motor vehicle, or portable audio equipment shall allow specific public disturbance noises as defined in this eOrdinance to originate from such sources.

(2) The provisions of this section shall not apply to:

Ordinance No. _____
Page 3 of 4

(a) Sounds from public safety or emergency vehicles or equipment, including, but not limited to, police, fire protection, and ambulances;

(b) Sounds resulting from eCity-approved community events.

(3) The content of the sound or noise will not be considered in determining a violation of this chapter.

Sec. 4. DMMC 7.36.030 and section 3 of Ordinance No. 1072 are amended to read as follows:

Penalty. A violation of or failure to comply with this chapter is punished as follows:

(1) A first violation within a 12-calendar-month period is a class ~~6-3~~ civil infraction.

(2) A second ~~and subsequent~~ violation within a 12-calendar-month period is a class ~~2-1~~ civil infraction.

(3) A third or subsequent violation within a 12-calendar-month period is a misdemeanor.

NEW SECTION. **Sec. 5. Codification.** Section 1 of this Ordinance shall be codified as DMMC 7.36.005, entitled "Purpose".

NEW SECTION. **Sec. 6. Severability - Construction.**

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

Ordinance No. _____
 Page 4 of 4

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

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

PASSED BY the City Council of the City of Des Moines 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

Published: _____

Effective Date: _____