

AGENDA

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

September 11, 2014 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

EXECUTIVE SESSION

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT

Item 1: EAGLE SCOUT PROJECT RECOGNITION, CHRIS POWELL

Item 2: DES MOINES MEMORIAL DRIVE PRESERVATION ASSOCIATION,
ROSE CLARK, KITTY MILNE

Page 1 Item 3: REQUEST TO REDUCE RENTAL FEE AT STEVEN J. UNDERWOOD PARK,
TERRILL HUCKE FUNDRAISING TOURNAMENT

CONSENT AGENDA

Page 7 Item 1: APPROVAL OF VOUCHERS

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

Claim Checks: \$1,660,355.69

Payroll Fund Transfers: \$447,327.12

Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers: \$2,107,682.81

Page 9 Item 2: APPROVAL OF MINUTES

Motion is to approve the minutes of the July 24th and August 14, 2014 City Council meetings.

Page 21 Item 3: DRAFT RESOLUTION NO. 14-193, HIGHLINE SCHOOL DISTRICT CAPITAL BOND MEASURE PROPOSITION 1

Motion is to adopt Draft Resolution No. 14-193 supporting the Highline School District's Capital Bond Measure Proposition 1, *Bonds to Construct New Schools and Replace and Renovate Deteriorating Schools*, to finance improvements to its schools in the amount of \$385,065,156.00 on the November 4, 2014 election ballot.

Page 41 Item 4: DRAFT RESOLUTION NO. 14-043-A, SETTING A PUBLIC HEARING FOR SUBSTITUTE DRAFT ORDINANCE NO. 14-043-A
Motion is to adopt Draft Resolution No. 14-043-A setting a public hearing on October 2, 2014 to consider Substitute Draft Ordinance No. 14-043-A relating to regulations for the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending Chapters 14.20, 16.01 and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 and Section 424 of Ordinance No. 1591.

Page 49 Item 5: CONSULTANT SERVICES CONTRACT ADDENDUM WITH DAVID A. CLARK ARCHITECTS, PLLC FOR DESIGN SERVICES FOR THE DES MOINES BEACH PARK HISTORIC DINING HALL REHABILITATION
Motion is to approve Addendum 1 to the Consultant Services Contract with David A. Clark Architects, PLLC for additional design services for the Des Moines Beach Park Historic Dining Hall Rehabilitation Project in the amount of \$10,550.53, bringing the total contract amount to \$125,225.53, and authorize the City Manager to sign the Consultant Addendum substantially in the form as submitted.

Page 71 Item 6: TRANSPORTATION GATEWAY PROJECT: CONSULTANT AGREEMENT SUPPLEMENT FOR CONSTRUCTION ENGINEERING AND INSPECTION SERVICES FOR THE 24TH AVENUE S IMPROVEMENT PROJECT (S 216TH STREET TO S 208TH STREET)
Motion is to approve Supplemental Agreement #12 with KPG Consulting Engineers, Inc. for additional Construction Engineering and Inspection Services necessary for the 24th Avenue South Improvements (S 216th Street to S 208th Street) in the amount of \$108,230.68, bringing the total Agreement amount of \$3,945,705.25, and further authorize the City Manager to sign the contract supplement substantially in the form as submitted.

Page 99 Item 7: CHANGE ORDER FOR THE AGREEMENT WITH MOFFATT NICHOL FOR ENGINEERING AND CONSULTING SERVICES FOR THE J DOCK FIRE REHABILITATION PROJECT
Motion is to approve Change Order No. 1 to the Agreement with Moffatt Nichol for engineering and consulting services for the J Dock Fire Rehabilitation Project in the amount of \$16,757 for a total of \$87,296, and authorize the City Manager to sign the Change Order substantially in the form as attached.

NEW BUSINESS

Page 111 Item 1: AMENDMENTS TO TITLE 9 DMMC, THE "CRIMINAL CODE"
Staff Presentation: Assistant City Attorney Tim George

Page 171 Item 2: DRAFT RESOLUTION NO. 14-142, AUTHORIZATION TO WRITE-OFF UNCOLLECTIBLE ACCOUNTS RECEIVABLE
Staff Presentation: Finance Director Paula Henderson

NEXT MEETING DATE

September 25, 2014

ADJOURNMENT

Jacob O'Brien
6620 Commercial Ave
Everett, WA 98203
September 1, 2014

COUNCIL - FYI

Des Moines City Council
City of Des Moines WA
21630 11th Ave S., Suite A
Des Moines, WA 98198

Dear Des Moines City Council:

A fundraiser tournament will be held at Steven J Underwood Fields on September 13th for Terrill Huckle. Terrill broke his C6, C7 and L1 vertebrae in a diving accident on July 15th. He has recently returned home but is facing medical bills, and the need to purchase equipment to support his disability.

Many individuals and companies have stepped forward to donate prizes to raffle or auction. And all of the funds raised will be going directly to Terrill. For this reason, we are trying to reduce our expenses as much as possible for the tournament. Is it possible to have the field rental fee reduced to support Terrill?

Thank you in advance.

Sincerely,

Jacob O'Brien
Terrill Huckle Fundraiser Tournament Director

Terrill Hucke Fundraiser Softball Tournament



Terrill broke his C6, C7 and L1 vertebrae in a diving accident on July 14th. He is in the process of transitioning from the hospital back to his house.

100% of the raised proceeds will go to Terrill to support the costs of medical expenses and making his house ADA accessible.

Terrill has supported the local softball community for many years by playing in various tournaments and managing a league team at Russell Road. Come join us in supporting him!

For more information on Terrill and to donate visit:

<https://terrill-hucke.squarespace.com/>



Mens E/Rec and Coed - Unsanctioned USSSA rules

\$225 per team – 3 game guarantee

Homerun derby \$10 - Bat donated by Do Work to winner

Fundraiser BBQ and Raffles

When: September 13th

Where: Steven J Underwood Park - Des Moines

Contact Jake O'Brien for more information and to register.

Email: jakeobrien8@gmail.com

Text/call: (253) 569-5403

Bonnie Wilkins

From: Tony Piasecki
Sent: Friday, September 05, 2014 12:54 PM
To: Bonnie Wilkins
Subject: FW: Reduced fee request

Bonnie,

For the Administration Reports item regarding a request for fee reduction.

Tony Piasecki
 Des Moines City Manager

CONFIDENTIALITY STATEMENT: The information contained in this electronic communication is personal, privileged and/or confidential information intended only for the use of the individual(s) or entity(ies) to which it has been addressed. If you read this communication and are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication, other than delivery to the intended recipient is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply e-mail. Thank you.

From: Patrice Thorell
Sent: Friday, September 05, 2014 12:12 PM
To: Tony Piasecki
Subject: RE: Reduced fee request

Tony,

Here is the estimated cost for the Parks maintenance crew to prep fields and clean up after a tournament rental day:

Game Preps:	1 FTE- 2/hrs -	\$76
	1 Sea. Worker- 2/hrs	\$25
Liter pickup/ Cleaning:	1 Sea. Worker- .5-1/hrs	<u>\$12.5</u>
Est. Labor		\$113.50

Sincerely,



Patrice Thorell
 Parks, Recreation and Senior Services Director
 1000 S. 220th Street
 Des Moines, WA 98198
 206-870-6529
pthorell@desmoineswa.gov



From: Tony Piasecki
Sent: Friday, September 05, 2014 8:33 AM
To: Patrice Thorell
Subject: RE: Reduced fee request

Does Parks Maintenance have any role in getting the fields ready?

Tony Piasecki
 Des Moines City Manager

CONFIDENTIALITY STATEMENT: The information contained in this electronic communication is personal, privileged and/or confidential information intended only for the use of the individual(s) or entity(ies) to which it has been addressed. If you read this communication and are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication, other than delivery to the intended recipient is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply e-mail. Thank you.

From: Patrice Thorell
Sent: Thursday, September 04, 2014 1:43 PM
To: Tony Piasecki
Subject: Reduced fee request

Tony, Ralph put together the numbers for the rental costs to the City. He gets 10-15 requests for fundraiser tournaments annually and they have paid full price or cancelled due to low attendance. Please see the breakdown below and let me know if you have any questions.
 Sincerely,



Parks, Recreation and Senior Services Director
 1000 S. 220th Street
 Des Moines, WA 98198
 206-870-6529
pthorell@desmoineswa.gov



From: Ralph Thomas
Sent: Thursday, September 04, 2014 12:59 PM
To: Patrice Thorell
Subject: Reduce fee request

Patrice in regards to the Jacob O'Brien letter asking for a reduce fee. Here is our breakdown for the fees. They have asked to rent the complex for 13 hours, our staff will be there at least 14 or 15 hours getting it prepared for the start and lock up.

Tournament Field Rental Fees Per Field

One day, three fields rental is \$600. * Includes 3 field preps (1st start the day, 2nd mid day, 3rd to start championship rounds). *Optional lights rental fee (\$25 per hr. per field)

One staff is scheduled for the duration of the event.

They have asked for 13 hours of rentals so they will need lights for 2-3 hours.

Field Rental Costs

1 staff @ \$12 hr for normal preps (dry weather- see above schedule).

\$12 x 15hrs = \$180 + benefits \$197

Fuel for equipment \$15

Field chalk 6 bags @ \$6 = \$36

Equipment, garbage bags, toilet paper, etc. \$15

City Field Rental Costs Total \$263

Additional Costs for Inclement Weather Conditions

2nd staff @\$12 to get the fields ready to play in the morning

\$12 x 4hrs = \$48 + benefits \$54

Diamond Dry (if fields are wet) 8 to 12 bags at \$8 a bag. \$64- \$96

City Additional Costs Total \$108-\$150

Ralph

CITY OF DES MOINES
Voucher Certification Approval

11-Sep-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 **September 11, 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		140355	-			-140354	1,593,806.16
Electronic Wire Transfers	4	BK OF AMER VISA, DEPT OF REV, WA DEPT LIC/FIREARMS, MERITAIN					75,052.53
Subtotal for this Council Packet							1,668,858.69
Voided Claim Checks this check run:		140383					(4,576.15)
Voided Claim Checks from previous check runs		133330/139804/140097					(3,926.85)
Total Claims/Wire Transfers/Voids							1,660,355.69
Payroll Vouchers:		DISBURSED 08/20/14					Amounts
Payroll Checks		18536	-	18540	=	5	7,366.30
Direct Deposit		340001	-	340174	=	174	294,318.43
Payroll Taxes							65,492.04
Wage/Garnishments							1,066.91
Voids						0	0.00
Electronic Wire Transfers							79,083.44
ICMA 401 Forfeitures							0.00
Total Claims							447,327.12
Total certified Wire Transfers,Voids, A/P & Payroll vouchers for September 11, 2014							2,107,682.81

MINUTES

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

July 24, 2014 – 7:00 p.m.

CALL TO ORDER

Mayor Kaplan called the meeting to order at 7:01 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Pennington.

ROLL CALL

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

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Community Development Manager Denise Lathrop; Senior Planner Laura Techico; City Clerk Bonnie Wilkins.

CORRESPONDENCE

There were no correspondences.

COMMENTS FROM THE PUBLIC

Nancy Gosen, 21925 7th Avenue S., thanked Council for their support of the Beach Park Concert series. She also introduced a cultural survey that will be available in the near future.

Wayne Jones, PO Box 146, Renton; asked Council to consider approving New Business Item #2, Highline View Estates, for another year.

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Pennington:

- Waterland weekend:
 - Thanked everyone involved for their efforts.
- Participated in the Port of Seattle Disaster Drill.

Councilmember Sheckler:

- No report.

Councilmember Burrage:

- Attended the Waterland Parade:
 - Rode in a 1936 Ford with a rumble seat.

Mayor Pro Tem Pina:

- Great summer events:
 - Farmers Market.
 - 4th of July fireworks.
 - Wesley Homes Barbeque.
 - Waterland Weekend:
 - Carnival.
 - Parade.
 - Car Show.
 - Bite of Des Moines.
 - Mid-Sound Sailing Social.

Councilmember Musser:

- Thanked volunteers and runners who attended/helped Waterland 5K Fun Run.
- Municipal Facilities Committee:
 - 2015-2020 MCI & Marina CIP Budgets.
 - Redondo float repair almost complete.
 - Technology insufficiencies within the City.
 - Dining Hall update.
 - Activity Center generator design.

Councilmember Nutting:

- Participated in Waterland weekend:
 - Thanked Destination Des Moines and local business.
- Thanked the Arts Commission for their summer concert series.

PRESIDING OFFICER'S REPORT

- Asked for a moment of silence, for former Councilmember Dan Caldwell, who passed away recently.
 - Memorial will be held Saturday, July 26th @ 11:00 a.m.
- Met with Pat McLaughlin of King County Solid Waste. They are looking for individuals to serve on their Advisory Committee.
- Sound Transit meetings in the Des Moines area.
- Environment Committee:
 - Tree Ordinance.
- Waterland weekend:
 - Parade.
 - Wheels & Keels, car and boat show.
 - Taste of Des Moines.
- Thanked Senior Center volunteers with a box lunch at the Founder's Lodge.
- Attended summer concert.
- Southeast Asia Festival at Saltwater Park.
- Cambodian Community Celebration:
 - August 23rd, 11:00 a.m. to 4:00 p.m. @ Saltwater State Park.
- Met with new Assistant City Manager, Michael Matthias:
 - Economic Development.
 - Future of Marina District.
- Highline College Women's Soccer Team:
 - Interested in Community Clean-Up Day.

- Presented Welding Coordinator, Dale Copeland, an award for his years of service at Puget Sound Skills Center. Mr. Copeland and his students created the sculpture at the corner of 227th and Marine View Drive and the sculpture located at Outlook II Park.

ADMINISTRATION REPORT

- Des Moines Creek Business Park permit fees paid to the City.
- Introduced new Assistant City Manager, Michael Matthias.

Item 1: KING CONSERVATION DISTRICT ADVISORY COMMITTEE UPDATE
Dierdre Grace and Melissa Lang gave an update to Council on the King Conservation District.

CONSENT AGENDA

- Item 1: APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers and payroll transfers included in the attached list and further described as follows:
Claim Checks: \$1,502,919.57
Payroll Fund Transfers: \$865,294.55
Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers: \$2,368,214.12
- Item 2: APPROVAL OF MINUTES
Motion is to approve the minutes from the June 26, 2014 regular City Council Meeting.
- Item 3: SALTWATER STATE PARK BRIDGE REHABILITATION – DESIGN TASK 01– AMENDMENT #2
Motion is to approve Amendment No. 2 to Task Order Assignment 01 with Exeltech Consulting, Inc. for the Saltwater State Park Bridge Rehabilitation Final design approved changes in the amount of \$50,000.00, bringing the total design authorization to \$593,546.99, and further authorize the City Manager to sign said Task Order Amendment substantially in the form as submitted.
- Item 4: RESOLUTION SETTING A PUBLIC HEARING REGARDING MARINA DISTRICT BUILDING HEIGHTS
Motion is to adopt Draft Resolution No. 14-143 setting a public hearing on August 14, 2014 to consider Draft Ordinance No. 14-143 amending the boundary of Area 2 on Figure 1 Downtown Commercial Height Areas codified in DMMC 18.115.060(1)(b).
- Item 5: CONSULTANT CONTRACT AMENDMENT: BHC CONSULTANTS, LLC
Motion is to approve Amendment No. 1 to the Contract with BHC Consultants, continuing professional inspection and plan review services in the amount of \$15,000 (bringing the total contract amount to \$65,000), and authorize the City Manager to sign the contract amendment substantially in the form submitted.

Direction/Action

Motion made by Councilmember Musser to approve the consent agenda; seconded by Mayor Pro Tem Pina.
The motion passed 7-0.

PUBLIC HEARING

Item 1: DRAFT ORDINANCE NO. 14-114, SIGN CODE
Staff Presentation: Community Development Manager
Denise Lathrop

Mayor Kaplan opened the Public Hearing at 8:01 p.m.

Community Development Manager Lathrop spoke briefly to Council on the Sign Code omissions.

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

Mayor Kaplan closed the Public Hearing at 8:05 p.m.

Direction/Action

Motion 1 made by Councilmember Musser to suspend Rule 26(a) in order to enact Draft Ordinance No. 14-114 on first reading; seconded by Mayor Pro Tem Pina. The motion passed 7-0.

Motion 2 made by Councilmember Musser to enact Draft Ordinance No. 14-114 amending DMMC 18.200.160(7) and 18.200.300(I)(c)(i) as housekeeping measures to incorporate inadvertently omitted language into the Sign Code as enacted by the City Council in Ordinance No. 1572; seconded by Mayor Pro Tem Pina. The motion passed 7-0.

Mayor Kaplan read Ordinance No. 14-114 into the record.

Mayor Kaplan moved New Business Item #2 before New Business Item #1.

NEW BUSINESS

Item 2: FINAL PLAT EXTENSION REQUEST FOR HIGHLINE VIEW ESTATES 21
LOT MODIFIED SUBDIVISION; LUA07-004
Staff Presentation: Senior Planner Laura Techico

Direction/Action

Motion made by Councilmember Musser to adopt Draft Resolution No. 14-149 extending the expiration date to obtain final plat approval for the preliminary modified subdivision entitled "Highline View Estates" from July 3, 2015 to July 3, 2016; seconded by Councilmember Nutting. The motion passed 7-0.

At 8:13 p.m. Councilmember Sheckler left the meeting.

Item 1: FEDERAL WAY LINK EXTENSION (FWLE) DEIS AND SOUND TRANSIT LONG RANGE PLAN DSEIS UPDATES
Staff Presentation: Sound Transit Staff

Sound Transit Staff Cathal Ridge gave a power point presentation to Council on the Federal Way Link Extension DEIS and Sound Transit Long Range Plan DSEIS Updates.

Chelsea Levy updated Council on the Long Range Plan of Sound Transit.

No action was taken.

NEXT MEETING DATE

August 14, 2014 Regular City Council Meeting

ADJOURNMENT

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

The meeting was adjourned at 8:40 p.m.

Respectfully Submitted,
Bonnie Wilkins
City Clerk



MINUTES

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

August 14, 2014 – 7:00 p.m.

CALL TO ORDER

Mayor Kaplan called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Burrage.

ROLL CALL

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

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Civil Engineer I Tommy Owen; Community Development Manager Denise Lathrop; Land Use Planner Nikole Coleman-Porter; City Clerk Bonnie Wilkins.

Action/Direction

Motion made by Mayor Kaplan that Resolution No. 1271 adopted on July 24th be rescinded and that the Public Hearing on Draft Ordinance No. 14-143 Marina District Building Heights, referenced on the August 14, 2014 Agenda, be stricken; Seconded by Councilmember Nutting.
The motion passed 7-0.

CORRESPONDENCE

There were no correspondences.

COMMENTS FROM THE PUBLIC

- Mike Berey, 28632 Redondo Beach Drive S; concerned about lack of communication on Redondo issues, specifically a parking plan in Redondo.
- Henry Kerr, 28618 Redondo Beach Drive S; interested in knowing more about the formal outreach that will take place for Redondo residents.
- Rick Johnson, 28624 Redondo Beach Drive S; concerned about on-going speeding on Redondo Beach Drive.
- Troy Schlaitzer, 28604 Redondo Beach Drive S; suggests having permit parking for the Redondo area and also concerned about speeding on Redondo Beach Drive.
- Patricio Mendoza, Human Services Advisory Committee Member introduced Manuella Ginnett, 24909 13th Place S; who gave an update on the Multi-Service Center, a recipient of funding from the City.
- Gene White, 28742 Redondo Beach Drive; thanked Council for making the City better, wants Council to look for possible alternative options for parking and offered to help in any way. Also concerned about speeding on Redondo Beach Drive.
- Edo Gebenini, 28716 Soundview Drive; hopes to have input in whatever is decided regarding parking at Redondo.
- Bonnie Komar, 28716 Soundview Drive; would like to review the parking study prior to any implementation and suggested to Council that they come down to look at the area.
- Kathy Lande, 28425 Soundview Drive S; concerned about lack of information to Redondo residents. Also concerned about drugs and speeding in the area.
- Richard Half, 2871 6th Place South; concerned about parking on residential streets.

- Michelle Roedell, 22612 10th Avenue S; addressed Redondo residents letting them know that Council came and spoke to her neighborhood group and found it very helpful.

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Pennington:

- No Report.

Councilmember Sheckler:

- Thanked Woodmont/Redondo residents for bringing issues to Council.
- Artemis Hotel has been taken over by the Sheraton:
 - August 28th Pacific Highway will be down to one lane.

Councilmember Burrage:

- Thanked Redondo residents for coming and sharing.
- Back-pack program:
 - Manned booth for Coalition for Human Trafficking:
 - Shoe drive.

Mayor Pro Tem Pina:

- Offered to speak with the Redondo residents:
 - Thanked the Redondo residents for coming.
- Finance & Economic Development Committee meeting:
 - Series of maps:
 - Activity in the City.
 - Upcoming activity in the City.
 - Will be posted to the web-site.
 - Independent Consultant to view the City.
 - Status of support enforcement.

Councilmember Musser:

- Thanked Patricio for speaking on behalf of Human Services Advisory Committee Meeting.
 - Revision of current City Policy for Human Services:
 - Broadening focus to provide better mental health and depression services to community.

Councilmember Nutting:

- Thanked Redondo residents.
- Attended the ribbon cutting ceremony for the Des Moines Creek Business Park.
- Thanked Arts Commission for a great Concert Series this summer.
- Movie in the Park August 15th: *Lego Movie*.
- Kindergarten Jump Start starts on Monday.
- September 3rd – kids back to school:
 - Please drive safe.
- August 23rd 5th Annual Brews & Blues:
 - Bluesandbrewsfest.org.
- Farmer's Market.

PRESIDING OFFICER'S REPORT

- Addressed rumor of parking plan in Redondo.
- Communication:
 - City currents.
 - Web-site.
 - E-mail.
 - Meet in person.
 - Brainstorm ideas to facilitate communication.
- Thanked Destination Des Moines for the Waterland Festival and all summer programs.
- Saltwater State Park:
 - Flute Quest.
- Groundbreaking for the Des Moines Creek Business Park
 - Panattoni Development Company.
 - 32 acres being cleared.
 - Approximately 800-1,600 new jobs.
- Ribbon cutting for 216th and 24th Avenue S roadway improvements.

ADMINISTRATION REPORT

Item 1: DESTINATION DES MOINES UPDATE

Tony Hettler, President of Destination Des Moines, gave Council a recap of events that took place in Des Moines this summer.

Tony Hettler introduced Scott Evans who spoke about the Washington Main Street Program.

At 8:10 p.m. Councilmember Sheckler left the meeting.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

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

Claim Checks: \$917,804.38

Payroll Fund Transfers: \$947,155.21

Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers: \$1,864,959.59

Item 2: DRAFT RESOLUTION NO. 14-153-A, OFFICIAL NAMING OF THE DES MOINES BEACH PARK HERITAGE TRAIL

Motion is to pass Draft Resolution No 14-153-A, naming and designating the Des Moines Beach Park Heritage Trail as the "Carmen L. Scott Des Moines Beach Park Heritage Trail."

Item 3: INTERLOCAL AGREEMENT BETWEEN THE CITY OF DES MOINES AND THE HIGHLINE SCHOOL DISTRICT FOR A SCHOOL RESOURCE OFFICER AT MT. RAINIER HIGH SCHOOL

Motion is to approve the three year agreement between the City of Des Moines and the Highline School District for the City to provide a police officer to serve as a school resource officer and for the District to compensate the City \$65,000 a year for the ten months the officer will be assigned to the school as described in the Interlocal Agreement, and to authorize the City Manager to sign the Agreement substantially in the form as submitted.

- Item 4: INTERLOCAL COOPERATION AGREEMENT FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG)
Motion is to approve the 2015-2017 Interlocal Cooperation Agreement for the Community Development Block Grant Program (CDBG) and to authorize the City Manager to sign the King County Interlocal Cooperation Agreement for the Community Development Block Grant Program (CDBG) for a three-year period, 2015, 2016 and 2017, substantially in the form as attached.
- Item 5: SOUTH KING COUNTY GAY PRIDE DAY PROCLAMATION
Motion is to approve the Proclamation declaring September 14, 2014 as *South King County Gay Pride Day*.
- Item 6: INTERLOCAL COOPERATION AGREEMENT FOR THE REGIONAL AFFORDABLE HOUSING PROGRAM (RAHP)
Motion is to approve the 2015-2017 King County Interlocal Cooperation Agreement for the Regional Affordable Housing Program and to authorize the City Manager to sign the King County Interlocal Cooperation Agreement for the Regional Affordable Housing Program for a three-year period, 2015, 2016 and 2017, substantially in the form as attached.

Direction/Action

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

Councilmember Burrage pulled Item #2 for a proposed name change.

The remainder of the Consent Agenda passed 6-0.

Motion made by Mayor Kaplan to pass Draft Resolution No. 14-153-A, naming and designating the Des Moines Beach Park Heritage Trail as the Carmen L. Scott Des Moines Beach Park Heritage Trail; seconded by Councilmember Nutting.

Motion made by Councilmember Burrage to change the designation to be The Carmen L. Scott Heritage Trail; in lieu of a second, Councilmember Musser asked former Councilmember Scott what name she would prefer used. Former Councilmember Scott indicated she would like the designation to read, The Carmen Scott Heritage Trail; acceptable to both the maker and the seconder of the original motion.

The motion, as amended, passed 6-0.

Mayor Kaplan recognized former Councilmember Scott on the Heritage Trail.

Former Councilmember Scott spoke to the audience on the Heritage Trail.

EXECUTIVE SESSION

At 8:19 p.m. Council went into Executive Session. The purpose of the Executive Session was to discuss labor negotiations under RCW 42.30.140(4)(a). The Executive Session was expected to last 20 minutes. In attendance were: Mayor Kaplan; Mayor Pro Tem Pina; Councilmembers Nutting, Musser, Burrage and Pennington; City Manager Piasecki; Assistant City Manager Matthias; City Attorney Bosmans; Assistant City Attorney George; Human Resources Manager Murphy. At 8:38 p.m. Mayor Kaplan extended the Executive Session until 8:50 p.m. At 8:50 p.m. Mayor Kaplan extended the Executive Session until 9:00 p.m. At 9:00 p.m. the Executive Session concluded and Council resumed the regular meeting.

No formal action was taken.

PUBLIC HEARING

Item 1: This item was stricken from the Agenda.

Item 2: DRAFT ORDINANCE NO. 14-137, STREET VACATION OF PUBLIC RIGHT OF WAY WITHIN THE CITY OF DES MOINES KNOWN AS 5TH PLACE SOUTH, SOUTH OF SOUTH 287TH STREET
Staff Presentation: Civil Engineer I Tommy Owen

Mayor Kaplan opened the Public Hearing at 9:01 p.m.

Civil Engineer I Owen gave a power point presentation to Council.

Mayor Kaplan asked for those that signed up to speak:

- Richard Haff, 28701 6th Place S #201; would like an unrestricted view easement of his property to not allow trees to go above 20 feet.
- Eugene White, 28742 Redondo Beach Drive; would like to have Council come to the site of his property to discuss the vacation in hopes to avoid lot line adjustments.
- Chuck Hugo, 28720 Soundview Drive S; concerned about the overall appearance and the 100 year old 150 foot pine tree.
- Bonnie Komar, 28716 Soundview Drive S; concerned about the large tree on the property asking for the vacation.
- Samantha Foster, 28701 6th Place S #209; concerned that more of her view will go away with possible trees being planted.
- Thomas Deacon, 28736 Soundview Drive S; concerned about the angles of the sub-division and the trees that are between his property and the condo.
- Jeff Johnson, 28750 5th Place S; asked for drainage on 5th Place S before the street vacation.

Mayor Kaplan asked if anyone else wished to speak.

- Debbie Millard, 28726 Soundview Drive S; addressed tree issue that prior speakers are concerned about and is concerned about retaining privacy.
- Michael Smith, 28701 6th Place S; concerned about privacy.
- Edo Gebenini, 28716 Soundview Drive S; concerned about removal of trees.

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

Mayor Kaplan closed the Public Hearing at 9:31 p.m.

Direction/Action

Motion 1A made by Councilmember Musser to pass Draft Ordinance No. 14-137 on to a second reading on the September 25, 2014 agenda; seconded by Mayor Pro Tem Pina.

The motion passed 6-0.

Mayor Kaplan read Draft Ordinance No. 14-137 into the record.

OLD BUSINESS

Item 1:

PACIFIC HIGHWAY SOUTH SUBAREA PLANNING – LAND USE OPTIONS

Staff Presentation: Community Development Manager
Denise Lathrop

Community Development Manager Lathrop gave a power point presentation to Council on the Pacific Highway South Subarea Planning and Land Use Planner Coleman-Porter gave a power point presentation to Council on Land Use Concepts.

No formal action was taken.

NEXT MEETING DATE

September 11, 2014 Regular City Council Meeting

ADJOURNMENT

Motion made by Councilmember Musser to adjourn; seconded by Mayor Pro Tem Pina.
The motion passed 6-0.

The meeting was adjourned at 9:57 p.m.

Respectfully Submitted,
Bonnie Wilkins
City Clerk

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Resolution No. 14-193,
Highline School District Capital Bond Measure
Proposition 1

AGENDA OF: September 11, 2014

DEPT. OF ORIGIN: Legislative

DATE SUBMITTED: September 4, 2014

ATTACHMENTS:

1. Draft Resolution No. 14-193
2. HSD May 28, 2014 Board of Directors
Packet – Action taken June 4, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose:

The purpose of this agenda item is to adopt Draft Resolution No. 14-193 supporting the Highline Public School District's Bond Measure Proposition 1 on the November 4, 2014 election ballot.

Suggested Motion

MOTION: "I move to adopt Draft Resolution No. 14-193 supporting the Highline School District's Capital Bond Measure Proposition 1, *Bonds to Construct New Schools and Replace and Renovate Deteriorating Schools*, to finance improvements to its schools in the amount of \$385,065,156.00 on the November 4, 2014 election ballot."

Background:

The Highline School District is experiencing a significant increase in enrollment that has led to overcrowding at many schools and is projected to grow by an additional 2,100 students in the next 8-10 years. Within a few years, the population bulge now impacting elementary schools will hit the middle schools and high schools.

Discussion

If approved the Bond Measure would finance improvements to its schools to include building two new middle schools and one elementary school (Des Moines Elementary to be relocated at 16th Place South and South 240th Street), rebuilding Highline High School, upgrading and modernizing Tyee and Evergreen High Schools, repairing deteriorating roofs and structures, enhancing learning environments at other District schools, expanding student access to classroom technology at all schools, and making district-wide safety and security improvements.

Alternatives

To not adopt Draft Resolution No. 14-193.

Financial Impact

The estimated property tax rate would increase \$1.12 per \$1,000.00 in assessed valuation that amounts to \$336.00 per year for a home valued at \$300,000.00.

Recommendation

None.

CITY ATTORNEY'S FIRST DRAFT 09/03/2014

DRAFT RESOLUTION NO. 14-193

A RESOLUTION OF THE COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, supporting Highline School District No. 401 Proposition 1, *Bonds to Construct New Schools and Replace and Renovate Deteriorating Schools*, in the amount of \$385,065.156.00 of general obligation bonds to finance improvements to its schools.

WHEREAS, Highline School District provides a high quality public school education to students who live in the City of Des Moines, and quality schools are a critical resource for local communities and employers, and

WHEREAS, Highline School District is experiencing a significant increase in enrollment that has led to overcrowding at many schools; and enrollment projections call for continued increases and enrollment, resulting in more overcrowding across the District, and

WHEREAS, improvements to school facilities are needed in the District in order to provide the students with adequate, proper, and safe educational facilities, and

WHEREAS, on June 4, 2014, the District's Board of Directors adopted Resolution No. 06-14 providing for the submission to the voters of the District at a special election to be held on November 4, 2014 Proposition 1 to finance improvements to its schools to include building two new middle schools and one elementary school (Des Moines Elementary); rebuilding a high school; upgrading and modernizing two high schools; repairing deteriorating roofs and structures; enhancing learning environments at other District schools; expanding student access to classroom technology at all schools; and making District-wide safety and security improvements, and

WHEREAS, Des Moines students benefited greatly over the past 10 years with new, state-of-the-art schools with the latest technology, including Mt. Rainier High School, Midway Elementary School, Parkside Elementary School and North Hill Elementary School, and

WHEREAS, the District's Proposition 1 will provide the

Resolution No. ____
Page 2 of 3

financing of these improvements by issuing \$385,065,156 of general obligation bonds and levying annual excess property taxes to repay the bonds, and

WHEREAS, the \$385,065,156.00 bond measure will leverage up to an additional \$78.6 million in state and federal matching funds; now therefore,

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

The Des Moines City Council strongly supports Highline School District's Proposition 1, *Bonds to Construct New Schools and Replace and Renovate Deteriorating Schools*, on the November 4, 2014 ballot, concerning a proposition to relieve overcrowding and replace deteriorating, outdated schools; authorizing the District to rebuild Highline High School, construct two new middle schools, construct a new Des Moines Elementary School at Zenith, make critical improvements at Evergreen and Tyee Campuses, and make District-wide health, safety, security, arts, technology, and other capital improvements; issue no more than \$385,054,156.00 of general obligation bonds maturing within 21 years; and levy annual excess property taxes to repay the bonds, all as provided in Highline School District's Resolution No. 06-114.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

Resolution No. ____
Page 3 of 3

City Clerk



Highline Public Schools Board Routing Form

(Use this form for items going before the Board)

DATE: May 28, 2014

FROM: Duggan Harman, Chief of Staff & Finance 631-3078

RE: Resolution No. 06-14: Bonds to Construct New Schools and Replace and Renovate Deteriorating Schools

TIMELINE

1. Introduction

DATE

05-28-14

2. Action

06-04-14

APPROVAL ROUTING

APPROVED BY

DATE

1. Department Head

Duggan Harman

5-20-14

2. Policy Office Review

Holly Fry

5-20-14

3. Finance/Budget Review

Duggan Harman

5-20-14

4. Applicable Cabinet Member

S. Enk

5. Superintendent

ATTACHMENT(S):

Board Action Report

Resolution No. 06-14



Highline Public Schools²⁹ Board Action Report

"A Path to Success for Every Student"

☒ Supports the Strategic Plan

DATE: May 28, 2014

FROM: Dr. Susan Enfield, Superintendent

For Introduction: 05-28-14

LEAD STAFF: Duggan Harman, Chief of Staff & Finance

For Action: 06-04-14

I. TITLE Resolution No. 06-14: Bonds to Construct New Schools and Replace and Renovate Deteriorating Schools

II. WHY BOARD ACTION IS NECESSARY

Under District Policy 9222, the Board must authorize an election to seek the approval of voters to issue bonds.

III. BACKGROUND INFORMATION

Planning for a capital project package began in October, 2013. Since then, staff have held community meetings on the issue as well as meeting with the Board in multiple work sessions on the issue.

The need to fund the proposed capital projects is driven from two areas: capacity to address increasing student enrollment and replacement of deteriorating schools. Projections for the next ten years show enrollment growth of over 2,000 students. In addition, some schools were built in the early 1920's and are in urgent need of replacement. Other district buildings are in need of critical repairs to address safety, security or deferred maintenance concerns.

The projects to be funded by the proposed sale of bonds follow the Board-adopted guiding principles to address building safety and security; address capacity needed to accommodate projected enrollment growth and placement of academic and student support programs; and address building condition.

IV. RECOMMENDED MOTION

I move the Highline School Board adopt Resolution No. 06-14, which places on the November 4th, 2014 ballot for voter approval a proposition authorizing the District to issue general obligation bonds in the principal amount of no more than \$385,065,156. Proceeds from the sale of these bonds would fund the construction of two new middle schools, rebuilding of both an existing elementary and high school, provide critical needs improvements at two other high school campuses, as well as fund District-wide health, safety, security, arts, technology, and other capital improvements.

V. FISCAL IMPACT/REVENUE SOURCE)

Fiscal impact of this action will be approximately \$385.1M to fully implement the capital plan developed for this bond.

The revenue source for this motion is issuance of up to \$385,065,156 in general obligation bonds that by this action will be placed before voters in an election on November 4, 2014.

Expenditure: ☐ One-time ☐ Annual ☒ Other Source

VI. APPLICABLE POLICY(S)

This action is in compliance with the following:
Policy No. 9222 School Facilities - Bonds

VII. ALTERNATIVES

No Bond Alternative: This alternative is not recommended for the following reasons.

Without the projects funded by this bond sale, capacity shortfalls that are already significant in some schools/areas of the District will become a critical District-wide issue at all grade levels. With very limited fund balance available for capital projects the District would have to resort to non-capital actions (such as split shifting of schools and significantly higher class sizes) to accommodate projected increases in enrollment.

Without the projects funded by bond sale, building conditions will continue to deteriorate and the current maintenance backlog will increase.

VIII. COMMUNITY ENGAGEMENT

Community Engagement Required: ☒ Yes ☐ No

In the last several months the district had conducted a series of community meetings and Board work sessions on the need for a bond as well as presented information before the City Councils of SeaTac, Des Moines, Normandy Park and Burien. Additional community engagement opportunities have been held including meetings with school PTSA organizations and a regional Chamber of Commerce.

IX. ATTACHMENTS

Resolution No. 06-14

HIGHLINE SCHOOL DISTRICT NO. 401
KING COUNTY, WASHINGTON
(HIGHLINE PUBLIC SCHOOLS)

BONDS TO CONSTRUCT NEW SCHOOLS AND REPLACE
AND RENOVATE DETERIORATING SCHOOLS

RESOLUTION NO. 06-14

A RESOLUTION of the Board of Directors of Highline School District No. 401, King County, Washington, providing for the submission to the voters of the District at a special election to be held on November 4, 2014, in conjunction with the State General election to be held on the same date, of a proposition authorizing the District to issue general obligation bonds in the principal amount of no more than \$385,065,156, for the purpose of paying costs of rebuilding Highline High School, constructing two new middle schools, constructing a new Des Moines Elementary School at Zenith, making critical improvements at the Evergreen and Tyee Campuses, and making District-wide health, safety, security, arts, technology, and other capital improvements, the principal of and interest on such bonds to be payable from annual excess property tax levies; designating the District's Chief of Staff and Finance and bond counsel to receive notice of the ballot title from the Director of Records and Elections of King County, Washington; authorizing a request for a Certificate of Eligibility from the State Treasurer pursuant to chapter 39.98 RCW; designating the Secretary to the Board and/or the District's Chief of Staff and Finance as the District officials authorized to file with the State Treasurer, on behalf of the District, the request for a Certificate of Eligibility; and providing for other matters properly related thereto, all as more particularly set forth herein.

ADOPTED: JUNE 4, 2014

This document prepared by:

*FOSTER PEPPER PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-5339*

HIGHLINE SCHOOL DISTRICT NO. 401
KING COUNTY, WASHINGTON
(HIGHLINE PUBLIC SCHOOLS)

RESOLUTION NO. 06-14

A RESOLUTION of the Board of Directors of Highline School District No. 401, King County, Washington, providing for the submission to the voters of the District at a special election to be held on November 4, 2014, in conjunction with the State General election to be held on the same date, of a proposition authorizing the District to issue general obligation bonds in the principal amount of no more than \$385,065,156, for the purpose of paying costs of rebuilding Highline High School, constructing two new middle schools, constructing a new Des Moines Elementary School at Zenith, making critical improvements at the Evergreen and Tyee Campuses, and making District-wide health, safety, security, arts, technology, and other capital improvements, the principal of and interest on such bonds to be payable from annual excess property tax levies; designating the District's Chief of Staff and Finance and bond counsel to receive notice of the ballot title from the Director of Records and Elections of King County, Washington; authorizing a request for a Certificate of Eligibility from the State Treasurer pursuant to chapter 39.98 RCW; designating the Secretary to the Board and/or the District's Chief of Staff and Finance as the District officials authorized to file with the State Treasurer, on behalf of the District, the request for a Certificate of Eligibility; and providing for other matters properly related thereto, all as more particularly set forth herein.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF HIGHLINE SCHOOL DISTRICT NO. 401, KING COUNTY, WASHINGTON, as follows:

Section 1. Findings and Determinations. The Board of Directors (the "Board") of Highline School District No. 401, King County, Washington (the "District"), takes note of the following facts and hereby makes the following findings and determinations:

(a) Overcrowding, deteriorating and educationally outdated infrastructure and schools, and the needs of our educational programs require that the District rebuild Highline High School, construct two new middle schools, construct a new Des Moines Elementary School at Zenith, make critical improvements at the Evergreen and Tyee Campuses, and make District-wide health, safety, security, arts, technology, and other capital improvements, all as more particularly defined and described in Section 2 herein (collectively, the "Projects"). The Projects are urgently required to correct the existing conditions.

(b) The District lacks sufficient money with which to pay costs of the Projects.

(c) To pay costs of the Projects, it is necessary and advisable that the District issue and sell unlimited tax general obligation bonds in the principal amount of no more than \$385,065,156 (the "Bonds"), or such lesser maximum amount as may be legally issued under the laws governing the limitation of indebtedness or required to carry out and accomplish the Projects.

(d) The District is authorized pursuant to Article VII, Section 2(b) of the Washington Constitution and laws of the State of Washington, including Revised Code of Washington ("RCW") 28A.530.010, RCW 28A.530.020, RCW 39.36.050 and RCW 84.52.056, to submit to the District's voters at a special election, for their approval or rejection, the proposition of whether the District shall issue the Bonds to pay costs of the Projects and levy annual excess property taxes to pay and retire the Bonds.

(e) The best interests of the District's students and other inhabitants require the District to carry out and accomplish the Projects as hereinafter provided.

Section 2. Description of Projects. The Projects to be paid for with proceeds of the Bonds, including interest earnings thereon ("Bond Proceeds"), are more particularly defined and described as follows:

(a) Rebuild Highline High School at or near the existing site, which shall include, but not be limited to, modernizing the Performing Arts Center, all as deemed necessary and advisable by the Board.

(b) Construct a new middle school at the Manhattan site, or other site to be determined by the Board, all as deemed necessary and advisable by the Board.

(c) Construct a new middle school at the Glacier site, or other site to be determined by the Board, all as deemed necessary and advisable by the Board.

(d) Construct a new Des Moines Elementary School at the Zenith site, all as deemed necessary and advisable by the Board.

(e) Make critical improvements at the Evergreen High School Campus and Tyee High School Campus, including, but not limited to: (1) acquiring, constructing and installing new and/or repair existing roofing systems; (2) acquiring, constructing, installing, renovating and equipping science and other educational portable classrooms; (3) upgrading and/or improving HVAC, mechanical, electrical, plumbing and window systems; (4) making energy efficiency improvements; (5) improving parking and interior and exterior finishes; (6) constructing a new multipurpose field at the Evergreen High School Campus; (7) making health, safety, security and infrastructure improvements; and (8) making other critical improvements, all as deemed necessary and advisable by the Board.

(f) Make District-wide health, safety, security, arts, technology, and other capital improvements, including, but not limited to: (1) relocating Big Picture School and other alternative educational programs to facilities and sites to be determined by the Board; (2) renovating Olympic Junior High, Salmon Creek and Sunnysdale Schools; (3) making critical improvements identified in the *Highline School District No. 401 Study and Survey, A Comprehensive Report of Existing School Facilities*, dated October 2008, as updated May 2013, prepared by Integrus Architecture, as further supplemented by District Facilities Services Staff, and not otherwise completed as provided herein, which are incorporated herein by this reference; (4) making arts improvements, including, but not limited to: (i) making infrastructure, lighting, technology and storage improvements; and (ii) acquiring and installing musical instruments and other major equipment for visual and performing arts programs; (5) making District-wide technology system improvements to enhance student

learning, including, but not limited to: (i) acquiring, constructing and installing District-wide mobile/wireless classroom technology systems, equipment, infrastructure, hardware and wiring, and providing initial support implementation and hardware for use of instructional technology; and (ii) acquiring and installing new District-wide software tools, classroom software, web-based tools for on-line learning, virtual course modules, instructional software for science, technology, engineering and math, and providing related training necessary to install and implement such software, tools and modules; and (6) making other District-wide health, safety, security, arts, technology, and other capital improvements, all as deemed necessary and advisable by the Board. The foregoing technology system improvements shall be part of the District's integrated technology systems and facilities.

(g) Acquire, construct and install all necessary furniture, equipment, apparatus, accessories, fixtures and appurtenances in the foregoing, all as deemed necessary and advisable by the Board.

(h) Pay incidental costs incurred in connection with carrying out and accomplishing the Projects described above pursuant to RCW 39.46.070. Such incidental costs shall be deemed part of the Projects and shall include, but not be limited to: (1) costs related to the issuance, sale and delivery of the Bonds; (2) payments for fiscal and legal expenses; (3) costs of obtaining ratings and bond insurance; (4) costs of printing, advertising, establishing and funding accounts; (5) payment of interest due on the Bonds for up to six months after completion of construction; (6) necessary and related engineering, architectural, planning, consulting, inspection, permitting and testing costs; (7) administrative and relocation expenses; (8) site acquisition and improvement costs; (9) demolition costs; (10) costs related to demolition and/or deconstruction of existing school facilities to recycle, reclaim and repurpose such school facilities and/or building materials; (11) costs of on-site and off-site utilities and road improvements; and (12) costs of other similar activities or purposes, all as deemed necessary and advisable by the Board. The Projects, or any portion or portions thereof, shall be acquired or made insofar as is practicable with available Bond Proceeds, together with any other money of the District legally available therefor, and in such order of time as shall be deemed necessary and advisable by the Board. Subject to Section 6 of this resolution, the Board shall allocate the Bond Proceeds, together with any other money of the District legally available therefor, between the various parts of the Projects so as to accomplish, as near as may be, all of the Projects. The Board shall determine the exact order, extent and specifications for the Projects. The Projects are to be more fully described in the plans and specifications to be filed with the District.

Section 3. Calling of Election. The Director of Records and Elections of King County, Washington, as *ex officio* Supervisor of Elections (the "Auditor"), is requested to call and conduct a special election in the District, in the manner provided by law, to be held therein on November 4, 2014, in conjunction with the State General election to be held on the same date, for the purpose of submitting to the District's voters, for their approval or rejection, the proposition of whether the District shall issue the Bonds to pay costs of the Projects and levy annual excess property taxes to pay and retire the Bonds.

If the proposition is approved by the requisite number of voters, the District will be authorized to issue, sell and deliver the Bonds in the manner described in this resolution, spend the Bond Proceeds to pay costs of the Projects, and levy annual excess property taxes to pay and retire the Bonds. The Bond Proceeds shall be used, either with or without additional money now

available or hereafter available to the District, for capital purposes only, as permitted by law, which shall not include the replacement of equipment.

Section 4. Authorization to Issue the Bonds. The Bonds authorized may be issued as a single issue, as a part of a combined issue with other authorized bonds, or in more than one series, all as deemed necessary and advisable by the Board and as permitted by law. Further, the Bonds may be issued, as deemed necessary and advisable by the Board, as taxable bonds, tax-exempt bonds and/or any other type of tax credit bonds that are now or in the future may be authorized under applicable state and federal law, including, but not limited to, "build America bonds" or "qualified tax credit bonds" within the meaning of Section 54A(d)(1) of the Internal Revenue Code of 1986, as amended (the "Code") (generically, "Tax Credit Bonds").

Each series of the Bonds shall be issued as fully registered bonds; shall bear interest payable as permitted by law; shall mature within 21 years from the date of issuance of such series of the Bonds (but may mature at an earlier date or dates as fixed by the Board); shall be paid by annual property tax levies sufficient in amount to pay both principal and interest when due, which annual property tax levies shall be made in excess of regular property tax levies without limitation as to rate or amount but only in amounts sufficient to meet such payments of principal and interest as they come due; and shall be issued and sold in such manner, at such times and in such amounts as shall be required for the purpose for which each series of the Bonds are to be issued, all as deemed necessary and advisable by the Board and as permitted by law. The life of the Projects to be financed with the Bond Proceeds shall exceed the term of the respective series of Bonds that finance such Projects. The Board hereby authorizes and directs the Secretary to the Board (the "Secretary") and/or the District's Chief of Staff and Finance (the "Chief of Staff and Finance") to determine for each series of Bonds whether such series should be sold by negotiated or competitive sale, and with respect to such series of Bonds that are to be sold by competitive sale, to: (a) specify a date and time of sale of such Bonds; (b) give notice of that sale; (c) determine any bid requirements and criteria for determining the award of the bid; (d) provide for the use of an electronic bidding mechanism if the Secretary and/or Chief of Staff and Finance deems electronic bidding to be beneficial to the District; and (e) specify other matters in his or her determination necessary, appropriate or desirable to carry out the sale of the Bonds. Notwithstanding the foregoing, the amount, date, denominations, interest rates, payment dates, final maturity, redemption rights, price, and other terms and conditions of the Bonds (or parameters with respect thereto) shall be hereafter fixed by one or more resolutions of the Board authorizing the issuance, sale and delivery of such series of Bonds, which resolutions may delegate to a District officer or employee the authority to fix any of the foregoing, all as deemed necessary and advisable by the Board and as permitted by law.

Pending the issuance of any series of the Bonds, the District may issue short-term obligations pursuant to chapter 39.50 RCW (which may be issued as Tax Credit Bonds, if permitted under applicable law) to pay for any portion of the costs of the Projects. Such obligations may be paid or refunded with the Bond Proceeds.

If the District receives voter approval to issue the Bonds in the manner described in this resolution, the Board authorizes and directs the Secretary and/or the Chief of Staff and Finance to: (a) review and "deem final" (within the meaning of Rule 15c2-12 of the Securities and Exchange Commission), if necessary and upon such official's satisfaction, any preliminary

official statement prepared in connection with the sale of each series of the Bonds by the District; (b) authorize the "deemed final" preliminary official statement to be distributed prior to the date any underwriter or purchaser bids for, purchases, offers or sells each series of the Bonds; and (c) acknowledge in writing any action taken pursuant to clauses (a) and (b) of this paragraph.

Section 5. Intent to Reimburse. The Board declares that to the extent, prior to the date the Bonds, or other bonds or obligations (which includes the Bonds, or other bonds or obligations issued as tax-exempt bonds and/or Tax Credit Bonds) are issued to pay costs of the Projects, the District shall make capital expenditures for the Projects from money that is not (and is not reasonably expected to be) reserved, allocated on a long-term basis or otherwise set aside by the District under its existing and reasonably foreseeable budgetary and financial circumstances to pay costs of the Projects, those capital expenditures are intended to be reimbursed out of the Bond Proceeds, or proceeds of other bonds or obligations, issued in an amount not to exceed the principal amount of the Bonds provided by this resolution.

Section 6. Sufficiency of Bond Proceeds. If Bond Proceeds are more than sufficient to carry out and accomplish the Projects (the "Excess Bond Proceeds"), and state or local circumstances require, the District may use the Excess Bond Proceeds to: (a) acquire, construct, install, equip and make other capital improvements to the District's facilities; or (b) retire and/or defease a portion of the Bonds or other outstanding bonds of the District, all as the Board may determine by resolution, after holding a public hearing thereon pursuant to RCW 28A.530.020. In the event that the Bond Proceeds, together with any other money of the District legally available therefor, are insufficient to carry out and accomplish all of the Projects, the District shall use the Bond Proceeds and other available money for paying the cost of that portion of the Projects that is deemed by the Board most necessary and in the best interest of the District.

Section 7. Use of State Financing Assistance. It is anticipated that the District may receive some money from the State of Washington as state financing assistance under chapter 28A.525 RCW with respect to the Projects (the "State Financing Assistance"). The State Financing Assistance shall be used, when and in such amounts as it may become available, to carry out and accomplish the Projects. If the State Financing Assistance is more than sufficient to carry out and accomplish the Projects (the "Excess State Financing Assistance"), the District shall use the Excess State Financing Assistance to carry out and accomplish any other capital improvements identified in the District's 6-year Capital Facilities Improvement Plan, and not otherwise completed as provided herein, which are incorporated herein by this reference (collectively referred to herein as the "Excess State Financing Assistance Improvements"). The provisions of Section 2(g) and (h) of this resolution are incorporated herein by this reference and made a part of the Excess State Financing Assistance Improvements.

If the Excess State Financing Assistance is more than sufficient to carry out and accomplish the Excess State Financing Assistance Improvements (the "Remaining Excess State Financing Assistance"), and state or local circumstances require, the District may use the Remaining Excess State Financing Assistance to: (a) acquire, construct, install, equip and make other capital improvements to the District's facilities; (b) retire and/or defease a portion of the Bonds or other outstanding bonds of the District; or (c) provide for other purposes, all as the Board may determine by resolution, after holding a public hearing thereon pursuant to RCW 28A.530.020.

Section 8. Alteration of Expenditures. If the Board shall subsequently determine that state or local circumstances, including, but not limited to, changed conditions or needs, regulatory considerations or incompatible development, should cause any alteration to the Projects or the Excess State Financing Assistance Improvements, the District shall not be required to accomplish the Projects or the Excess State Financing Assistance Improvements, and may apply the Bond Proceeds, State Financing Assistance or Excess State Financing Assistance (or any portion thereof) to: (a) other portions of the Projects or the Excess State Financing Assistance Improvements; (b) acquire, construct, install, equip and make other capital improvements to the District's facilities; or (c) retire and/or defease a portion of the Bonds or other outstanding bonds of the District, all as the Board may determine by resolution after holding a public hearing thereon pursuant to RCW 28A.530.020.

Section 9. Form of Ballot Title. Pursuant to RCW 29A.36.071, the King County Prosecuting Attorney is requested to prepare the concise description of the aforesaid proposition for the ballot title in substantially the following form:

PROPOSITION 1

HIGHLINE SCHOOL DISTRICT NO. 401 (HIGHLINE PUBLIC SCHOOLS)

BONDS TO CONSTRUCT NEW SCHOOLS AND REPLACE AND RENOVATE DETERIORATING SCHOOLS

The Board of Directors of Highline School District No. 401 adopted Resolution No. 06-14, concerning a proposition to relieve overcrowding and replace deteriorating, outdated schools. This proposition would authorize the District to rebuild Highline High School, construct two new middle schools, construct a new Des Moines Elementary School at Zenith, make critical improvements at Evergreen and Tye Campuses, and make District-wide health, safety, security, arts, technology, and other capital improvements; issue no more than \$385,065,156 of general obligation bonds maturing within 21 years; and levy annual excess property taxes to repay the bonds, all as provided in Resolution No. 06-14. Should this proposition be:

Approved ☐

Rejected ☐

Section 10. Authorization to Deliver Resolution to Auditor and Perform Other Necessary Duties. The Secretary or her designee is directed to: (a) present a certified copy of this resolution to the Auditor no later than August 5, 2014; and (b) perform such other duties as are necessary or required by law to submit to the District's voters at the aforesaid special election, for their approval or rejection, the proposition of whether the District shall issue the Bonds to pay costs of the Projects and levy annual excess property taxes to pay and retire the Bonds.

Section 11. Notices Relating to Ballot Title. For purposes of receiving notice of the exact language of the ballot title required by RCW 29A.36.080, the Board hereby designates the (a) Chief of Staff and Finance (Duggan Harman), telephone: 206.631.3078; fax: 206.433.2351; email:

duggan.harman@highlineschools.org; and (b) bond counsel, Foster Pepper PLLC (Jim McNeill), telephone: 206.447.5339; fax 800.533.2284; email: mcnej@foster.com, as the individuals to whom the Auditor shall provide such notice. The Secretary is authorized to approve changes to the ballot title, if any, deemed necessary by the Auditor or the King County Prosecuting Attorney.

Section 12. Authorization of Local Voters' Pamphlet. The preparation and distribution of information on the ballot title for inclusion in a local voters' pamphlet and/or online voters' guide (the "Pamphlet") is hereby authorized. The Pamphlet shall include, if applicable, an explanatory statement and statements in favor of and in opposition to the ballot title. The preparation of explanatory statement, the appointment of pro/con committees and the preparation of statements in favor of and in opposition to the ballot title shall be in accordance with chapter 29A.32 RCW and the rules and guidelines of the Auditor, as applicable.

Section 13. Authorization to Request Participation in Washington State School District Credit Enhancement Program Authorized. The Board hereby finds and determines that, if the District receives voter approval to issue the Bonds in the manner described in this resolution, it will be in the best interests of the District's taxpayers to request the State of Washington's guaranty for payment of the Bonds under chapter 39.98 RCW, the Washington State School District Credit Enhancement Program. Accordingly, the Board hereby requests the State Treasurer to issue a Certificate of Eligibility to the District pledging the full faith, credit, and taxing power of the State of Washington to guarantee the payment, when due, of the principal of and interest on the Bonds pursuant to chapter 39.98 RCW and the rules promulgated thereunder by the State Finance Committee. The Board designates the Secretary and/or the Chief of Staff and Finance as the District officials authorized to file with the State Treasurer, on behalf of the District, the request for a Certificate of Eligibility.

Section 14. Authorization to Request Authority to Issue Tax Credit Bonds. To the extent the Board deems it necessary and advisable to issue all or a portion of the Bonds as Tax Credit Bonds, the Board hereby (a) authorizes the District to request authorization from Office of the Superintendent of Public Instruction ("OSPI"), if applicable, to issue such Bonds as Tax Credit Bonds for the purpose of paying costs of the Projects, and (b) designates the Secretary and/or the Chief of Staff and Finance as the District officials authorized to prepare, sign and submit to OSPI the appropriate applications (or other required forms or documents) to issue the Tax Credit Bonds.

Section 15. General Authorization and Ratification. The Secretary, the Chief of Staff and Finance, the President of the Board, other appropriate officers of the District and bond counsel, Foster Pepper PLLC, are severally authorized and directed to take such actions and to execute such documents as in their judgment may be necessary or desirable to effectuate the provisions of this resolution. All actions taken prior to the effective date of this resolution in furtherance of and not inconsistent with the provisions of this resolution are hereby ratified and confirmed in all respects.

Section 16. Severability. If any provision of this resolution shall be declared by any court of competent jurisdiction to be invalid, then such provision shall be null and void and shall be separable from the remaining provisions of this resolution and shall in no way affect the validity of

the other provisions of this resolution, of the Bonds or of the levy or collection of the taxes pledged to pay and retire the Bonds.

Section 17. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED by the Board of Directors of Highline School District No. 401, King County, Washington, at a regular open public meeting thereof, held this 4th day of June, 2014, the following Directors being present and voting in favor of the resolution.

HIGHLINE SCHOOL DISTRICT NO. 401
KING COUNTY, WASHINGTON

Michael D. Spear, President and Director

Tyrone Curry Sr., Vice President and Director

Angelica Alvarez, Director

Bernie Dorsey, Director

Susan Goding, Director

ATTEST:

Susan A. Enfield, Ed.D
Secretary to the Board of Directors

CERTIFICATE

I, SUSAN A. ENFIELD, Ed.D., Secretary to the Board of Directors of Highline School District No. 401, King County, Washington (the "District"), hereby certify as follows:

1. The foregoing Resolution No. 06-14 (the "Resolution") is a full, true and correct copy of the Resolution duly adopted at a regular meeting of the Board of Directors of the District (the "Board") held at the regular meeting place thereof on June 4, 2014, as that Resolution appears on the minute book of the District, and the Resolution is now in full force and effect; and

2. A quorum of the members of the Board was present throughout the meeting and a sufficient number of members of the Board present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of June, 2014.

HIGHLINE SCHOOL DISTRICT NO. 401
KING COUNTY, WASHINGTON

SUSAN A. ENFIELD, Ed.D.
Secretary to the Board of Directors

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Resolution No. 14-043-A Setting
Public Hearing for Substitute Draft Ordinance No.
14-043-A.

ATTACHMENTS:

1. Draft Resolution No. 14-043-A Setting a
Public Hearing Date for Substitute Draft
Ordinance No. 14-043-A

FOR AGENDA OF: September 11, 2014

DEPT. OF ORIGIN: Planning, Building and
Public Works

DATE SUBMITTED: September 4, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: JA

Purpose and Recommendation

The purpose of this Agenda Item is for City Council to consider Draft Resolution No. 14-043-A (refer to Attachment 1) which will set a public hearing date for the consideration of Substitute Draft Ordinance No. 14-043-A, relating to regulations for cutting and removal of trees on private developed sites, private undeveloped sites, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending Chapters 14.20, 16.01, and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 and Section 424 of Ordinance No. 1591; and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106. The following motion will appear on the consent calendar:

Suggested Motion

Motion 1: “I move to adopt Draft Resolution No. 14-043-A setting a public hearing on October 2, 2014 to consider Substitute Draft Ordinance No. 14-043-A relating to regulations for the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled “Trees” to Title 16, amending Chapters 14.20, 16.01, and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 and Section 424 of Ordinance No. 1591.”

Background

At the November 14th, 2013 Environment Committee, Administration provided an overview of how the Community Development Division interprets the Des Moines Municipal Code requirements related to requests by citizens and others to prune, top, or remove trees within the City of Des Moines. Below is a summary of the direction the Committee provided as it relates to the following categories of sites:

- **Trees on private developed sites** – No permit required, provided that the tree(s) are not located within a designated critical area, shoreline environment, or required landscaping area.
- **Trees on private undeveloped sites** – Limited to removal of dead, diseased, or hazard trees, subject to approval of a tree permit. Limited tree pruning is allowed using methods approved by the International Society of Arboriculture (ISA) that do not destroy the integrity of the tree. The Committee’s position was that indiscriminant removal of trees would increase runoff potential and create an implied view protection.
- **Trees on city-owned property** – Limited to removal of dead, diseased or hazard trees, subject to approval of a tree permit. Limited tree pruning is allowed using methods approved by the International Society of Arboriculture (ISA) that do not destroy the integrity of the tree.
- **Trees on city right-of-way** - Limited to removal of dead, diseased or hazard trees, subject to approval of a tree permit and a right-of-way use permit, provided that the tree(s) are not located within a designated critical area, shoreline environment, or required landscaping area . Limited tree pruning is allowed using methods approved by the International Society of Arboriculture (ISA) that do not destroy the integrity of the tree.
- **Trees within environmentally critical areas, shoreline environments, and required landscaping (private/public properties)** – Subject to approval of a tree permit and threshold/disturbance limits per Environmentally Critical Areas Ordinance (Chapter 16.10 DMMC, formerly Chapter 18.86), Shoreline Master Program (Chapter 16.20 DMMC, formerly Chapter 18.90), and Landscaping and Screening (Chapter 18.195 DMMC, formerly Chapter 18.41).

Discussion

A Public Hearing was held on May 22, 2014 to consider Draft Ordinance No. 14-043. A number of concerns were raised at the Public Hearing, and Council sent the Draft Ordinance back to the Environment Committee for further review and discussion.

Staff subsequently developed Substitute Draft Ordinance 14-043-A, which was presented and discussed at the July 17, 2014 meeting of the Environment Committee.

Substitute Draft Ordinance No. 14-043-A proposes to add a new chapter entitled “Trees” to Title 16. The draft ordinance amends Chapter 14.20 DMMC to address concerns about the threshold point at

which point a tree permit would be required; amends Chapter 16.01 DMMC to add and modify certain definitions; amends Chapter 18.195.020 to provide consistent definitions; and repeals Chapter 18.195.130 dealing with scenic view protection.

Substitute Draft Ordinance No. 14-043-A reflects the policy direction received from the Environment Committee to address areas of ambiguity, remove areas of contradiction, and provide greater overall clarity on how the City regulates the cutting and maintenance of trees in the City, including but not limited to the following:

Permit Requirements:

- (1) No tree permit required. Except as otherwise provided in (2), no tree permit is required to remove, cut, or prune trees on private developed or partially developed lots as follows:
 - (a) Trees located outside of environmentally critical areas, shoreline areas, and associated buffer areas as verified by the City or qualified professional;
 - (b) Trees that are not part of a required landscaping area;
 - (c) The total area to be cleared is less than XX square feet (to be discussed).
- (2) Tree permit required. Except as exempted in (3) below, a tree permit is required to remove, cut, or prune trees as follows:
 - (a) Trees located within a critical area or shoreline area, or associated buffers.
 - (b) Trees located within a required landscaping area.
 - (c) Trees located on a private developed or partially developed lot where the total area to be cleared is XX square feet or greater (to be discussed).
 - (d) Trees located on private undeveloped lots.
 - (e) Trees located on city-owned property.
 - (f) Trees located on city right of way.
- (3) Exemptions. The following situations are exempt from obtaining a tree permit that would otherwise be required under this section:
 - (a) Dead, diseased or hazard trees, as determined and/or verified by the City or as determined by a certified arborist, that are located outside of critical areas, shoreline areas and associated buffers.
 - (b) Emergency. A tree may be removed without first obtaining a tree permit in an emergency situation involving immediate danger to life or property provided the City is notified within seven days of the tree being cut, is provided such additional information as the City requests in order to verify the emergency, and an-after-the- fact tree permit is obtained within twenty days following the cutting of the tree, if required.
 - (c) Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of the City.

(4) Other permits required. Other permits may be required as follows:

- (a) Removing, cutting, or pruning of trees located within environmentally critical areas or the associated buffer shall be reviewed in accordance with the environmentally critical areas regulations codified in chapter 16.10 DMMC.
- (b) Removing, cutting, or pruning of trees located within shoreline environments or the associated buffer shall be reviewed in accordance with the shoreline master program codified in chapter 16.20 DMMC.
- (c) Removing, cutting, or pruning of trees in a required landscaping area are subject to the Landscaping and Screening provisions codified in chapter 18.195 DMMC, and/or the requirements identified on the Final Plat.
- (d) Removing, cutting, or pruning of trees located within the City right-of-way shall be reviewed in accordance the Use and Maintenance of Public Rights-of-Way provisions codified in chapter 12.05 DMMC.
- (e) Removal, cutting, or pruning of trees that results in a total area of disturbance greater than XX square feet (to be discussed) shall be reviewed in accordance with the land clearing, grading, and filling provisions codified in Chapter 14.20 DMMC.

Alternatives

The City Council may:

- 1. Adopt the proposed Draft Resolution.
- 2. Adopt the proposed Draft Resolution with a different hearing date.
- 3. Decline to adopt the Draft Resolution.

Financial Impact

Code amendments intended by Substitute Draft Ordinance No. 14-043-A will provide more clarity related to the cutting of trees on private and public property. It will also help control indiscriminate cutting of trees, particularly in environmentally critical areas (i.e., steep slopes, landslide hazard areas) and shoreline zones there is greater potential for impact to the environment, loss or damage to property, or creation of a public safety hazard that can have negative financial implications.

Recommendation or Conclusion

Staff recommends that City Council adopt Draft Resolution No. 14-043-A.

CITY ATTORNEY'S FIRST DRAFT 08/21/2014

DRAFT RESOLUTION NO. 14-043-A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider Substitute Draft Ordinance No. 14-043-A revising and updating City of Des Moines regulations relating to the cutting and removal of trees on private developed sites, private undeveloped sites, public properties, City-owned property and right-of-way, and environmentally critical areas; adding and codifying a new chapter entitled "Trees" to Title 16, amending chapters 14.20, 16.01, and 18.95 of the Des Moines Municipal Code (DMMC) to add new definitions and development regulations; repealing DMMC 18.95.130 and section 424 of Ordinance No. 1591; and finding that the revised development regulations meet the statutory requirements of RCW 36.70A.106

WHEREAS, tree cutting, tree removal and tree retention are regulated pursuant to the Use and Maintenance of Public Rights-of-Way (chapter 12.05 DMMC), Land Filling, Clearing and Grading Code (chapter 14.20 DMMC), Environmentally Critical Areas Code (chapter 16.10 DMMC), Shoreline Master Program (chapter 16.20 DMMC), Layout and Design of Subdivisions and Similar Requirements (chapter 17.35 DMMC), and Landscaping and Screening Requirements (chapter 18.195 DMMC), and

WHEREAS, there is no clear policy or development criteria in the DMMC regarding "best management practices" for the cutting of trees, and

WHEREAS, the City researched and assessed the experience of other jurisdictions in regard to standards and requirements for regulating the cutting of trees, and

WHEREAS, the City Council Environment Committee held three meetings to consider the matter and provided guidance on the development of Draft Ordinance No. 14-043, and

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

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

Resolution No. ____
 Page 2 of ____

WHEREAS, a public hearing was held on May 22, 2014 to consider Draft Ordinance No. 14-043, and a number of concerns were raised at the public hearing, and

WHEREAS, the City Council sent Draft Ordinance No. 14-042 back to the Environment Committee for further review and discussion in order to address the concerns, and

WHEREAS, the Environment Committee met on July 17, 2014 to review and discuss Substitute Draft Ordinance 14-043-A, which was prepared to address concerns raised at the May 22, 2014 Public Hearing, and

WHEREAS, the Environment Committee directed that Substitute Draft Ordinance No. 14-043-A be brought back to the Council for consideration, now therefore

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

The matter of adding and codifying a new chapter entitled "Trees" to Title 16 DMMC, amending chapters 14.20, 16.01, and 18.95 DMMC to add new definitions and development regulations; repealing DMMC 18.95.130 and section 424 of Ordinance No. 1591, is set for a public hearing before the City Council on Thursday, October 2, 2014, at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, Suite B, Des Moines, Washington.

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

M A Y O R

APPROVED AS TO FORM:

Resolution No. ____
Page 3 of ____

City Attorney

ATTEST:

City Clerk

A G E N D A I T E M

SUBJECT: Consultant Services Contract
Addendum with David A. Clark Architects, PLLC
for Design Services for the Des Moines Beach
Park Historic Dining Hall Rehabilitation

ATTACHMENTS:

1. Contract Amendment/Addendum
2. Consultant Services Contract

AGENDA OF: September 11, 2014

DEPT. OF ORIGIN: Planning, Building & Public
Works

DATE SUBMITTED: August 25, 2014

CLEARANCES:

- [X] Legal *JB*
 [X] Finance *ph*
 [] Marina N/A
 [X] Parks, Recreation & Senior Services
 [X] Planning, Building & Public Works *DJB*
 [] Police NA
 [] Courts NA

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *AA*

Purpose and Recommendation:

The purpose of this item is for the City Council to approve an addendum (refer to Attachment 1) to the Consultant Services Contract with David A. Clark Architects, PLLC for additional design services for the Des Moines Beach Park Historic Dining Hall Rehabilitation Project. The following motion will appear on the Consent calendar:

Suggested Motion:

MOTION: "I move to approve Addendum 1 to the Consultant Services Contract with David A. Clark Architects, PLLC for additional design services for the Des Moines Beach Park Historic Dining Hall Rehabilitation Project in the amount of \$10,550.53, bringing the total contract amount to \$125,225.53, and authorize the City Manager to sign the Consultant Addendum substantially in the form as submitted."

Background:

On October 10, 2013, the City Council awarded the Consultant Services Contract (refer to Attachment 2) to David A. Clark Architects, PLLC for Design Services for the Des Moines Beach Park Historic Dining Hall Rehabilitation.

Discussion:

Staff sent out a Notice to Proceed on this work on October 28, 2013. The original scope of work assumed that the dining hall windows would simply be replaced. Upon design review by our project sponsors, we learned that the windows would have to be rehabilitated as is, which was not what the City envisioned or desired for this building.

Staff and the Architect had several meetings and discussions (both onsite and via teleconference) with King County Landmarks and State Historic Preservation regarding issues with the windows and the issues the window repairs/restorations present to the project as a whole. These negotiations resulted in several months of delay to the project schedule, and significant additional work on the project. We have finally reached a resolution on the issues and have proceeded to complete the design and go out for bids based upon those decisions.

The Architect went above and beyond his original scope of work and fee proposal in performing the necessary work and research to arrive at the satisfactory decision. The purpose of this Contract Addendum is to address the extra work effort required by the Architect to redesign the project as required by our project sponsors. Following is a summary of the additional work effort:

- 15 hours spent attending grant presentations with Patrice, and having multiple meetings onsite with the State and County historic preservation folks to discuss window options, and how to address them.
- 13.5 hours of design effort to incorporate all of the extra window work into the plans and specifications.
- 8.5 hours spent developing the many different requested design options, and analysis of those options for feasibility.
- 20.5 hours spent developing the various cost estimates for all of the design options, so that Council could make an informed choice of which design option to ultimately pursue.
- 6 hours spent updating the project plans and specifications.
- Multiple additional hours not claimed coming out to the site to meet with Jeremy Nutting during the demolition work to answer questions.
- Multiple hours not claimed going to window suppliers to pick up various window samples so that we could conduct the various window discussions.

Financial Impact:

There are sufficient funds in the project budget to cover this additional design work.

Alternatives

None.

Recommendation/Conclusion:

Staff recommends that Council approve the Consultant Services Contract Addendum with David A. Clark Architects, PLLC for design services for the Des Moines Beach Park Historic Dining Hall Rehabilitation.

Concurrence:

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

**CONTRACT AMENDMENT/ADDENDUM FORM****CONTRACT FOR DES MOINES BEACH PARK HISTORIC DINING HALL
REHABILITATION DESIGN BETWEEN
THE CITY OF DES MOINES AND DAVID A. CLARK ARCHITECTS, PLLC**

THIS AMENDMENT/ADDENDUM #1 is entered into on this _____ day of _____, 2014, pursuant to that certain Contract entered into on the 24th day of October, 2013, between the **CITY OF DES MOINES**, WASHINGTON (hereinafter "City"), and **DAVID A. CLARK ARCHITECTS, PLLC**, (hereinafter "Consultant"),.

The parties herein agree that the Contract dated October 24, 2013, shall remain in full force and effect, except for the amendments/addendums set forth as follows:

1) **SECTION III A** of Contract dated October 24, 2013, is hereby amended to read as follows:

The total amount of compensation paid to the Consultant, based on time and materials, is increased by \$10,550.53; bringing the contract to a new not to exceed amount of \$125,225.53. The additional compensation is related to the extra work involved in resolving issues with design of the windows.

As Directed by the Des Moines City Council
in Open Public Meeting on _____.



CONSULTANT SERVICES CONTRACT between the City of Des Moines and

David A. Clark Architects, PLLC

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and David A. Clark Architects, PLLC organized under the laws of the State of Washington, located and doing business at 33017 134th Ave. SE, Auburn, WA 98092 (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

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

See attached Exhibit "A" -- Consultant Scope and Fee Proposal, dated October 2, 2013; which is incorporated into this contract.

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

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I by December 31, 2015.

III. COMPENSATION.

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed \$114,675.00 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit "A" for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

- B. The Consultant shall submit monthly payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

IV. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Consultant has the ability to control and direct the performance and details of its work; however, the City shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

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

The Consultant accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Consultant as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

VI. CLAIMS. If the Consultant disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Consultant may file a claim as provided in this section. The Consultant shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Consultant knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by

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

At a minimum, a Consultant's written claim shall include the information set forth in subsections A, items 1 through 5 below.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
 - 1. The date of the Consultant's claim;
 - 2. The nature and circumstances that caused the claim;
 - 3. The provisions in this Contract that support the claim;
 - 4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
 - 5. An analysis of the progress schedule showing the schedule change or disruption if the Consultant is asserting a schedule change or disruption.
- B. Records. The Consultant shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Consultant's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

- C. Consultant's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.
- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Consultant also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).
- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Consultant completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

VII. LIMITATION OF ACTIONS. CONSULTANT MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONSULTANT'S ABILITY

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

VIII. TERMINATION. Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

IX. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

X. INDEMNIFICATION. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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

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

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

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

XI. INSURANCE. The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

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

provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:

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

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

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

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

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

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

D. Verification of Coverage Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

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

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

XIV. CITY'S RIGHT OF INSPECTION. Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

XV. WORK PERFORMED AT CONSULTANT'S RISK. Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultant's own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XVI. MISCELLANEOUS PROVISIONS.

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim

arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section X of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.

F. Entire Contract. The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

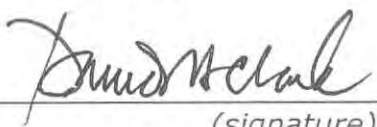
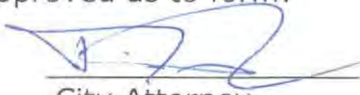
G. Compliance with Laws. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the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

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

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

J. Records Retention and Audit. During the progress of the Work and for a period not less than three (3) years from the date of completion of the Work or for the retention period required by law, whichever is greater, records and accounts pertaining to the Work and accounting therefore are to be kept available by the Parties for inspection and audit by representatives of the Parties and copies of all records, accounts, documents, or other data pertaining to the Work shall be furnished upon request. Records and accounts shall be maintained in accordance with applicable state law and regulations.

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

CONSULTANT: By: <u></u> (signature) Print Name: <u>DAVID A. CLARK</u> Its <u>OPERATING MEMBER</u> (Title) DATE: <u>10/21/13</u>	CITY OF DES MOINES: By: <u></u> (signature) Print Name: <u>Anthony A. Piasecki</u> Its <u>City Manager</u> (Title) DATE: <u>10/24/13</u> Approved as to form: <u></u> City Attorney DATE: <u>10/24/13</u>
---	---

At the direction of the Des Moines
 City Council taken at an open public
 meeting on OCTOBER 10, 2013.

NOTICES TO BE SENT TO: CONSULTANT: David A. Clark David A. Clark Architects, PLLC 33017 134th Ave. SE Auburn, WA 98092 (253) 351-8877 (telephone) (253) 804-6566 (facsimile)	NOTICES TO BE SENT TO: CITY OF DES MOINES: Scott J. Romano City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 (206) 870-6539 (telephone) (206) 870-6596 (facsimile)
---	---

9

10

Des Moines Beach Park Historic Dining Hall Rehabilitation
Consultant's Scope and Fee
 October 2, 2013

Project scope:

All design work shall be targeted to the owner's priorities to obtain the highest and best use of the available funds. Please see detailed scope listed on page four below. Our tasks are as follows:

Task 1.1:

Review the previous design drawings and prepare cost estimate to determine the amount of work that can be accomplished for the \$825,000 budget. Segment scope of work based on Owner's list of priorities.

Task 1.2:

Review Owner's program and prepare design development drawings to fit the Owner's program and the construction budget. Update the cost estimates. Obtain owner's approval of the DD work or revise DD drawings until Owner's approval is obtained. Prepare phasing steps if requested. Attend public meetings and council meetings as requested.

Task 2.1

Prepare construction documents for permitting. Hold meetings with the building department to determine scope of submittal. Review code requirements and prepare code check plans. Complete submittal forms and make permit submittals. Update cost estimate.

Task 2.2

Update permit drawings after permit approval and Owner review and coordination meetings with sub consultants. Prepare specifications and assist the Owner in preparation of division 0 boiler plate. Update costs estimate and obtain Owner's approval to bid.

Task 3

Submit the project to Bid through Owner's preferred method. Prepare addendums as required. Review substitution requests. Answer questions and conduct pre-bid conference. Attend the bid opening and vet the apparent low bidder. Make presentation to council if requested.

Task 4

Construction Administration. Complete CA work as indicated in complete scope of services in article 3.6, below.

Goals:

Goals are an element of the Owner's wish list compared to the construction funds available. The Architect will support the goals set forth by the Owner as follows:

Goal #1: Remove red tag:

1. *Restoring utilities*
2. *Structural improvements*
3. *ADA restroom(s)*
4. *Restore exterior exit doors and provide proper hardware*
5. *Install code required lighting*
6. *Install fire sprinklers*

Goal #2: Provide program & community usage:

1. Roofing
2. Repair siding and remove dry rot in walls
3. Wall and roof insulation
4. Kitchen
5. HVAC upgrades
6. Painting
7. Window repair

Goal #3: Cosmetic/fully functioning tasks:

1. Windows
2. Restore stairs to the second floor
3. Flooring

Reviews:

We recommend reviews after task 1, task 2.1 and 2.2. We assume our interim review will be conducted by both Parks and PW.

Project deliverables:

Review sets will be submitted in either electronic or paper formats, as requested. All printing would be accomplished at cost plus 10%.

Governing Documents:

Division 0 documents will be prepared by the City, divisions 1-17 will be prepared by the Consultant. The Architect will provide AIA documents that will be incorporated as a secondary document after the WSDOT Standard Specifications for Road, Bridge and Municipal Construction, current edition.

Owner's Consultants and Owner's Contractors:

Owner will engage the services of a hazardous waste consultant and abatement contractor for completion of the abatement work prior to the Architect's work, and shall be solely responsible for overseeing the abatement work. The Architect is not involved in the abatement work in any way. The Owner shall further engage the services of a material testing agency and commissioning agents necessary for the scope of work and successful completion of the building project. The Architect's cost estimates will include budget estimates for the material testing and inspection agencies.

Relationships:**Owner-Architect:**

The Parks department is the end user and client, Public Works Project Manager as the liaison to other departments and administration. We will be open to both Parks and PW PM and any other department, but accept final direction from the PW PM.

Owner-Contractor:

The Owner shall make all communication with the Contractor through the Architect, except in the case of emergency and the Architect is not immediately available.

Architect-Contractor:

The Architect and the Contractor shall communicate through each other and shall not have direct communication with the Owner or the subcontractors unless an emergency exists.

Architect-Architect's Sub-Consultants:

The Architect's subconsultants report only to the Architect and will have no direct interaction with the Owner or the contractor without the Architect present. The Contractor and the Owner will communicate through the Architect as the prime consultant.

Architect-Owner's Agencies:

The Architect will support the Owner in their communication and interaction with granting and historical agencies.

Meetings:

The Architect shall participate in public presentations as reasonably requested by the Owner.

**A/E fee – Fixed amount based on
the construction cost of the project**

					\$ 114,675
Design Development Task 1				24%	\$ 27,522.00
Principal	103.0	166.15	17,119.90		
Designer/Drafting	85.8	85.53	7,337.10		
MEPS Consultants (estimated)			3,065.00		
Construction Documents Task 2				54%	\$ 61,924.50
Principal	128.3	166.15	21,312.23		
Designer/Drafting	304.6	85.53	26,048.28		
MEPS Consultants (estimated)			14,564.00		
Bidding Task 3				3%	\$ 3,440.25
Principal	17.5	166.15	2,900.25		
Designer/Drafting	0.0	85.53	0.00		
MEPS Consultants (estimated)			540.00		
Construction Observation Task 4				19%	\$ 21,788.25
Principal	106.5	\$166.15	17,696.93		
Designer/Drafting	23.0	85.53	1,966.33		
MEPS Consultants (estimated)			2,125.00		

Inclusions:

Architectural design, Mechanical engineering, Structural engineering, Electrical engineering, Civil engineering, and cost estimating. Includes drafting changes required by RFI replies. See complete scope beginning on page four, below.

Exclusions:

The Architect's scope of work does not include landscape architectural, survey, environmental, hazardous material survey/ removal/mitigation, LEED, material testing, colored renderings, animation and 3d drawings, noise studies, commissioning, furniture, fixture and equipment, soils engineering, printing, deliveries, etc, sales taxes, full time or extensive construction observation, drafting record dimensional drawings completed by the contractor. All hazardous waste and lead abatement will be completed by the Owner and are not a part of the Architects' scope.

Complete Scope of Services

ARTICLE 1 THE SERVICES

1.1 General Description: Provide professional Architectural services for the renovation of the Des Moines Dining Hall Renovation project.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

2.1 The Architect shall provide the professional services as set forth in the agreement and its attachments.

2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall conform with all rules reasonably established by the Owner.

2.3 The Architect identifies David Clark, a representative authorized to act on behalf of the Architect with respect to the Project as the project manager.

2.4 The Architect shall procure and maintain for the duration of the Agreement, insurance of the types and in the amounts required by the Owner. Certificates and endorsements shall be provided as set forth by the Owner.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services.

3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants.

3.1.3 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

3.3 DESIGN DEVELOPMENT PHASE SERVICES

3.3.1 The Architect shall prepare Design Development Documents for the Owner's approval.

3.3.2 The Architect shall update the estimate of the Cost of the Work.

3.3.3 The Architect shall submit the Design Development documents to the Owner and advise the Owner of any adjustments to the estimate of the Cost of the Work.

3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

3.4.1 The Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work.

3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

3.4.3 During the development of the Construction Documents, the Architect shall prepare bidding documents.

3.4.4 The Architect shall update the estimate for the Cost of the Work and shall advise the Owner of any adjustments to the estimate of the Cost of the Work.

3.5 BIDDING PHASE SERVICES

3.5.1 GENERAL

The Architect shall assist the Owner in (1) obtaining competitive bids; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid, if any; and, (4) awarding and preparing contracts for construction.

3.5.2 COMPETITIVE BIDDING

3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

3.5.2.2 The Architect shall assist the Owner in bidding the Project.

3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

3.6 CONSTRUCTION PHASE SERVICES

3.6.1 GENERAL

3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201, General Conditions of the Contract for Construction and the WSDOT Standard specifications for Road, Bridge and Municipal Construction.

3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement.

3.6.1.3 The Contractor only, not the Owner or the Architect, shall have control over or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.

3.6.2 EVALUATIONS OF THE WORK

3.6.2.1 The Architect shall visit the site once per week during active construction activity to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, the Architect shall keep the Owner informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

3.6.2.2 The Architect or the Owner has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed.

3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in good faith and in writing within any time limits agreed upon or otherwise with reasonable promptness.

3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either.

3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents.

3.6.3.2 The Architect shall maintain a record of the Applications and Certificates for Payment.

3.6.4 SUBMITTALS

3.6.4.1 The Architect shall review the Contractor's submittals with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

3.6.4.2 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Accuracy and completeness of dimensions and quantities on the shop drawings are the Contractor's responsibility.

3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

3.6.5 CHANGES IN THE WORK

3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

3.6.5.2 The Architect shall maintain records relative to changes in the Work.

3.6.6 PROJECT COMPLETION

3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

3.6.6.4 The Architect shall forward to the Owner any documentation required of the Contractor under the Contract Documents.

3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Transportation Gateway Project:
Consultant Agreement Supplement for
Construction Engineering and
Inspection Services for the 24th
Avenue S Improvement Project (S.
216th Street to S. 208th Street)

ATTACHMENTS:

1. Proposed Consultant Agreement Supplement No. 12
2. Consultant Agreement Supplement #10
3. 2014-2019 CIP Budget Worksheet

AGENDA OF: September 11, 2014

DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: September 3, 2014

CLEARANCES:

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

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:** [Signature]

Purpose and Recommendation:

The purpose of this item is to seek Council approval of a Supplemental Agreement #12 (Attachment 1) with KPG Consulting Engineers, Inc. for additional Construction Engineering and Inspection Services for the 24th Avenue South Improvement project. Administration recommends that the Council approve the Consultant Agreement. The following motion will appear on the consent calendar.

Suggested Motion

Motion: "I move to approve Supplemental Agreement #12 with KPG Consulting Engineers, Inc. for additional Construction Engineering and Inspection Services necessary for the 24th Avenue South Improvements (S. 216th Street to S. 208th Street) in the amount of \$108,230.68, bringing the total Agreement amount to \$3,945,705.25, and further authorize the City Manager to sign the contract supplement substantially in the form as submitted."

Background

On March 26, 2009, the City Council approved a Consultant Agreement with KPG Consulting Engineers, Inc. (KPG) for the preliminary design phase of the improvements on 24th Avenue South

between South 216th Street and South 208th Street, as well as South 216th Street from I-5 to 18th Avenue South. These improvements are collectively referred to as the Transportation Gateway Project.

KPG was recommended as the most qualified team for this work based upon evaluation of five qualified firms who responded to an advertized RFP for professional services. This solicitation covered all aspects of design and construction including provisions that the project may be phased: preliminary design; final engineering plans, specifications and estimates (PS&E); right of way acquisition; as well as construction administration and inspection services upon satisfactory work performance.

The design work for this project has been managed by supplemental agreements with KPG to advance the project from preliminary planning to final design stages including preparation of engineering documents for various segments of the Transportation Gateway Project. On November 29, 2009, based upon the preliminary design report recommendations and extensive citizen involvement, the Council selected an “offset alignment” and approved a supplemental agreement with KPG to conduct final PS&E and right of way acquisition services.

PS&E, environmental work and right of way acquisition processes followed approved Federal guidelines and City of Des Moines procedures. Per direction of the City Council and available funding, two segments of the project were advanced into a “shovel ready” project phase including full right of way acquisition: S. 216th Street, Segment 2 (between 24th Avenue S. and 18th Avenue S) and 24th Avenue South (between S. 216th Street and S. 208th Street). KPG also assisted the City in preparation of materials to successfully compete for full construction funding with the Puget Sound Regional Council (PSRC) and the Washington State Transportation Improvement Board (TIB).

On November 26, 2012, the TIB authorized award of a construction contract and obligated up to \$3,780,502 in state funds for construction and construction management services on the S. 216th Street, Segment 2 improvements. On August November 29, 2012 the City Council awarded a contract for construction of S. 216th Street Segment #2 in the amount of \$5,156,507, plus a 10% contingency. Simultaneously, the Council also approved a supplemental agreement with KPG (Supplement #9, \$559,953.60) to provide construction engineering and inspection services for the project. This project was completed ahead of schedule and expected to fall within the City Council approved budget.

The Transportation Gateway Project, 24th Avenue South improvements are under construction as authorized by the City Council on August 8, 2013 under a \$4,858,947.95 construction contract to DPK, Inc. The Council authorized up to a 10% contingency. The project is funded by the federal Surface Transportation Project (STP) as a phase of the regional “Connecting 28th/24th Avenue South” sponsored jointly by the City of SeaTac and the City of Des Moines. The Federal Highways Administration (FHWA), on April 4, 2013, obligated \$3 million funds for construction of the 24th Avenue South segment in the City of Des Moines.

Agreements are in place for all franchise utilities involved in undergrounding of power, water and communications lines. In advance of the call for bids, Midway Sewer District, PSE Gas and PSE high voltage transmission lines were installed and/or relocated in preparation for construction. The Council approved an agreement with Highline Water District to include replacement of a 12” water line as part of the contract, subject to reimbursement of construction and related construction engineering costs.

Concurrent with approval of the 24th Avenue South construction contract, the City Council authorized Supplemental Agreement #10 (see Attachment #2) with KPG, Inc for construction engineering services with fees estimated at \$688,092. Supplemental Agreement # 11 in the amount \$279,523.71 was

approved by the Council on March 13, 2014 to proceed with S. 216th Street Segment 1A (24th Avenue S to SR99) design and right of way services. Segment 1A is progressing including successfully competing for \$1million in FHWA ROW funding (2015) and \$892,000 in FMSIB partial construction funding (2016). Work continues to modify plans, secure right of way, and leverage partnerships in seeking remaining construction funds. The total maximum contract amount for Transportation Gateway Project consultant engineering expenses will be \$3,945,705.25 with Council approval of Supplemental Agreement #12 (see Attachment #1).

Discussion

Currently construction is approximately 65% complete with underground utilities, curb, gutter, sidewalks, street lighting and the initial course of pavement installed on the west side of the street. The contractor is clearing on the east side of the street, installing a new 12" water main for the Highline Water District as well as finishing other drainage and utility work in preparation for installation of remaining curb, gutter and sidewalk.

Several unforeseen construction related activities have added 38 working days to the contract which has added additional construction costs as well as inspection and administrative costs to the project. Early in the grading work, a significant amount of unforeseen, unsuitable soils were encountered requiring removal, disposal and replacement on the west side of the right of way. During the course of the project it was also necessary to coordinate with the Port of Seattle development to ensure that conflicts with future driveways and improvements were minimized, particularly regarding the location of underground utilities. Puget Sound Energy also requested underground utility change orders to the contract (100% reimbursable) to accommodate future development. These change orders and other minor changes have added 38 additional working days to the contract. The current Engineers estimate of the construction cost to complete is \$5,139,154.71 (7/6/14) and is within the 10% contingency authorized by the council. The completion date is weather dependent, but is scheduled for December 2, 2014.

These additional working days as well as design work required for coordination with the Port of Seattle's Des Moines Creek Business Park development increased the estimated cost of construction services by \$108,230.68. The total cost of construction engineering and inspection services for 24th Avenue South (Attachments 1 & 2) are estimated to be about \$796,323, or 15.5% of the estimated cost to complete construction. This construction engineering and inspection percentage is in line with typical percentages for federally funded projects.

Alternatives

The Council could choose to not reimburse KPG for these additional construction services. Provision of these construction services are critical to managing the project scope, schedule and budget as well as adhering to FHWA requirements for project management and funding to finish the project.

Financial Impact

A copy of the 2014-2019 project budget worksheets from the Transportation CIP is provided as Attachment 3. In summary, the project is within budget.

There are a number of funding partners on the project. The Federal Highway Administration obligated \$3,000,000 in federal funds for construction and has been reimbursing the City. The Port of Seattle, supplemented the City budget by contributing \$3,500,000 for 24th Avenue South frontage improvements as part of the Second Development Agreement for the Des Moines Creek Business Park. This contribution from the Port of Seattle was received by the City in May, 2013 and the Port is proceeding to develop the property under an agreement with Panattoni Development Company. The Highline Water

District Agreement, approved by the Council on June 6, 2013, reimburses the City for 12" water main replacement along the corridor. (\$540,580-Schedule E, plus \$60,000 for construction administration, engineering, and inspection).

Aerial utilities are being undergrounded as part of the improvement project, including facilities from Puget Sound Energy, CenturyLink, and Comcast. Each of the utilities are partnering with the City on the costs associated with the undergrounding, in accordance with current regulations. Change orders requested by the utilities are 100% reimbursable.

Reimbursement for engineering costs associated with PSE change orders (\$25,819.79) will be negotiated in the final settlement of the Schedule 74 agreement related to underground utility charges. The \$8117.81 in survey expenses have been reimbursed to the City by PSE.

Revenues are consistent with the 2014-2019 budget estimates including full funding for administration, construction, CM, engineering and inspection. The minimum 13.5% local funding match required for federal grant funds has been met.

Recommendation or Conclusion

Staff recommends approval of Supplement #12 with KPG for additional CM and Inspection Services.

Concurrence

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



**Washington State
Department of Transportation**

Supplemental Agreement Number <u>12</u>		Organization and Address KPG 753 9th Avenue North Seattle, WA 98199	
Original Agreement Number		Phone: 206-286-1640	
Project Number STPUL-1231(006)	Execution Date 3/26/2009	Completion Date 06/30/2015	
Project Title Transportation Gateway Project	New Maximum Amount Payable \$ 3,945,705.25		
Description of Work Port coordination and additional construction services for: City of Des Moines Transportation Gateway Project - 24th Avenue South			

The Local Agency of the City of Des Moines

desires to supplement the agreement entered into with KPG

and executed on 3/26/2009 and identified as Agreement No. _____

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

Provide Port coordination and additional construction services in accordance with Exhibit A-12

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: Time for completion shall be June 30, 2015.

III

Section V, PAYMENT, shall be amended as follows:

Cost for this work shall not exceed \$108,230.68, as shown on Exhibit E-12 without authorization from the City

If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to this office for final action.

By: Nelson Davis, KPG

By: City of Des Moines



Consultant Signature

Approving Authority Signature

EXHIBIT A-12**City of Des Moines****Transportation Gateway Project****Scope, Hour and Fee Estimate****July 23, 2014****Supplement 12 – Port Coordination and Additional Construction Services****Des Moines Transportation Gateway Project – 24th Avenue South****Federal Aid No. STPUL-1231(006)****Contract No. TA4991**

This work will provide additional construction management services for the construction contract to complete the City of Des Moines Transportation Gateway Project – 24th Avenue South (hereinafter called “Project”). These services will include project management, documentation control, inspection, materials testing, engineering design, and contract administration associated with the following changes:

- Coordination and implementation of changes associated with the Port development;
- Coordination and implementation of Puget Sound Energy revisions;
- Construction services for additional working days associated with the Port development change order, Puget Sound Energy change orders, and unsuitable base material removal change order;
- Assistance with relocation of PSE high voltage facilities on the east side of 24th Avenue S.

This work is supplemental to the Supplement 10 authorization to complete construction services for the 24th Avenue S project. A detailed scope for the Contract follows:

I. SCOPE OF WORK**TASK 1 – PORT COORDINATION AND ADDITIONAL CONSTRUCTION SERVICES**

- 1.1 The Consultant shall work with the City for coordination with the Port of Seattle developer to review proposed access locations and necessary revisions to the 24th Avenue S Plans to accommodate upcoming development. This coordination may include, but is not necessarily limited to, providing provisions for future driveways, median and planter modifications, illumination revisions, and preparation of design and change order documentation to implement the agreed upon revisions.

- 1.2 The Consultant shall provide office and field construction services for the additional 5 working days provided by the Port development change order.
- 1.3 Puget Sound Energy (PSE) requires additional communication and power infrastructure associated with the upcoming Port development. The Consultant shall prepare necessary documentation to execute change orders associated with the additional PSE infrastructure.
- 1.4 The Consultant shall provide office and field construction services for the additional 10 working days provided by the PSE infrastructure change orders.
- 1.5 Following clearing and grading activities on the west side of 24th Avenue S, extensive unsuitable base material was encountered as a result of landfilling of vegetation associated with the previous noise mitigation area demolition in this area. A change order was prepared for removal of the unsuitable base and replacement with structural roadway base material. The Consultant shall provide office and field construction services for the additional 22 working days provided by the change order for removal of unsuitable base material.

TASK 2 – PSE HIGH VOLTAGE RELOCATION

- 2.1 Puget Sound Energy high voltage relocation design along 24th Avenue S was found to be in conflict with proposed roadway improvements. The Consultant shall provide design and survey support to assist PSE with placement away from proposed improvements.

HOUR AND FEE ESTIMATE

EXHIBIT E-12

Project: City of Des Moines
 Transportation Gateway Project - 24th Avenue South
 Supplement No. 12 - Port Coordination and Additional Construction Services



Task	Description	Labor Hour Estimate									Total Fee
		*Project Manager	*Senior Engineer	*Project Engineer	*Design Engineer	Const *Technician	*Survey Crew	*Doc Specialist	*Const Inspector	*Const Admin	Fee
		\$ 183.52	\$ 135.95	\$ 117.83	\$ 101.65	\$ 84.71	\$ 136.68	\$ 97.20	\$ 99.90	\$ 70.47	

Task 1 - Port Coordination and

1.1	Port Development coordination and change orders	2	16	40	60	24	0	60	4	8	\$ 22,183.34
1.2	Construction services for Port changes (5 days)	0	0	40	0	10	0	20	40	20	\$ 12,909.90
1.3	PSE requested change order preparation	0	0	0	20	0	0	0	4	0	\$ 2,432.69
1.4	Construction services for PSE changes (10 days)	0	0	80	0	20	0	40	80	40	\$ 25,819.79
1.5	Construction services for unsuitable exc (22 days)	0	0	0	88	0	0	22	176	44	\$ 31,767.15
	Reimbursable expenses - Mileage										\$ 1,000.00
	Reimbursable expenses - Materials testing (HWA)										\$ 4,000.00
	Task Totals	2	16	160	168	54	0	142	304	112	\$ 100,112.87

Task 2 - PSE High Voltage Relocation

2.1	Design and survey for PSE high voltage relocation	0	1	47	0	0	11	0	8	2	\$ 8,117.81
	Reimbursable expenses										\$ -
	Task Totals	0	1	47	0	0	11	0	8	2	\$ 8,117.81

Total: \$ 108,230.68

* Hourly rates are based on the following:

	Totals									
Direct Salary Costs	\$ 62.50	\$ 46.30	\$ 40.13	\$ 34.62	\$ 28.85	\$ 46.55	\$ 36.00	\$ 37.00	\$ 24.00	\$ 36,859.54
Overhead Rate					163.63%					\$ 60,313.27
Fixed Fee					30%					\$ 11,057.86



Washington State
Department of Transportation

Supplemental Agreement Number <u>10</u>		Organization and Address KPG 753 9th Avenue North Seattle, WA 98199 Phone: (206) 286-1640	
Original Agreement Number			
Project Number	Execution Date 08/08/2013	Completion Date 12/31/2014	
Project Title Transportation Gateway Project		New Maximum Amount Payable \$ 3,557,950.86	
Description of Work Construction services for: City of Des Moines Transportation Gateway Project - 24th Avenue South			

The Local Agency of the City of Des Moines
desires to supplement the agreement entered into with KPG
and executed on 08/08/2013 and identified as Agreement No. _____
All provisions in the basic agreement remain in effect except as expressly modified by this supplement.
The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

Provide construction services in accordance with Exhibit A-10.

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: Time for completion shall be December 31st, 2014.

III

Section V, PAYMENT, shall be amended as follows:

Cost for this work shall not exceed \$688,091.86, as shown on
Exhibit E-10 without separate authorization from the City.

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to this office for final action.

By: Nelson Davis, KPG

By: City of Des Moines

Consultant Signature

Approving Authority Signature

8/20/2013

Date

At the direction of the Des Moines
City Council taken at an open public
meeting on August 8, 2013.

EXHIBIT A-10**City of Des Moines****Transportation Gateway Project****Scope, Hour and Fee Estimate****June 28th, 2013****Supplement 10 – Construction Services****Des Moines Transportation Gateway Project – 24th Avenue South****Federal Aid No. STPUL-1231(006)****Contract No. TA4991**

This work will provide construction management services for the construction contract to complete the City of Des Moines Transportation Gateway Project – 24th Avenue South (hereinafter called “Project”). These services will include project management, documentation control, inspection, materials testing, public involvement, and contract administration during the construction of the project, as detailed below. KPG (“Consultant”) will provide to the City of Des Moines, Washington (“City”) construction management and engineering services for the project. A detailed scope for the Contract follows:

I. INTRODUCTION

The following scope of services and associated costs are based upon the assumptions outlined below.

Assumptions:

- The proposed project team will include a part-time project manager, a part-time project engineer, one full-time documentation control specialist, one full-time & one part-time inspector during construction activities, necessary sub-consultants to provide services for materials testing, and other supporting tasks as deemed necessary. The level of services is based on a project duration of approximately 10 months, or approximately **200 working days**. It is anticipated that full time site observation will be required for the entire duration of construction and that supplemental observation will be necessary for specialized work elements such as urban design, landscaping, signals, illumination, and major storm facilities.
- Services will be performed in accordance with the WSDOT Local Agency Guidelines (LAG), the WSDOT Construction Manual, the interlocal Agreements between Highline Water District, PSE, CenturyLink, and Comcast (“Utilities”), and the City of Des Moines street standards.
- For work on Utility Schedules, the Consultant will coordinate with the Utilities as lead in administering the work of the Contractor as per the terms of the Interlocal Agreement between

the Utilities and the City of Des Moines. The Utilities will provide field inspection for all work surrounding the construction of the utility systems, as described in the interlocal agreement, and bid documents. The Consultant will provide administrative support for inspection and field duties relating to the Utilities work, including all documentation control and testing as needed. Simultaneous work will be ongoing with roadway improvements, requiring separate observation and management by the Consultant.

- Services considered incidental to this work include management of temporary construction licenses secured by the City. The consultant will also administer the work of the Contractor consistent with said licenses as well as the terms of any easements secured for project improvements.
- Hours of work. Work is anticipated to take place during daylight hours on a single shift of 8 hours per day, 5 days per week. No night or weekend work is anticipated as part of this scope of services.
- **Field office:** It is recognized that the Contractor will provide a field office and other items for use by field staff. Other items and supplies may be needed for the field office, including marking paint, and other items, which will be invoiced.
- The Consultant shall coordinate work with the adjacent development of the Port of Seattle's Des Moines Creek Business Park as well as ongoing construction of South 216th Street - Segment 2, Including but not limited to coordination of potential driveway cuts on the west side as well as possible modification of the size and location of the center landscape medians..

Project Objectives

The objective and purpose of this Construction Management Services Agreement is for the Consultant to successfully deliver the construction of the Project to the City by ensuring that the improvements are constructed in accordance with the approved Plans and Specifications, as may be amended or revised, that all of the required Project documentation is accounted for, and ultimately that the City receives an outstanding review by WSDOT local programs at the end of the Project.

II. SCOPE OF WORK

TASK 1 – MANAGEMENT/COORDINATION/ADMINISTRATION

Provide overall project management, coordination with the City, monthly progress reports, and invoicing. This effort will include the following elements.

- Organize and layout work for project staff. Prepare project instructions on contract administration procedures to be used during construction.

- Review monthly expenditures and CM team scope activities. Prepare and submit project progress letters to the City along with invoices describing CM services provided each month. Prepare and submit reporting required by funding source(s), if any.

Deliverables

- Monthly invoices and progress reports

TASK 2 – ON-CALL SURVEYING

The City's Contractor will be providing construction staking for the project Control has been provided in the bid documents. No construction staking has been provided as part of this scope.

- The Consultant will provide quality control survey to spot check critical location and/or control information. A total of 40 hours of crew time are included in the estimated costs for these services.

TASK 3 – PRECONSTRUCTION SERVICES

- 3.1 **Preconstruction Conference:** The Consultant will prepare an agenda for, distribute notices of, and conduct a preconstruction conference in the City's offices. The Consultant's project manager, project engineer, document control specialist, and inspector(s) will attend the preconstruction conference. The Consultant will prepare a written record of the meeting and distribute copies of the minutes to all attendees and affected agencies, staff, etc.

At the Pre-construction conference, the Consultant shall facilitate discussions with the Contractor concerning the plans, specifications, schedules, issues with utilities, unusual conditions, federal, state, and local requirements, EEO, DBE and training requirements, and any other items that will result in better project understanding among the parties involved.

- 3.2 **Preconstruction Photos:** Preconstruction photographs will include existing condition of the project right-of-way, and all relevant buildings adjoining the site. Photos will be cataloged as to their location, date, and other relevant information. Consultant will provide one set of preconstruction photographs to the City in digital format.

Deliverables

- Preconstruction conference agenda with meeting minutes
- Preconstruction photos
-

TASK 4 – COMMUNITY OUTREACH

- 4.1 **Community Communication:** The Consultant shall serve as the primary contact for public inquiries about the project. The Consultant will develop responses to inquiries within 24 hours. The Consultant will produce and distribute monthly e-mails with updated project information. The consultant will develop and regularly maintain a communications log that documents all inquiries and their resolution. This will include utilizing the answering machine to collect phone calls from the public, and responding to inquiries. All calls will be recorded in a phone memorandum. Three project flyers will be prepared as part of the community communication. The flyers will be mailed by the City and prepared by the Consultant.
- 4.2 **Project Website Assistance:** The Consultant shall develop draft text for the project website and provide regular updates of the project schedule and progress every month. These updates will be provided in e-mail format with four pictures per update to document progress. The City will host and post updates to the project website. Information on traffic control impacts to local residents can be included as part of the project update.
- 4.3 **Council Meeting Assistance:** The Consultant shall provide assistance to City staff in preparing for Council meeting reports and presentations as needed during the course of the construction Project. The Consultant will attend up to two Council meetings, and assist City staff in making presentations to the City Council on issues related to the Construction of the Project. Graphic support may be needed, but in electronic format only (PowerPoint etc.).

Deliverables

- Distribute monthly emails with updated project information.
- Prepare project flyers for the City to distribute
- Develop draft text for project website with regular updates.

TASK 5 – CONSTRUCTION SERVICES - FIELD

- 5.1 The Consultant shall provide the services of one part-time project engineer, one full-time inspector, one part time inspector, the equivalent of one full time documentation control specialist, and other tasks necessary to monitor the progress of the work. Construction staff shall oversee the following items of Work, on the project site, and will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City.
- Roadway widening - construct curb, gutter, and sidewalks along both sides of 24th Avenue South from South 216th Street to South 208th Street.
 - Clearing, grubbing, roadway and structure excavation.
 - Paving with hot mix asphalt and cement concrete approaches.
 - Storm drainage improvements including flow control and water quality facilities.
 - Adjustment of surface utilities to grade.
 - Installation of lane markers, signs, and other channelization.
 - Overhead utility conversion.
 - Installation of irrigation, landscaping, fencing, and property restoration.
 - Installation of illumination and modifications to existing traffic signal systems.
 - Highline Water District water main construction – Additive Bid Schedule E

- And all incidental items necessary to complete the Work as described in the Plans and/or Specifications.
- Coordination of Traffic Control with the City of SeaTac at S. 208th Street
- Coordination of the DMCBP development with potential new driveway cuts to the west and possible modifications to the size and location of the center landscape medians.

The Utilities will provide inspection for work associated with the Utility Schedules; however, the Consultant shall administer the work of the Contractor as provided under the agreements between the City and the Utilities. The presence of the Consultant's personnel at the construction site is for the purpose of providing to the City a greater degree of confidence that the completed work will generally conform to the Contract Documents, meet all applicable federal funding requirements, and ensure that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction Contractor(s). The Consultant's personnel shall act in accordance with Section 1-05.1 and 1-05.2 of the current WSDOT Standard Specifications. The Consultant will endeavor to protect the city against defects and deficiencies in the work of the Contractor(s), but cannot guarantee the Contractors' performance and shall not be responsible for construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the work performed by the construction contractor(s) and any subcontractors.

Field inspection staff will perform the following duties as a matter of their daily activities:

- i. Observe technical conduct of the construction, including providing day-to-day contact with construction contractor, City, utilities, and other stakeholders, and monitor for adherence to the Contract Documents. The Consultant's personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the Standard Specifications.
- ii. Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes, and notify construction contractor of noncompliance. Advise the City of any non-conforming work observed during site visits.
- iii. Document all material delivered to the job site in accordance with the LAG Manual.
- iv. Prepare daily inspection reports, recording the construction contractor's operations as actually observed by the Consultant; includes quantities of work placed that day, contractor's equipment and crews, and other pertinent information. All daily inspection reports will adhere to WSDOT Local Agency Guidelines.
- v. Interpret Contract Documents in coordination with City and KPG.
- vi. Resolve questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction contractor.
- vii. Establish communications with adjacent property owners. Respond to questions from property owners and the general public.
- viii. Coordinate with permit holders on the Project to monitor compliance with approved permits, if applicable.
- ix. Prepare field records and documents to help assure the Project is administered in accordance with funding agency requirements (Construction Manual 10-2.1B). The Utilities will provide measurement and payment information to the consultant for development of monthly pay estimates.

- x. Collect and calculate delivery tickets and scalesmans daily reports of aggregate. All tickets will be initialed with correct bid item and stationing identified. Construction Manual 10-2
- xi. Attend and actively participate in regular on-site meetings.
- xii. Take periodic digital photographs during the course of construction.
- xiii. Coordinate with the City's and/or WSDOT's utility and traffic signal operations and maintenance personnel.
- xiv. Conduct wage rate interviews, DBE interviews and Training Interviews in accordance with the LAG Manual.
- xv. Punch list. Upon substantial completion of work, coordinate with the Client and affected agencies, to prepare a 'punch list' of items to be completed or corrected. Coordinate final inspection with those agencies.
- xvi. Audits: Provide oversight during audits performed by WSDOT Local Programs and others.

Assumptions:

- Consultant will provide observation services for the days/hours that their Inspector(s) personnel is/are on-site. The Inspector(s) will not be able to observe or report construction activities, or collect documentation, during the time they are not on-site.
- The Consultant's monitoring of the construction contractor's activities is to ascertain whether or not they are performing the work in accordance with the Contract Documents; in case of noncompliance, Consultant will reject non-conforming work, and pursue the other remedies in the interests of the City, as detailed in the Contract Documents. The Consultant cannot guarantee the construction contractors' performance, and it is understood that Consultant shall assume no responsibility for: proper construction means, methods, techniques; project site safety, safety precautions or programs; or for the failure of any other entity to perform its work in accordance with laws, contracts, regulations, or City's expectations.

- 5.2 **Materials Testing:** Coordinate and manage materials testing sub-consultants for construction services, who will provide materials testing services as required, up to \$60,000. Coordinate the work of the materials testing technicians and testing laboratories in the observation and testing of materials used in the construction; document and evaluate results of testing; and address deficiencies. Frequency of testing shall be as prescribed in the WSDOT Construction Manual and LAG manual for the following materials: structural concrete, roadway asphalt, roadway surfacing, roadway base material, and structural grout and any other testing as prescribed within the project Specifications and WSDOT Standard Specifications 2012.

Qualified tester requirements as identified in WSDOT LAG 52.3.32 illustrate that for projects on non-NHS highway systems, there is no requirement for qualified testers, but the requirements within the manual must be followed if federal funding applies. Therefore, material testing will be conducted by contracted subconsultant laboratories services that meet the following accreditations: AASHTO R18, A2LA, USACE, Ecology, AMRL, CCRL. The subconsultant laboratory personnel will hold certifications from ACI and NICET.

Assumptions:

It is assumed that materials that require fabrication inspection per WSDOT LAG 52.3.32 will be conducted by WSDOT through contract with the City. Materials that fall within this

category include: structural steel beams or fabricated welded items, structural precast concrete items, and signs.

- 5.3 **Substantial Completion:** Upon substantial completion of work, coordinate with the City and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or 'punchlist' of items to be completed. A punchlist and Certificate of Substantial Completion will be prepared by the Consultant and issued by the City.

Deliverables

- Daily Construction Reports with project photos – submitted on a weekly basis
- Punch List, Certificate of Substantial Completion
- Review test reports for compliance

TASK 6 – CONSTRUCTION SERVICES - OFFICE

- 6.1 **Document Control.** Original documentation will be housed at the Consultant's office, and filed in accordance with standard filing protocol to meet WSDOT Highways & Local Program Requirements. A copy of working files will be maintained in the field office.

Document Control also consists of preparing Final Project Reports for the City for WSDOT and FHWA acceptance and include:

- Final Estimate (Approving Authority File)
- Comparison of Preliminary and Final Quantities (Approving Authority File)
- Final Records as identified in WSDOT LAG (Approving Authority File)
- Record of Material Samples and Tests
- Materials Certification
- Affidavit of Wages Paid
- Release for the Protection of Property Owners and General Contractor
- DOT Form 422-102 EF, Quarterly Report of Amounts Credited as DBE Participation

- 6.2 **Project Coordination:** Liaison with City, construction contractor, engineer, utilities and property owners on a regular basis to discuss project issues and status.
- 6.3 **Plan Interpretations:** Provide technical interpretations of the drawings, specifications, and contract documents, and evaluate requested deviations from the approved design or specifications. Coordinate with City for resolution of issues involving scope, schedule, and/or budget changes.
- 6.4 **Weekly Meetings:** Lead weekly meetings, including preparation of agenda, meeting minutes, and distribution of minutes to attendees. Outstanding issues to be tracked on a weekly basis.
- 6.5 **Initial Schedule Review:** Perform detailed schedule review of contractor provided CPM for conformance with the contract documents.

- 6.6 **Lump Sum Breakdown:** Evaluate construction contractors' Schedule of Values for lump sum items. Review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Lump Sum Breakdowns for payment each month will be calculated with detailed data per WSDOT LAG Requirements.
- 6.7 **Monthly Pay Requests:** Prepare monthly requests for payment, review with the City, highline Water District, and contractor and approve, as permitted. Utilize City provided format for pay estimates, or Consultant format. The Utilities to provide quantities for payment for work associated with Utility Schedules.
- 6.8 **Monthly Schedule Review:** At the monthly cutoff, review contractor's updated schedule and compare with field-observed progress, as described in Section 1-08 of the Special Provisions. In addition, perform schedule analysis on contractor provided CPM updates and review schedule for delays and impacts. Coordinate with Contractor in the development of recovery schedules, as needed, to address delays caused by either events or issues within the Contractor's control or other events or issues beyond the Contractor's control.
- 6.9 **Certified Payroll:** Process and track all certified payroll per WSDOT Highways & Local Program Requirements. This includes verifying 30% of all payrolls submitted and tracking payroll each week. Payroll and payroll logs will adhere to WSDOT LAG requirements.
- 6.10 **Weekly Statement of Working Days:** Prepare and issue weekly statement of working day report each week.
- 6.11 **WSDOT & FHWA Reporting:** Prepare and track all necessary reports per WSDOT Highways & Local Program Requirements. This will include DBE condition of award tracking throughout the project. DBE Reporting. EEO reporting. Training Goal tracking via certified payroll. DBE on site reviews. Training Questionnaires. Periodically meet with WSDOT Highways and Local Programs staff as requested to review project status.
- 6.12 **Subcontractor Documentation:** Process / Approve all required subcontractor documentation per WSDOT Highways & Local Program Requirements. Request to Sublets will be verified and logged. Certification for Federal Aid will be obtained from all subcontractors. This includes checking System Award Management System (SAMS), verifying OM/WBE, verifying business licensing, reviewing insurance documentation, verifying city business licensing, Intent to Pay Prevailing Wage and Affidavit of Wages Paid. All subcontractor documentation will be logged into WSDOT's subcontractor logs.
- 6.13 **Property Owner Matrix:** Develop a matrix of property owners that will document commitments to each property owners, property restoration, and other related impacts.
- 6.14 **Cost Projections:** Prepare up to two cost projections for the project. Projections to be based on the current amount paid to date, pending change orders, quantity projections, and other information. A verbal memo to file at substantial completion will be written outlining all of the over/under-run in accordance with the WSDOT LAG and CM Manual.
- 6.15 **Record Drawings:** Review record drawings prepared by the Contractor and Utilities, and prepare a conformed set of project record drawings based on Contractor provided information and from inspection notes. Record drawings to be verified on a monthly basis, as part of the

progress payment to the Contractor. Upon project completion, contractor provided markups will be verified for completeness and supplemented with inspection information. The Consultant will prepare record drawings for Schedule A in AutoCAD format based on construction records provided by the Contractor. Electronic and full size mylar record drawings will be provided to the City.

6.16 **Audit Oversight:** Provide oversight during audits performed by WSDOT Local Programs and others.

6.17 **Physical Completion Letter:** Following completion of all punchlist work, prepare physical completion letter to the contractor and WSDOT, and recommend that City and/or Utilities accept the project.

6.18 **Project Closeout:** Transfer all project documents to the City for permanent storage.

- Schedule review comments
- As-built schedule
- Meeting agendas and notes
- Monthly Pay Estimates
- WSDOT Reporting
- Subcontractor Packets
- Cost Projection
- Physical Completion Letter
- Final Project Documents

TASK 7 – SUBMITTAL/RFI PROCESSING

7.1 **Submittals:** Coordinate review process for shop drawings, samples, traffic control plans, test reports, and other submittals from the Contractor for compliance with the contract documents. Key submittals to be transmitted to the City for their review and approval. Submittals shall be logged and tracked.

7.2 **Request for Information (RFI):** Review and respond to RFI's. RFI's shall be logged and tracked.

7.3 **Record of Materials (ROM):** Utilize ROM prepared by WSDOT and update based on Special Provisions and Plans for use on the project, based on the contract specifications and WSDOT/LAG requirements. Maintain the ROM according to WSDOT Highways & Local Program Requirements. The ROM will track all of the materials delivered to the site including manufacturer/supplier, approved RAM's, QPL items, material compliance documentation, and all other required documentation.

Deliverables

- Submittal log
- RFI Log
- Completed Record of Material for Material Certification

TASK 8 – CHANGE MANAGEMENT

8.1 **Case Log:** Develop and maintain a case log which includes change orders, RFP's, Field Work Directives per Highway & Local Programs Guidelines

- 8.2 **Change Orders:** Develop change orders per Highway & Local Programs Guidelines, provide technical assistance to negotiate change orders, and assist in resolution of disputes which may occur during the course of the project. A total of 160 hours have been included in the cost for services. Each change order will be executed in accordance with WSDOT Local Agency Guidelines and contain the following:
- Change order
 - Independent Cost Estimate
 - Time Impact Analysis
 - Contractor's Pricing
 - Verbal Approval Memo
 - Change Order Checklist (LAG Manual)
 - Change Order Request Form
 - Back up documentation
- 8.3 **Field Work Directives:** Prepare field work directives as necessary to keep the contractor on schedule.
- 8.4 **Minor Change Orders:** Develop minor change orders per WSDOT Highways & Local Program Requirements. Each minor change order will be executed in accordance with WSDOT Local Agency Guidelines and contain the following:
- Independent Cost Estimate
 - Verbal Approval Memo
 - Back up documentation
- 8.5 **Force Account:** Track contractor force account labor, equipment and materials. Provide payment according to WSDOT requirements. All force account calculations will be verified by the engineer and double checked by the documentation specialist per WSDOT LAG Manual.

Deliverables

- Change Order(s)
- Case Management Log
- RFI Log
- Minor Change Order(s)
- Force Account Records

TASK 9 – Management Reserve

The services described under this task, and any other additional services requested by the City, will be performed only when authorized by the City. Authorization to perform additional services will be in writing, specifying the work to be performed, and basis of payment. A total of \$10,000 has been included in the cost for services as a placeholder.

- Produce traffic advisories and other news releases at project milestones.

- Provide any additional services resulting from changes in scope or design of the project. Changes include, but are not limited to, changes in size, complexity, the schedule, character of construction, or method of financing.
- Preparation of award submittal for APWA, ASCE, and other agencies.
- Provide claims analysis and assistance in resolving claims that are protracted in nature and beyond the scope of the change order process described herein.
- Ribbon Cutting Ceremony: Conduct a ribbon cutting ceremony that provides information about the project elements and schedule, and that provides information about how to stay informed through the project. Handouts to be prepared for this task. Refreshments, tables, and other necessary items to be provided by the Consultant
- Media Relations: Produce and distribute periodic press releases at key milestones about the project and its progress. Meet with press to help develop stories about the project.
- Other activities deemed necessary by the City.

EXHIBIT E-10

FEE SUMMARY



Project: City of Des Moines
 Transportation Gateway Project - 24th Avenue South
 Supplement No. 10 - Construction Services

Description	Estimated Fee
Task 1 - Management/Coordination/Administration	\$ 25,771.41
Task 2 - On-Call Surveying	\$ 9,392.35
Task 3 - Preconstruction Services	\$ 9,087.97
Task 4 - Community Outreach	\$ 12,847.94
Task 5 - Construction Services - Field	\$ 384,492.32
Task 6 - Construction Services - Office	\$ 182,977.68
Task 7 - Submittal/RFI Processing	\$ 35,579.02
Task 8 - Change Management	\$ 17,943.17
Subtotal:	\$ 678,091.86
Management Reserve:	\$ 10,000.00
Total:	\$ 688,091.86

7/30/2013

HOURLY AND FEE ESTIMATE

EXHIBIT E-10

Project: City of Des Moines
Transportation Gateway Project - 24th Avenue South
Supplement No. 10 - Construction Services



Task	Description	Labor Hour Estimate									Total Fee
		*Project Manager	*Senior Engineer	*Project Engineer	*Design Engineer	Const *Technician	*Survey Crew	*Doc Specialist	*Const Inspector	*Const Admin	Fee
		\$ 183.52	\$ 135.95	\$ 117.83	\$ 101.65	\$ 84.71	\$ 136.68	\$ 97.20	\$ 99.90	\$ 70.47	
Task 1 - Management/Coordination/Administration											
1.1	Project Organization and Layout	24	8	8	8	0	0	40	8	40	\$ 14,754.01
1.2	Monthly Review and Invoicing (10 months)	40	0	16	0	0	0	0	0	24	\$ 10,917.40
	Reimbursable expenses - see breakdown for details										\$ 100.00
	Task Totals	64	8	24	8	0	0	40	8	64	\$ 25,771.41
Task 2 - On-Call Surveying											
2.1	On-Call survey allowance	0	0	8	0	24	40	0	8	0	\$ 9,242.35
	Reimbursable expenses - see breakdown for details										\$ 150.00
	Task Totals	0	0	8	0	24	40	0	8	0	\$ 9,392.35
Task 3 - Preconstruction Services											
3.1	Preconstruction Conference	4	0	8	4	8	0	4	24	16	\$ 6,675.00
3.2	Preconstruction Photos	0	0	0	0	0	0	0	8	8	\$ 1,362.97
	Reimbursable expenses - see breakdown for details										\$ 1,050.00
	Task Total	4	0	8	4	8	0	4	32	24	\$ 9,087.97
Task 4 - Community Outreach											
4.1	Community Communication	8	4	4	0	16	0	4	8	16	\$ 6,154.22
4.2	Project Website Assistance	4	0	16	0	16	0	8	0	24	\$ 6,443.72
	Reimbursable expenses - see breakdown for details										\$ 250.00
	Task Total	12	4	20	0	32	0	12	8	40	\$ 12,847.94
Task 5 - Construction Services - Field											
5.1	Construction Observation	16	40	160	120	80	0	80	2400	40	\$ 296,558.12
5.2	Material Testing	8	4	24	16	0	0	24	40	24	\$ 14,486.55
5.3	Substantial Completion	8	0	16	0	0	0	24	24	8	\$ 8,647.66
	Reimbursable expenses - see breakdown for details										\$ 64,800.00
	Task Total	32	44	200	136	80	0	128	2464	72	\$ 384,492.32
Task 6 - Construction Services - Office											
6.1	Document Control	4	0	0	0	80	0	360	0	24	\$ 44,194.36
6.2	Project Coordination	12	0	24	0	24	0	0	0	8	\$ 7,627.10
6.3	Plan Interpretation	2	16	32	24	8	0	0	0	4	\$ 9,712.22
6.4	Weekly Meetings	0	16	36	0	20	0	72	20	4	\$ 17,389.75
6.5	Initial Schedule Review	2	0	8	0	20	0	6	0	0	\$ 3,587.15
6.6	Lump Sum Breakdown	0	0	4	0	4	0	2	0	0	\$ 1,004.58
6.7	Monthly Pay Requests (est. 10)	6	0	80	0	40	0	80	0	24	\$ 23,383.61

HOUR AND FEE ESTIMATE

EXHIBIT E-10

Project: City of Des Moines
 Transportation Gateway Project - 24th Avenue South
 Supplement No. 10 - Construction Services



Task	Description	Labor Hour Estimate									Total Fee
		*Project Manager \$ 183.52	*Senior Engineer \$ 135.95	*Project Engineer \$ 117.83	*Design Engineer \$ 101.65	Const *Technician \$ 84.71	*Survey Crew \$ 136.68	*Doc Specialist \$ 97.20	*Const Inspector \$ 99.90	*Const Admin \$ 70.47	Fee
6.8	Monthly Schedule Review	0	0	4	0	16	0	8	8	0	\$ 3,403.53
6.9	Certified Payroll	0	0	16	0	80	0	40	0	0	\$ 12,550.32
6.10	Weekly Statement of Working Days	0	0	0	0	0	0	8	0	0	\$ 777.60
6.11	WSDOT & FHWA Reporting	0	0	0	0	24	0	76	0	0	\$ 9,420.29
6.12	Subcontractor Documentation	0	0	24	0	36	0	16	0	0	\$ 7,432.85
6.13	Property Owner Matrix	0	0	8	0	8	0	8	0	0	\$ 2,397.97
6.14	Cost Projections	4	0	32	0	0	0	24	0	0	\$ 6,837.55
6.15	Record Drawings	2	16	32	24	40	0	24	16	0	\$ 16,072.33
6.16	Audit Oversight	4	0	8	0	0	0	24	0	0	\$ 4,009.54
6.17	Physical Completion Letter	2	0	8	0	0	0	16	0	0	\$ 2,864.91
6.18	Project Closeout	8	0	24	0	24	0	16	0	16	\$ 9,011.99
	Reimbursable expenses - see breakdown for details										\$ 1,300.00
	Task Total	46	48	340	48	424	0	780	44	80	\$ 182,977.68
Task 7 - Submittal/RFI Processing											
7.1	Submittals	8	24	40	24	16	0	24	0	16	\$ 16,699.76
7.2	Request for Information (RFI)	4	8	24	24	16	0	0	16	8	\$ 10,606.97
7.3	Record of Materials (ROM)	2	4	16	4	0	0	40	4	4	\$ 7,772.28
	Reimbursable expenses - see breakdown for details										\$ 500.00
	Task Total	14	36	80	52	32	0	64	20	28	\$ 35,579.02
Task 8 - Change Management											
8.1	Case Log	4	0	8	0	0	0	4	0	0	\$ 2,065.54
8.2	Change Orders	0	0	20	0	20	0	4	8	0	\$ 5,238.92
8.3	Field Work Directives	0	0	16	0	8	0	4	8	0	\$ 3,751.04
8.4	Minor Change Orders	0	0	16	0	16	0	8	4	0	\$ 4,417.94
8.5	Force Account	0	0	4	0	0	0	0	16	0	\$ 2,069.73
	Reimbursable expenses - see breakdown for details										\$ 400.00
	Task Total	4	0	64	0	44	0	20	36	0	\$ 17,943.17

Subtotal: \$ 678,091.86

Management Reserve (Task 9): \$ 10,000.00

Total: \$ 688,091.86

* Hourly rates are based on the following:

	Totals									
Direct Salary Costs	\$ 62.50	\$ 46.30	\$ 40.13	\$ 34.62	\$ 28.85	\$ 46.55	\$ 36.00	\$ 37.00	\$ 24.00	\$ 230,934.12
Overhead Rate					163.63%					\$ 377,877.50
Fixed Fee					30%					\$ 69,280.24

HOUR AND FEE ESTIMATE

EXHIBIT E-10



Project: City of Des Moines
 Transportation Gateway Project - 24th Avenue South
 Supplement No. 10 - Construction Services

Reimbursable Breakdown	Cost
Task 1 - Management/Coordination/Administration	
Mileage	\$ 50.00
Reproduction	\$ 50.00
Task 1 - Total	\$ 100.00
Task 2 - On-Call Surveying	
Mileage	\$ 100.00
Reproduction	\$ 50.00
Task 2 - Total	\$ 150.00
Task 3 - Preconstruction Services	
Mileage	\$ 50.00
Reproduction	\$ 1,000.00
Task 3 - Total	\$ 1,050.00
Task 4 - Community Outreach	
Mileage	\$ -
Reproduction	\$ 250.00
Task 4 - Total	\$ 250.00
Task 5 - Construction Services - Field	
Mileage	\$ 4,000.00
Misc. Field Supplies	\$ 800.00
Material Testing Allowance (HWA GeoSciences)	\$ 60,000.00
Task 5 - Total	\$ 64,800.00

HOUR AND FEE ESTIMATE

EXHIBIT E-10



Project: City of Des Moines
 Transportation Gateway Project - 24th Avenue South
 Supplement No. 10 - Construction Services

Reimbursable Breakdown	Cost
Task 6 - Construction Services - Office	
Mileage	\$ 700.00
Reproduction	\$ 600.00
Task 6 - Total	\$ 1,300.00
Task 7 - Submittal/RFI Processing	
Mileage	\$ -
Reproduction	\$ 500.00
Task 7 - Total	\$ 500.00
Task 8 - Change Management	
Mileage	\$ 150.00
Reproduction	\$ 250.00
Task 8 - Total	\$ 400.00
Total Reimbursable Costs:	\$ 68,550.00



2014 - 2019 CAPITAL IMPROVEMENT PLAN

Transportation CIP Fund

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY Transportation
PROGRAM Des Moines Transportation Gateway
PROJECT 24th Avenue South Improvement Project

PROJECT NO. 319.300(131)
Project Type: Capacity
Council Goals met: 1, 2, 3
Council Objectives met:
Project Status Adopted

LOCATION 24th Avenue South - South 216th Street to South 208th Street

DESCRIPTION: Reconstruct roadway to five-lane cross section.

EXPENDITURE SCHEDULE

COST ELEMENTS	TOTAL*	FY 09 Act	FY 10 Act	FY 11 Act	FY 12 Act	FY 13 Est	FY 13 Amend	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19
ADMIN (CITY STAFF)	\$ 200,876	\$ 12,624	\$ 28,835	\$ 37,606	\$ 31,811	\$ 40,000	\$ 60,000	\$ 50,000					
CIP PROJ MANAGEMENT	55,000					15,000	15,000	40,000					
DESIGN / ENGINEERING	1,071,778	271,036	396,845	207,532	101,365	65,000	65,000	30,000					
LAND	322,460			322,460									
LAND - Prologis	208,390		208,390										
LAND - Port of Seattle	488,370			488,370									
ROW SERVICES	157,016	56	17,267	54,790	84,903								
IMPROVEMENTS	4,024,035					400,000	4,739,143	3,624,035					
INSPECTION	688,000					88,000	665,000	600,000					
CONTINGENCY	700,000					-	700,000	700,000					
Underground PSE Utilities	134,197				-	-	124,502	134,197					
PSE Sch. 74 Construction Agreement	250,000					-	250,000	250,000					
Comcast	74,158				-	-	50,965	74,158					
CenturyLink (Qwest)	85,979				-	-	63,950	85,979					
Midway Sewer	-				-	-	0	0					
Highline Water District	540,580				-	-	637,838	540,580					
TOTAL	\$ 9,000,839	\$ 283,716	\$ 651,337	\$ 1,110,758	\$ 218,079	\$ 608,000	\$ 7,371,398	\$ 6,128,949					

FUNDING SOURCES	TOTAL*	FY 09 Act	FY 10 Act	FY 11 Act	FY 12 Act	FY 13 Est	FY 13 Amend	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19
PWTF Loan - Design (Confirmed)	\$ 330,000	\$ 247,500	\$ 82,500		\$ -	\$ -	\$ -	\$ -					
PWTF Loan - Construction (Unconfirmed)													
WSDOT Ped & Bike Program (Unconfirmed)													
FHWA - STP (Confirmed)	3,000,000					\$ 200,000	3,000,000	2,800,000					
POS D.A. FEES (Confirmed)	3,500,000				-	3,500,000	3,500,000						
POS ROW Agreement	488,370			488,370									
ROW In-Lieu - Prologis (Received)	208,390		208,390										
IN-LIEU FEES - Prologis (Received)	820,000	36,216	360,447	423,337									
TIB (Unconfirmed)	-				-	-							
Traffic Impact Fees	180,593			27,952	-	-	152,641	152,641					
King County Metro (Confirmed)	-						-						
Comcast	134,240				-		84,938	134,240					
CenturyLink (Qwest)	30,805				-	-	-	30,805					
PSE Gas	50,218				5,280		74,787	44,938					
Midway Sewer District	-				-	-							
Highline Water District	600,580				-		701,622	600,580					
Transportation CIP Fund	(342,357)		-	171,099	212,799	(3,092,000)	(142,590)	2,365,745					
TOTAL	\$ 9,000,839	\$ 283,716	\$ 651,337	\$ 1,110,758	\$ 218,079	\$ 608,000	\$ 7,371,398	\$ 6,128,949					

*Excludes FY 13 Amd



2014 - 2019 CAPITAL IMPROVEMENT PLAN Transportation CIP Fund

CAPITAL IMPROVEMENT PLAN REQUEST FORM

CATEGORY	Transportation	PROJECT NO.	319.300(131)
PROGRAM	Des Moines Transportation Gateway	Project Type:	Capacity
PROJECT	24th Avenue South Improvement Project	Council Goals met:	1, 2, 3
		Council Objectives met:	
		Project Status	Adopted
LOCATION	24th Avenue South - South 216th Street to South 208th Street		

JUSTIFICATION:

The need for five-lane roadway with pedestrian and bicycle facilities along 24th Avenue South is identified in the City's Comprehensive Transportation Plan and the six-year Transportation Improvement Plan. Numerous development projects are planned along this corridor, including the Des Moines Creek Business Park and aviation logistics facilities in the City of SeaTac. 24th Avenue South is part of a planned corridor connection to a future SR509 interchange via the 24th/28th Avenue alignment planned by the City of SeaTac.

This project includes improvements that will be required when the Des Moines Creek Business Park and other business projects develop. These improvements include, but are not limited to, frontage and access improvements on 24th Avenue South. It is anticipated that in-lieu fees will be collected for these development-related improvements. The in-lieu fees indicated should be considered a placeholder, and the actual in-lieu fee amount is subject to change as determined during plan review.

With the development of the Des Moines Creek Business Park and other potential developments in the immediate area, planning and design for the 24th Avenue South corridor cannot be delayed. The City secured a PWTF planning loan to design improvements for this corridor.

SCOPE OF WORK:

An 85% design level estimate of probable costs are included in this budget including revisions to the S. 216th St/24th Avenue S. intersection with roadway transitions and median improvements. A design report (December 2010) includes design recommendations for this project including final engineering, environmental analysis, and permit documents. Preparation of final plans specifications and estimates to be completed by a consultant in March 2011. The project includes construction by a contractor of the following improvements: installation of curbs, gutters, sidewalks, planters, and bicycle lanes on both sides of the street, widening the road with asphalt pavement, installing center medians where feasible, constructing a new street lighting system, undergrounding storm water, overhead communications, and electrical distribution lines. Midway Sewer District may request and fund additional improvements. Right-of-way is scheduled to be acquired and cleared in 2011 allowing construction to proceed in 2012 if funding becomes available. Construction engineering and inspection will be done by a consultant.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Change Order for the Agreement with Moffatt Nichol for Engineering and Consulting Services for the J Dock Fire Rehabilitation Project.

FOR AGENDA OF: Sept. 11, 2014

DEPT. OF ORIGIN: Marina

ATTACHMENTS:

DATE SUBMITTED: September 4, 2014

1. Change Order No. 1 – J Dock Fire Rehabilitation Project.
2. Memorandum from Moffatt Nichol Containing Scope of Work and Budget for Change Order No. 1

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AA

Purpose and Recommendation

The purpose of this New Business item is to request the Council's approval of a change order to the Agreement between the City and Moffatt Nichol for engineering and consulting services for the J Dock Fire Rehabilitation Project. The change order would increase the authorized amount of the contract from \$70,539 to \$87,296, an increase of \$16,757.

Suggested Motion: "I move that the Council approve Change Order No. 1 to the Agreement with Moffatt Nichol for engineering and consulting services for the J Dock Fire Rehabilitation Project in the amount of \$16,757 for a total of \$87,296, and authorize the City Manager to sign the Change Order substantially in the form as attached."

Background

Last November the Council approved an agreement with Moffatt Nichol to provide engineering and consulting services for Phase 2 of the J Dock rebuild. The scope-of-work in that agreement focused on determining the specifications for the new section of J Dock, preparing the bid package and providing support during the bid process. Under the agreement, Moffatt Nichol will also analyze the plans submitted by the successful contractor to make sure they meet the required specifications and monitor the construction process to make sure the completed dock section is built to the plans and specifications.

When the agreement was approved the staff told the Council that staff expects to recover most of the costs from the City's insurance companies but they also expect that some items like the installation of a cable carrier for the utilities and the remodel of the security gate to fit the new dock may be considered "upgrades" by the insurance companies and subject to some negotiations. At that time, one of the excess insurance carriers was questioning the City's decision to demolish slips 1 thru 6 because those slips were not heavily damaged by fire, although they received extensive smoke damage and all of the electrical system for those slips was compromised by the intense heat of the fire. Staff has continued to work with the insurance carriers on this issue but they have reached a point where Moffatt Nichols professional experience will be needed to provide the information being requested by the insurance companies.

Discussion

The insurance companies have asked the City to provide information supporting the decision to remove slips 1 thru 6 when the dock was demolished from the east end to slips 19/20. To respond to their request the staff will need assistance in providing references to the specific code provisions that would trigger the requirement to remove slips 1 thru 6, along with information regarding constructability issues and cost comparisons between replacing all of the damaged section of the dock versus replacing just the most heavily damaged part.

To compile an effective response to the insurance companies requests, Moffatt Nichol proposed a scope-of work with 8 specific tasks, (page 2 of the attached memorandum from Moffatt Nichol dated August 21, 2014). The staff met with Moffatt Nichol to determine the best way to develop the response and the plan is to have the Marina staff take the lead on Task No. 2, "Immediate Action Rationale Summary" and No. 3, "Code Issues". The staff will prepare a written report that details the clean-up effort and the findings and code sections that support the total demolishing of the fire damaged part of J Dock. Moffatt Nichol will examine constructability issues and do the cost comparison analysis, (tasks No. 4 & No. 5).

Once these tasks are completed the staff and Moffatt Nichol will meet with the insurance companies. It is hoped that the information compiled and presented at that time will settle the issue in the City's favor. If not, the staff and Moffatt Nichol will be prepared to put forward other issues that would impact the decision to demolish the entire damaged section, like the stability of the remaining small part of the dock and the difficulties that another transition point would present for the utilities and the roof structure.

Financial Impact

This request would fund tasks numbers 1 thru 5 and half of tasks 7 & 8, a total of \$16,757. If further analysis is needed the staff will return to the Council with an update and a request for another change order to complete the analysis and response to the insurance companies. The staff believes that this change order will be a legitimate insurance claim and that the City will recover the cost of this change order from the insurance companies. In the meantime, all costs for the J Dock project are being paid for out of the Marina's Repair & Replacement account.

Conclusion

The staff firmly believes that leaving slips J-01 thru J-06 and trying to rebuild them is not in the best interest of the City. The new dock section has to be built in a different way entirely to meet the new

codes for roof loading. Trying to “wedge” the new section between two sections of the old dock would present insurmountable construction and operational problems. The staff recommends approving the change order and directing the staff and City Manager to prepare a factual and effective response to the insurance company’s requests.

Concurrence

The City Attorney’s office concurs with this recommendation.

Change Order 1

103

Attachment #1

Project Number:

Project Name: J DOCK FIRE DAMGE REHABILITAION PROJECT

Change Order Number: 1

CONSULTING ENGINEER – MOFFATT NICHOL

☒ Proposed by the Engineer

☐ Change proposed by Contractor

Endorsed by _____ N/A _____ Contractor _____ Date	Surety Consent (if required) Attorney on Fact _____ Date
---	---

Original Contract Amount	\$70,539.00
Current Contract Amount	\$70,539.00
Estimated Net Change This Order	\$16,757.00
Estimated Contract Total After Change	\$87,296.00
Original Contract Duration 200 working days	Open Until Completed
Current Contract Duration	N/A
Additional Contract Days This Order	N/A
Proposed Contract Duration	N/A

☐ Approval Recommended Project Engineer – _____ Date	☐ Approved Other _____ Date
☐ Approval Recommended Owner _____ Date	☐ Approved Other Approval When Required Signature _____ Date _____ Representing - Surety _____

This change order will fund task No.'s 1 thru 5 and half of task No's 7 & 8 shown on page 2 of the attached memorandum from Moffatt Nichol dated August 21, 2014, for a total CO of \$16,757. The Marina staff will take the lead on task No.'s 2 & 3 and provide written reports to Moffatt Nichol for inclusion in their report. Moffatt Nichol will complete tasks No. 5 & 6.



600 University Street, Suite 610
Seattle, WA 98101
(206) 622-0222 Fax (206) 622-4764
www.moffattnichol.com

MEMORANDUM

To: Joe Dusenbury, Harbormaster

From: Byron Haley, P.E.

Copy: Mike Hemphill, P.E.

Date: August 21, 2014

Subject: J Dock Fire Damage Rehabilitation Project
Proposal for Further Support

M&N Job No.: 8121-01

This memo summarizes Moffatt & Nichol's proposed approach for further supporting the City of Des Moines (City) in resolving issues associated with the repair to portions of the fire-damaged J Dock. Our proposed scope, schedule, staffing, and budget follow.

Scope of Services

Moffatt & Nichol (M&N) proposes to complete the following tasks for the City in support of your efforts to finalize rehabilitating the fire-damaged J Dock floats:

1. Participate In Scoping Meeting: The scoping meeting will be held to review the outstanding issues and to formulate a plan for assisting the City in closing the project.
2. Summarize Measures Taken To Minimize Loss Of Revenue: Minimizing the loss of revenue was of paramount importance to the city immediately after the fire was extinguished, and the City did what was necessary to restore undamaged portions of the marina to service as soon as possible.
3. Summarize Code Issues Associated With Repairs: Building Code requirements dictated upgrading certain portions of the floating dock system before they could be returned to service.
4. Summarize Constructability Issues Associated With Selected Repair Methodology: Replacing the floats exactly as they were prior to the fire may not have been practical, given means and methods available to the contractor selected to furnish and install the replacement floating dock system.
5. Review And Analyze Contractor Provided Schedule Of Values: The contractor selected to furnish and install the replacements for the fire-damaged portions of J Dock will provide a schedule of values for M&N to review and analyze.
6. Provide Stability Analysis Of Floats: Evaluate effect of superstructure on first 6 slips to assess the overall stability of those floats after the damaged floats were removed.
7. Provide Coordination And Support: Additional meetings and review of information provided by others will be required to support the City during these final stages of project completion.
8. Summarize Conclusions: Prepare a memorandum highlighting the conclusions reached as a result of the efforts associated with this task.

Schedule

The total duration of time required for completing these tasks is highly dependent on factors beyond the control of either the City or M&N. We will respond to requests for assistance in a timely manner and will keep you apprised of any issues delaying our responses to issues in progress.

Staffing

The team members performing this work are those who have worked with the City over the course of this project, and include Mike Hemphill, Byron Haley, Emy Carpenter, Peggy Confer, and Tom McCollough. These key individuals will be assisted by support staff as needed to complete assignments.

Budget

We propose to complete this work on a time and expense reimbursable basis and suggest the City establish an initial budget for an amount not to exceed \$27,356.00 (twenty-seven thousand three-hundred fifty six) as summarized in the following table. The cost to support the City in this review depends on the effort required to respond to issues as M&N works with you to conclude the review. This proposal summarizes the effort we anticipate, but factors beyond M&N's control could require more effort than is funded by the proposed budget. In that event, we will provide advance notice of efforts not anticipated by this proposal and will not exceed the authorized budget without the City's prior approval.

Table 1: Budget Summary

TASK NO	DESCRIPTION	COST
1	Scoping Meeting	\$803
2	Immediate Action Rationale Summary	\$2,136
3	Code Issues	\$1,542
4	Constructability Issues	\$4,361
5	Cost Comparison	\$2,574
6	Stability Analysis	\$3,538
7	Coordination and Support	\$5,296
8	Summarize Conclusions	\$5,386
	Expenses	\$220
	Wood Harbinger	\$1,500
	TOTAL	\$27,356

Additional details for the level of effort associated with completing the Scope of Services identified in this proposal and the costs shown in Table 1 are included as Attachment A.

The proposed level of effort and cost for completing the proposed Scope of Services are based on the following assumptions and clarifications:



1. Participate In Scoping Meeting
 - The project team will participate in one meeting, in the M&N office, with a duration of approximately one hour. We envision 3 staff from M&N will participate for the duration of this meeting and one subconsultant staff will participate for approximately half the meeting.
 - Draft meeting notes will be prepared for City review, and final notes will be distributed to attendees upon receipt of comments from the City.
2. Summarize Measures Taken To Minimize Loss of Revenue
 - Describe the measures taken and justification for steps taken very soon after the fire-damaged sections of J Dock were removed.
 - Summary will be based on experience of individual team members and on interviews conducted with up to two representatives from the City.
3. Summarize Code Issues Associated With Repairs
 - Primarily assess electrical and structural issues that were addressed during the J Dock rehabilitation effort based on technical staff's knowledge of the applicable sections of the building code and upon interviews conducted with up to two representatives from the City Building Department.
4. Summarize Constructability Issues Associated With Selected Repair Methodology
 - Provide descriptions of constructability issues associated with up to two alternative repair methodologies.
 - Base formulation of alternatives on professional experience in marina construction and on interviews with up to two individuals identified by the City.
5. Review and Analyze Contractor Provided Schedule of Values
 - Based on contractor provided schedule of values, develop comparative order of magnitude opinion of probable costs for up to two alternative repair schemes.
 - This effort will be coordinated with the above described summary of constructability issues.
 - Schedule of values will be developed by contractor responsible for furnishing and installing the replacement dock elements.
6. Provide Stability Analysis of Floats
 - Conduct a hydrostatic stability analysis under dead load, live load, and wind load using as-built drawings for the marina. Discussion will include review of weight distribution on the floating system and effects to float stability.
 - Estimate floatation requirements for two dock configurations.
7. Provide Coordination and Support
 - Participate in phone calls and support efforts of project team over duration of assignment, assuming approximately three phone calls per week over a duration of 4 weeks.
 - Attend up to three meetings, each with a duration of 2 hours at the City offices. Each meeting will be attended by up to two M&N team members on the average.



Joe Dusenbury, Harbormaster
August 21, 2014

M&N #: 8121-01
Memorandum

8. Summarize Conclusions

- Prepare a draft memorandum summarizing the findings and conclusions of this effort and issue the draft to the City for review and comment.
- Revise memorandum to reflect comments from the City and issue final memorandum to City.

Summary

M&N appreciates the opportunity to continue supporting the City on this project and we look forward to seeing the replacement floats integrated into the existing marina facility to serve the needs of your paying customers. We are prepared to provide these services upon receipt of your authorization to proceed.



ATTACHMENT A



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

MOFFATT & NICHOL

TASK NO	DESCRIPTION	Principle	Senior Engineer	Engineer III	Engineer II	Engineer / Scientist I	CADD Support	Admin. Assistant	Contract Admin	Total	Total
		\$250	\$209	\$195	\$172	\$150	\$128	\$97	\$78		
1	Scoping Meeting	1	1		2					4	\$ 803
2	Immediate Action Rationale Summary	1	2	4	4					11	\$ 2,136
3	Code Issues		2	4	2					8	\$ 1,542
4	Constructability Issues		1	16	6					23	\$ 4,361
5	Cost Comparison		2	4	8					14	\$ 2,574
6	Stability Analysis		2	16						18	\$ 3,538
7	Coordination and Support		8	8	12					28	\$ 5,296
8	Summarize Conclusions	2	2	8	16				2	30	\$ 5,386
TOTAL HOURS		4	20	60	50	0	0	0	2	136	
TOTAL LABOR		\$1,000	\$4,180	\$11,700	\$8,600	\$0	\$0	\$0	\$156		\$25,636
SUBCONSULTANTS		AMT	MARKUP	TOTAL	DIRECT EXPENSES						
A	Wood Harbinger (electrical)	\$1,364	136.4	\$ 1,500	Mileage \$200						
B			0	\$ -	Reproduction / Plotting / Printing \$20						
C			0	\$ -	Postage / Courier						
D			0	\$ -	Travel (airfare, lodging, meals)						
E			0	\$ -	Telephone / Fax						
F			0	\$ -	Photographic Processing						
G			0	\$ -	Miscellaneous / Other						
					TOTAL EXPENSES \$220						
					TOTAL SUBCONSULTANTS \$1,500						
					PROJECT TOTAL \$27,356						

109

109

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Amendments to Title 9 DMMC, the
"Criminal Code."

ATTACHMENTS:

1. Draft Ordinance No. 13-244
2. Attorney General Opinion # AGO 2008
No. 8

FOR AGENDA OF: September 11, 2014

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: September 3, 2014

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation

The purpose of this agenda item is to amend Title 9 DMMC, the Criminal Code, to be consistent with state law, organize and eliminate unneeded or outdated language, and to adopt newly enacted state statutes enabling the City to prosecute these crimes.

Suggested Motion

FIRST MOTION: "I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 13-244 on first reading."

SECOND MOTION: "I move to enact Draft Ordinance No. 13-244, amending, organizing, and updating Title 9 DMMC to be consistent with state law."

Background

The last comprehensive review of the City's Criminal Code in Title 9 DMMC occurred in 1993. Since that date, many state statutes have been amended, new statutes have been enacted, and previously adopted statutes have been repealed. Draft Ordinance 13-244 provides a comprehensive update to Title 9

DMMC by updating the state statutes adopted by reference to reflect their current citations and titles, adding new state statutes that are needed to prosecute those crimes in the Municipal Court, and deleting or amending sections that have been amended or repealed.

Discussion

Draft Ordinance 13-244 achieves three objectives: (1) updates the DMMC to comply with state law (2) adopts newly enacted laws to allow for enforcement in Des Moines and (3) eliminates references to state statutes that have been repealed and organizes the Title. All three will be discussed below:

Updates to comply with state law and current practice:

- * Section 1 adopts language allowing for the prosecution of Class C felonies as gross misdemeanors as well as serves as a catch-all for misdemeanor and gross misdemeanor violations of state law. The adoption of Class C felonies has become necessary due to the increased felony filing standards of King County. Some cases that were traditionally filed as felonies are now being declined and referred to municipalities for prosecution. Currently, the City is unable to prosecute these crimes.
- * Sections 22 and 23 amend the DMMC to comply with state law relating to the prohibition of firearms from specific places. State law preempts local codes regarding firearms. The City's prohibition on firearms in restaurants and Council Chambers exceeds state law and needs to be amended. (See Attorney General Opinion attached as exhibit #2).

Adopting by reference recently enacted state statutes: The following is a list of crimes that will be adopted by reference by this draft Ordinance as well as the year they were criminalized by the state legislature:

- * Section 21 adopts by reference RCW 9A.41.333 Duty to register – Requirements (Felony firearm offender) (2013).
- * Section 21 adopts by reference RCW 9A.41.335 Failure to register as felony firearm offender. (2013).
- * Section 24 adopts by reference RCW 9A.60.070 False academic credentials –Unlawful issuance or use – Definitions – Penalties (2012).
- * Section 27 adopts by reference RCW 9A.36.150 Interfering with the reporting of domestic violence (1993).
- * Section 28 adopts by reference RCW 9A.61.260 Cyberstalking (2004).
- * Section 28 adopts by reference RCW 9A.46.085 Stalking no-contact orders – Appearance before magistrate required (2013).

- * Section 31 adopts by reference RCW 9A.56.063 Making or possessing motor vehicle theft tools (2007).
- * Section 31 adopts by reference RCW 9A.56.096 Theft of rental, leased, lease-purchased, or loaned property (2009).
- * Section 31 adopts by reference RCW 9A.56.330 Possession of another's identification (2003).

Removing repealed state statutes, correcting citations and titles, and organization:

- * All state statutes that were previously adopted by reference but have since been repealed by the legislature were deleted.
- * References to state statutes were corrected to reflect their current titles and citations.
- * Section 7 moves the stand alone chapter specifically related to abandoning refrigeration equipment to the chapter entitled Littering and Polluting.
- * Section 15 moves the stand alone chapter specifically related to anticipatory offenses to the chapter entitled Preliminary Article.

Alternatives

1. Pass with alternative amendments.
2. Take no action.

Financial Impact

None

Recommendation

It is recommended by the Legal Department that the City Council enact Draft Ordinance No. 13-244.

CITY ATTORNEY'S FIRST DRAFT 08/20/2014**DRAFT ORDINANCE NO. 13-244**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the Criminal Code, amending Title 9 DMMC to be consistent with state law and repealing and replacing chapter 9.08 DMMC entitled "Abandoned Refrigeration Equipment" as a new section in chapter 9.56 DMMC and chapter 9.20 DMMC as a new DMMC section 9.04.055 entitled "Anticipatory Offenses".

WHEREAS, Title 9 DMMC, the City's Criminal Code, was originally enacted in 1964 and reenacted in 1993, and

WHEREAS, numerous provisions contained in Title 9 DMMC are outdated and inconsistent with state law due to amendments made by the state legislature, and

WHEREAS, RCW and WAC sections previously adopted by reference have been amended, deleted, or moved and references need to be updated, 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 Criminal Code; now therefore,

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

Sec. 1. DMMC 9.04.020 and section 2 of Ordinance No. 1036 are amended to read as follows:

9.04.020 Adoption by reference.

(1) Washington state statutes and state and county regulations adopted by reference in this title are adopted pursuant to RCW 35A.12.140 as though fully set forth in this title, and as presently constituted or as may be subsequently amended.

Draft Ordinance No. 13-244.1
10/29/2013

Ordinance No. ____
Page 2 of 44

(2) Not less than one copy of each such statute, code, or regulation as codified, and suitably marked to indicate amendments and additions, is filed in the office of the Des Moines City Clerk and with the administrator of the Des Moines Municipal Court and is available for use and examination by the public.

(3) Notwithstanding the RCW sections that are specifically adopted by reference in this Title, all RCW sections that constitute misdemeanors and gross misdemeanors and the RCW sections necessary for the investigation, arrest, prosecution, sentencing, confinement, and enforcement of misdemeanors and gross misdemeanors are hereby adopted by reference as currently enacted, as hereafter amended, as subsequently adopted, or recodified, and shall be given the same force and effect as if set forth herein in full.

(4) All Class C felony crimes set forth in the RCW are hereby adopted by reference for the purposes of charging a gross misdemeanor for a violation of any of the crimes set forth in chapter 9A.28 RCW, regarding anticipatory offenses, such as criminal attempt, criminal solicitation, or criminal conspiracy.

Sec. 2. Chapter 9.04.050 and section 5 of Ordinance No. 1036 are amended to read as follows:

Principles of liability. The following state statutes are adopted by reference and are applicable within the City:

RCW

9A.08.010 General requirements of culpability.
9A.08.020 Liability of conduct of another -
Complicity.

Ordinance No. ____
Page 3 of 44

9A.08.030	Criminal liability of corporations and persons acting or under a duty to act in their behalf. <u>Corporate and personal liability</u>
9A.16.110	Defense of person or property against heinous crime - Indemnification or reimbursement by state for expenses of defendant. <u>Defending against violent crime--Reimbursement.</u>

Sec. 3. DMMC 9.04.070 and section 7 of Ordinance No. 1036 are amended to read as follows:

Contempt of court. The following state statutes are adopted by reference and are applicable with the City:

RCW

7.21.010	Definitions.
7.21.020	Sanctions - Who may impose.
7.21.030	Remedial Sanctions - Payment for losses.
7.21.040	Punitive Sanctions - Fines.
7.21.050	Sanctions - Summary Imposition - Procedure.
7.21.070	Appellant <u>Appellate</u> review.

Sec. 4. DMMC 9.04.100 and section 10 of Ordinance No. 1036 as amended by section 1 of Ordinance No. 1048 are amended to read as follows:

Civil infractions, failure to sign, respond, appear, or pay penalty. The following state statute is adopted by reference and is applicable within the City:

RCW

7.80.160	Notice, fFailure to sign, nonappearance <u>exercise notice options--Failure to satisfy penalty.</u>
----------	---

Sec.5. DMMC 9.04.110 and section 11 of Ordinance No. 1036 are amended to read as follows:

Ordinance No. ____
Page 4 of 44

Prosecution costs.

(1) Whenever a person is convicted of a crime, the person may be required to pay court costs and recoupment along with any fine imposed.

(2) On failure to pay a fine, costs, or recoupment the defendant may be committed to jail until the judgment is paid in full. A defendant who has been committed shall be discharged upon the payment for the part of the fine and costs as remains unpaid after deducting from the whole amount any previous payment, and after deducting the amount allowed for each day of imprisonment.

(3) The amount allowed for each day of imprisonment is the same and is computed in the same manner as provided for superior court cases in RCW 10.82.030 and 10.82.040, ~~as presently constituted or as may be subsequently amended.~~

(4) All other proceedings in respect of the fine and costs are the same as in like cases in superior court.

Sec. 6. DMMC 9.04.120 and section 1 of Ordinance No. 1103 are amended to read as follows:

Incarceration costs. The following state statute is adopted by reference and is applicable within the City:

RCW

~~10.64.130 Incarceration costs.~~

~~10.01.160 Costs-What constitutes-Payment by
defendant-Procedure-Remission-Medical
or mental health treatment or services.~~

Sec. 7. Chapter 9.08 DMMC and section 12 of Ordinance No. 1036 are repealed and replaced as a new section entitled

Ordinance No. ____
Page 5 of 44

"Abandoned Refrigeration Equipment" in chapter 9.56 DMMC, Littering and Pollution.

Sec. 8. DMMC 9.10.020 and section 2 or Ordinance No. 1360 are amended to read as follows:

Definitions.--

~~(1)~~ **Use of words and phrases.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

~~(2)~~ "Alarm administrator" means a person or persons designated by the City of Des Moines ~~e~~Chief of ~~p~~Police to administer the City's false alarm reduction program.

~~(3)~~ "Alarm company" means the business, by an individual, partnership, corporation or other entity, of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, installing or monitoring an alarm system in an alarm site.

~~(4)~~ "Alarm dispatch request" means a notification to a law enforcement agency that an alarm, either manual or automatic, has been activated at a particular alarm site.

~~(5)~~ "Alarm registration" means the notification by an alarm company or an alarm user to the alarm administrator that an alarm system has been installed and is in use.

~~(6)~~ "Alarm site" means a single fixed premises or location served by an alarm system or systems. Each tenancy, if served by a separate

Ordinance No. ____
Page 6 of 44

alarm system in a multi-tenant building or complex, shall be considered a separate alarm site.

_____~~(7)~~—"Alarm system" means a device or series of devices which emit or transmit a remote or local audible, visual or electronic signal indicating an alarm condition that is intended to or causes law enforcement service to be summoned.

_____~~(8)~~—"Alarm user" means any person, firm, partnership, corporation or other entity, other than a public law enforcement agency, who (which) uses or is in control of any alarm system at its alarm site.

_____~~(9)~~—"Alarm user awareness class" means a class conducted by any municipality or law enforcement agency for the purpose of educating alarm users about the problems created by false alarms and responsible use and operation of alarm systems.

_____~~(10)~~—"Cancellation" or "responding agency alarm dispatch cancellation" is the process by which an alarm company providing monitoring verifies with the alarm user or responsible party that a false dispatch has occurred and that there is not an existing situation at the alarm site requiring law enforcement agency response.

_____~~(11)~~—"Conversion" means the transaction or process by which one alarm company begins monitoring of a previously unmonitored alarm system or an alarm system previously monitored by another alarm company.

_____~~(12)~~—"Duress alarm" means a silent alarm system signal generated by the manual activation of a device intended to signal a life threatening

Ordinance No. ____
Page 7 of 44

situation or a crime in progress requiring law enforcement response.

_____(13)—"False alarm" means an alarm dispatch request to a law enforcement agency, when the responding officer finds no evidence of a criminal offense or attempted criminal offense after having completed a timely investigation of the alarm site.

_____(14)—"Holdup alarm" means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress.

_____(15)—"Keypad" means a device that allows control of an alarm system by the manual entering of a coded sequence of numbers or letters.

_____(16)—"Local alarm system" means any alarm system that annunciates an alarm only by an internal or external audio device.

_____(17)—"Monitoring" means the process by which an alarm company receives signals from an alarm system and relays an alarm dispatch request to the city for the purpose of summoning law enforcement response to the alarm site.

_____(18)—"Panic" means an audible alarm system signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring law enforcement response.

_____(19)—"Person" means an individual, corporation, partnership, association, organization or similar entity.

_____(20)—"Revocation" means the cancellation and invalidation of an alarm registration.

Ordinance No. _____
Page 8 of 44

_____~~(21)~~—"Suspension" or "suspension of response" means that law enforcement will not respond to an alarm or to an alarm site even though an alarm dispatch request is received by law enforcement.

_____~~(22)~~—"Takeover" means the transaction or process by which an alarm user takes over control of an existing alarm system, which was previously controlled by another alarm user.

_____~~(23)~~—"Verify" means an attempt, by the alarm company or its representative, to contact the alarm site by telephonic or other electronic means, whether or not actual contact with a person is made, before requesting law enforcement dispatch, in an attempt to avoid an unnecessary alarm dispatch request.

_____~~(24)~~—"Zones" are subdivisions into which an alarm system is divided to indicate the general location from which an alarm system signal is transmitted.

Sec. 9. DMMC 9.10.090 and section 9 of Ordinance No. 1360 as amended by section 2 of Ordinance No. 1379 are amended to read as follows:

Enforcement and penalties.

(1) Any person operating a nonregistered alarm system (whether revoked, suspended or never acquired) will be subject to a \$200.00 fine in addition to any other fines. Failure to renew will be classified as use of a nonregistered alarm system.

(2) An alarm user shall be subject to fines, warnings and suspension or revocation of registration depending on the number of false

Ordinance No. _____
 Page 9 of 44

alarms emitted from an alarm system within a 12-month period from the date of registration or renewal.

(3) The fines for a false alarm for the year starting January 2006 shall be:

Number of False Alarms	Fines
1	0
2	0
3	\$100.00
4 or more	\$200.00 (each) or actual cost of response as deter-mined by e Chief of p Police

(4) The fines for the years 2007 and thereafter shall be determined by the city manager based upon the recommendation of the Des Moines police chief whose recommendation shall be based upon the actual costs of a two-officer response including dispatch fee and costs of administration.

(5) At the discretion of the alarm administrator, an alarm user may have the option of attending an alarm user awareness class in lieu of paying one prescribed fine.

(6) An alarm company will be subject to a \$200.00 fine per event if the alarm administrator determines that the alarm company has failed to

Ordinance No. ____
 Page 10 of 44

comply with any of the duties set forth in this chapter or that:

(a) The alarm company directly caused a false alarm. In this situation the fine will be assessed against the alarm company and will not be counted against the alarm user;

(b) There is a consistent pattern or written policy against verification;

(c) An alarm company employee made a false statement concerning the inspection of an alarm site or the performance of an alarm system; or

(d) An alarm company continues to request law enforcement dispatch to an alarm site after notification that the registration has been suspended or revoked and/or is subject to enforcement and penalties set forth in this chapter.

(7) Any due and unpaid alarm registration fee and all fines and penalties imposed by this chapter may be collected by civil action, which remedy shall be in addition to any and all other existing remedies and penalties.

Sec. 10. DMMC 9.10.030 and section 3 of Ordinance No. 1360 are amended to read as follows:

Registration required - Application - Fee - Transferability - False statements.

(1) After 60 days from the effective date of the Ordinance codified in this chapter, no alarm user shall operate, or cause to be operated, an alarm system at its alarm site without a valid alarm registration issued by the alarm

Ordinance No. ____
 Page 11 of 44

administrator. A separate registration is required for each alarm site.

(2) For those alarm systems in existence on the effective date of the ordinance codified in this chapter, the initial annual registration and fee for each alarm system must be submitted to the alarm administrator within 60 days of the effective date of the Ordinance codified in this chapter.

(3) For new alarm system installations and alarm takeovers, the initial annual registration and fee for each alarm system must be submitted within five days after the alarm installation or alarm takeover.

(4) The registration fee for the year starting January 2005 shall be:

Initial alarm registration	\$25.00
Renewal of alarm registration	\$25.00
Late fee (after 30 days)	\$25.00

(5) The registration and renewal fees for the years 2006 and thereafter shall be set by the city manager based upon the recommendation of the city of Des Moines police chief, whose recommendation shall be based upon the actual costs of administration and enforcement of the alarm registration program.

(6) Upon receipt of a completed application form and the alarm registration fee,

Ordinance No. ____
Page 12 of 44

the alarm administrator shall register the applicant unless the applicant has:

(a) Failed to pay a fine assessed under this chapter; or

(b) Had an alarm registration for the alarm site suspended or revoked, and the violation causing the suspension or revocation has not been corrected.

(7) Each alarm registration application shall be on a form approved by the eCity of Des Moines eChief of pPolice and shall provide such information and signed assurances as the chief deems necessary to carry out the intent and purposes of this chapter.

(8) Each alarm registration and renewal shall require a signed acknowledgment by the alarm user of the following:

Registration of an alarm system is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, of response by the City of Des Moines Police Department. Any and all liability and consequential damage resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By registering an alarm system, the alarm user acknowledges that police response may be based on many factors, including but not limited to availability of police units, priority of calls, weather conditions,

Ordinance No. ____
Page 13 of 44

traffic conditions, emergency
conditions, and staffing levels.

(9) Any false statement of a material fact made by an applicant for the purpose of obtaining an alarm registration shall be sufficient cause for refusal to issue or to revoke a registration.

(10) An alarm registration cannot be transferred to another person or alarm site. An alarm user shall inform the alarm administrator, within five business days, of any change that alters any information listed on the registration application.

(11) All fees owed by an applicant must be paid before a registration may be issued or renewed

Sec. 11. DMMC 9.10.120 and section 12 of Ordinance No. 1360 as amended by section 3 of Ordinance No. 1379 are amended to read as follows:

Appeals.

(1) An alarm user or an alarm company may appeal the assessment of a fine or suspension to the alarm administrator. An appeal fee of \$25.00 shall accompany the appeal. Appeal fees will be returned to ~~the~~ alarm user or the alarm company if the appeal is upheld. The filing of an appeal with the alarm administrator stays the assessment of the fine or suspension until the alarm administrator makes a final decision.

(2) The alarm user shall file a written appeal to the alarm administrator by setting forth the reasons for the appeal within 10 days after receipt of the fine.

Ordinance No. ____
 Page 14 of 44

(3) If the alarm administrator denies the issuance or renewal of an alarm registration, or suspends response, the alarm administrator shall send written notice of the action and a statement of the right to an appeal to either the applicant or alarm user and the alarm company.

(4) An alarm user or alarm company may appeal the decision of the alarm administrator to the ~~e~~City ~~H~~Hearing ~~e~~Examiner in accordance with chapter 18.94240 DMMC.

Sec.12. DMMC 9.12.010 and section 13 of Ordinance No. 1036 are amended to read as follows:

Alcoholic beverage control - Enforcement. The following state statutes are adopted by reference and are applicable within the city and wherever the word "title" or words "this title" are used therein the same is construed to mean and refer to Title 66 RCW and "this act" to mean and refer to the Washington State Liquor Act:

RCW

66.04.010	Definitions.
66.04.011	"Public place" not to include certain parks and picnic areas.
66.20.200	Unlawful acts relating to card of identification and certification card - <u>Penalties</u> .
66.20.210	Licensee's immunity to prosecution or suit - Certification card as evidence of good faith.
66.28.080	Permit for music and dancing upon licensed premises.
66.28.090	Licensed premises or banquet permit premises open to inspection - Failure to allow, violation.

Ordinance No. _____
 Page 15 of 44

66.44.010	Local officers to enforce law - Authority of board - Liquor enforcement officers.
66.44.040	Sufficiency of description of offenses in complaints, informations, process, etc.
66.44.050	Description of offense in words of statutes - Proof required.
66.44.060	Proof of unlawful sale establishes prima facie intent.
66.44.070	Certified analysis is prima facie evidence of alcoholic content.
66.44.080	Service of process on corporation.
66.44.090	Acting without license.
66.44.100	Opening or consuming liquor in public place - Penalty.
66.44.120	Unlawful use of seal.
66.44.130	Sale of liquor by drink or bottle.
66.44.140	Unlawful sale, transportation of spirituous liquor without stamp or seal - Unlawful operation, possession of still or mash.
66.44.150	Buying liquor illegally.
66.44.160	Illegal possession, transportation of alcoholic beverages.
66.44.170	Illegal possession of liquor with intent to sell - Prima facie evidence, what is.
66.44.175	Violations of law.
66.44.180	General penalties - Jurisdiction for violations.
66.44.200	Sales to persons apparently under the influence of liquor- <u>Purchases or consumption by persons apparently under the influence of liquor on licenses premises-Penalty-Notice-Separation of actions.</u>

Ordinance No. ____
Page 16 of 44

- 66.44.210 Obtaining liquor for ineligible person.
- 66.44.240 Drinking in public conveyance -
Penalty against carrier - Exception.
- 66.44.250 Drinking in public conveyance -
Penalty against individual -
Restricted application.
- 66.44.265 Candidates giving or purchasing
liquor on election day prohibited.
- 66.44.270 Furnishing liquor to minors -
Possession, use -
~~Exceptions~~Penalties--Exhibition of
effect--Exceptions.
- 66.44.280 Minor applying for permit.
- 66.44.290 Minor purchasing or attempting to
purchase liquor--Penalty.
- ~~66.44.291 Minor purchasing or attempting to
purchase liquor - Penalty against
persons between ages of eighteen and
twenty, inclusive.~~
- 66.44.300 ~~Treating minor, etc., in public place
where liquor sold.~~Treats, gifts,
purchases of liquor for or from
minor, or holding out minor as at
least twenty-one, in public place
where liquor sold.
- 66.44.310 ~~Minors frequenting taverns or
cocktail lounges - Misrepresentation
of age - Penalty - Classification of
licensees.~~off-limits area-
Misrepresentation of age-Penalty-
Classification of licensees.
- 66.44.316 Certain persons eighteen years and
over permitted to enter and remain
upon licensed premises during
employment.
- ~~66.44.320 Sales of liquor to minors a
violation.~~

Ordinance No. ____
Page 17 of 44

- 66.44.325 Unlawful transfer to a—minor of an identification of age identification.
- 66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card - Penalty.
- 66.44.340 Employees eighteen years and over allowed to sell and handle beer and wine for ~~class E and/or F licensed employers~~ certain licensed employers.
- 66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for ~~Class A, C, D and/or H licensed employers~~ certain licensed employers.
- 66.44.365 Juvenile driving privileges - Alcohol or drug violations.
- 66.44.370 Resisting or opposing officers in enforcement of Title.

Sec. 13. DMMC 9.12.020 and section 14 of Ordinance No. 1036 are amended to read as follows:

Hours of sale.

(1) WAC 314-161-0570, Hours of operation, is adopted by reference and is applicable within the city.

(2) A violation of or failure to comply with this section is a gross misdemeanor.

Sec. 14. DMMC 9.16.010 and section 15 of Ordinance No. 1036 as amended by section 1 of Ordinance No. 1145 are amended to read as follows:

State provisions adopted. The following state statutes are adopted by reference and are applicable within the City:

Ordinance No. _____
Page 18 of 44

RCW

- ~~9.08.020~~ ~~Diseased animals.~~
- 9.08.030 False certificate of registration of animals - False representation as to breed.
- 9.08.065 Definitions.
- 9.08.070 Pet animals - Taking, concealing, injuring, killing, etc. - Penalty.
- 16.52.011 Definitions - Principles of liability.
- 16.52.015 Enforcement - Law enforcement agencies and animal care and control agencies.
- ~~16.52.050~~ ~~Complaint - Search warrant - Arrest.~~
- 16.52.080 Transporting or confining in unsafe manner - Penalty.
- 16.52.085 Removal of ~~neglected~~ animals for feeding and ~~restoration to health care~~ - Examination - Notice - Return - ~~Nonliability.~~ Euthanasia
- 16.52.090 Docking horses - Misdemeanor.
- 16.52.095 Cutting ears - Misdemeanor.
- 16.52.100 Confinement without food and water - Intervention by others.
- 16.52.110 Old or diseased animals at large.
- ~~16.52.117~~ ~~Dog fighting - Owners, trainers, spectators - Exceptions.~~
- 16.52.165 Punishment - Conviction of misdemeanor.
- 16.52.180 Limitations on application of chapter.
- 16.52.185 Exclusions from chapter.
- 16.52.190 Poisoning animals - Penalty.
- 16.52.193 Poisoning animals - Strychnine sales - Records - Report on suspected purchases.
- ~~16.52.195~~ ~~Poisoning animals - Penalty.~~
- 16.52.200 Sentences - Forfeiture of animals - Liability for costs - ~~Civil p~~Penalty - Education, counseling.
- 16.52.207 Animal cruelty in the second degree - Penalty.

Ordinance No. ____
 Page 19 of 44

16.52.210 Destruction of animal by law enforcement officer - Immunity from liability.

Sec. 15. Chapter 9.20 DMMC is repealed and replaced as section 9.04.055 DMMC entitled "Anticipatory offenses."

Sec. 16. Chapter 9.24 DMMC and sections 19, 20, and 22 of Ordinance No. 1036 are amended to read as follows:

9.24.010. Definitions - Adoptions, Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

~~(2)~~—"Official eCity flag" means the design, attached as Exhibit "A" to this ~~title~~ and incorporated by reference, that is adopted as the official city flag for the eCity.

~~(3)~~—"Official municipal seal" means the decorative ornamental design, attached as Exhibit "B" to this ~~title~~ and incorporated by reference, that is adopted as the official municipal seal for the eCity.

9.24.020. Unlawful use. It is unlawful for a person to copy, reproduce, distribute, sell, or use in any manner the official municipal symbols adopted by this chapter without the express written consent of the eCity ~~manager~~ or the eCity ~~manager's~~ designee.

Ordinance No. ____
Page 20 of 44

9.24.030. Violation - Penalty. A violation of or failure to comply with this section is a misdemeanor.

9.24.040. Civil actions authorized. Upon approval of the eCity eCouncil, the eCity aAttorney is authorized to bring a civil action in superior court for injunctive relief, damages, costs, attorney's fees, and other remedies as the court deems appropriate for a violation of or failure to comply with this chapter.



Exhibit "A"



Exhibit "B"

Ordinance No. _____
 Page 21 of 44

Sec. 17. DMMC 9.28.010 and section 23 of Ordinance No. 1036 as amended by section 4 of Ordinance No. 1364 are amended to read as follows:

State statutes adopted by references. The following state statutes, as presently constituted or as may be subsequently amended, are adopted by reference and are applicable with the City:

RCW

69.50.101	Definitions.
69.50.102	Drug paraphernalia - Definitions.
69.50.309	Containers.
69.50.4014	Possession of forty grams or less of marijuana - Penalty.
69.50.404	Penalties under other laws.
69.50.405	Bar to prosecution.
69.50.412	Prohibited acts: E - Penalties.
69.50.425	Misdemeanor violations - Minimum penalties.
69.50.445	Opening <u>package of</u> or consuming package containing marijuana, useable marijuana, or marijuana-infused product in view of general public - Penalty.
69.50.505	Seizure and forfeiture.
69.50.506	Burden of proof; liabilities.
69.50.509	Search and seizure of controlled substances.
69.50.510	Search and seizure at rental premises - Notification of landlord.

Sec. 18. DMMC 9.28.040 and section 26 of Ordinance No. 1036 as amended by section 5 of Ordinance No. 1364 are amended to read as follows:

Legend and prescription drugs. The following state statutes, as presently constituted or as may be subsequently amended, are adopted by reference and are applicable with the City:

Ordinance No. ____
Page 22 of 44

RCW

69.41.010 Definitions.
69.41.020 Prohibited acts - Information not privileged communication.
69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited - Exceptions--Penalty.
69.41.032 Prescription of legend drugs by dialysis programs.
69.41.040 Prescription requirements--Penalty.
69.41.042 Record requirements.
69.41.044 Confidentiality.
69.41.050 Labeling requirements--Penalty.
69.41.060 Search and seizure.
69.41.062 Search and seizure at rental premises - Notification of landlord.
69.41.065 Violations - Juvenile driving privileges.
~~69.41.070 Penalties.~~
69.41.075 Rules - Availability of lists of drugs.
69.41.080 Animal control - Rules for possession and use of legend drugs.
69.41.300 Definitions.
69.41.320 Practitioners - Restricted use - Medical records.
69.41.350 Penalties.

Sec. 19. DMMC 9.28.080 and section 6 of Ordinance No. 1364 are amended to read as follows:

Precursor drugs. The following state statutes, as presently constituted or as may be subsequently amended, are adopted by reference and applicable with the City:

RCW

Ordinance No. _____
Page 23 of 44

- 69.43.010 ~~Report to state board of pharmacy~~
quality pharmacy assurance commission
- List of substances - Modification
of list - Identification of
purchasers - Report of transactions -
Penalties.
- 69.43.020 Receipt of substance from source
outside state - Report - Penalty.
- 69.43.030 Exemptions.
- 69.43.035 Suspicious transactions - Report -
Penalty.
- 69.43.043 Recordkeeping requirements - Penalty.
- 69.43.090 Permit to sell, transfer, furnish or
receive substance - Exemptions -
Application for permit - Fee -
Renewal - Penalty.
- 69.43.110 Ephedrine, pseudoephedrine,
phenylpropanolamine - Sales
restrictions - Electronic sales
tracking system - Penalty.
- 69.43.120 Ephedrine, pseudoephedrine,
phenylpropanolamine - Possession of
more than fifteen grams - Penalty -
Exceptions.

Sec. 20. DMMC 9.32.020 and section 28 of Ordinance
No. 1036 are amended to read as follows:

False fire alarms and miscellaneous crimes. the
following state statutes are adopted by reference
and are applicable within the City:

RCW

- 9.40.040 Operating engine or boiler without
spark arrester.
- 9.40.100 ~~Injuring or tampering with fire alarm~~
~~apparatus or equipment or fire~~
~~fighting equipment - Sounding false~~
~~alarm of fire - Penalty. Tampering~~

Ordinance No. _____
 Page 24 of 44

with fire alarm or firefighting
 equipment-False alarm-Penalties.

Sec. 21. DMMC 9.36.010 and section 29 of Ordinance No. 1036 are amended to read as follows:

The following state statutes are adopted by reference and are applicable within the City:

RCW

9.41.010 Terms defined.
 9.41.050 Carrying ~~pistol.~~ firearms.
 9.41.060 Exceptions to restrictions on carrying ~~pistol.~~ firearms.
 9.41.070 ~~Issue of licenses to carry - Fee -~~
~~Revocation - Renewal.~~ Concealed pistol
license - Application - Fee - Renewal.
 9.41.080 Delivery to ~~minors and others~~
~~forbidden.~~ ineligible persons.
 9.41.090 ~~Commercial sales regulated -~~
~~Requirements for delivery~~ Dealer
deliveries regulated - Hold on
delivery.
 9.41.093 ~~Exemptions.~~
 9.41.095 ~~Denial of application - Appeal.~~
 9.41.098 ~~Forfeiture of firearms, order by~~
~~courts - Return to owner -~~
~~Confiscation by law enforcement~~
~~officer.~~ -Disposition - Confiscation.
 9.41.100 ~~Dealers to be licensed.~~ Dealer
licensing and registration required.
 9.41.110 Dealer's licenses, by whom granted,
 and conditions, ~~thereof~~ fees -
Employees, fingerprinting and
background checks - Wholesale sales
excepted - Permits prohibited.
 9.41.120 ~~Certain transfers forbidden.~~ Firearms
as loan security.
 9.41.130 ~~False information forbidden.~~

Ordinance No. _____
Page 25 of 44

- 9.41.140 Alteration of identifying marks -
Exceptions.
- ~~9.41.150 Exemptions - Antique firearms.~~
- ~~9.41.160 Penalty.~~
- ~~9.41.170 Alien's license to carry firearms -
Exception.~~
- ~~9.41.180 Setting spring gun.~~
- ~~9.41.200 Machine gun defined.~~
- 9.41.220 ~~Machine guns~~ Unlawful firearms and
parts contraband.
- 9.41.230 Aiming or discharging firearms,
dangerous weapons.
- 9.41.240 ~~Use of firearms by minor.~~ Possession
of pistol by person from eighteen to
twenty-one.
- 9.41.250 Dangerous weapons - ~~Evidence.~~ Penalty
- 9.41.260 Dangerous exhibitions.
- 9.41.270 Weapons ~~apparently capable of
producing bodily harm - Unlawful
carrying or handling - Penalty -
Exceptions.~~
- 9.41.280 ~~Students carrying dangerous weapons on
school premises - Possessing dangerous
weapons on school facilities - Penalty
- Exceptions.~~
- 9.41.300 ~~Firearms~~ prohibited in certain places
- Local laws and ordinances -
Exceptions - Penalty.
- 9.41.333 Duty to register - Requirements
- 9.41.335 Failure to register as felony firearm
offender.
- 9.41.810 Penalty
- ~~77.165.250~~460 Loaded firearms in vehiclesrifle
or shotgun in vehicle-Unlawful use or
possession-unlawful use of a loaded
firearm--Penalty.
- ~~77.16.260 Shooting firearm from public highway.~~
- ~~77.16.290 Law enforcement officers - Exemption.~~

Ordinance No. ____
Page 26 of 44

Sec. 22. DMMC 9.36.030 and section 31 of Ordinance No. 1036 are amended to read as follows:

Weapons prohibited on liquor sale premises.

(1) Except as provided in subsection (2) of this section, it is unlawful for a person, on or in a premises in the city where alcoholic beverages are dispensed by the drink to:

(a) Carry a firearm, rifle or handgun, whether the person has a license or permit to carry a firearm or not, and whether the firearm is concealed or not. Subsection (a) is limited to any portion of an establishment classified by the State Liquor Control Board as off-limits to persons under the age of twenty-one, to;

(b) Carry a knife, sword, dagger, or other cutting or stabbing instrument, with a blade of a length of three inches or more, or a razor with an unguarded blade, whether the weapon or instrument is concealed or not; or

(c) Carry an instrument or weapon of the kind usually known as a slingshot, taser, throwing star, bow, sand club, blackjack, metal knuckles, or a stick, chain, metal pipe, bar, club or combination thereof including a device known as numchuk sticks, or a like device having the same or similar components or parts, whether or not connected by a rope, chain or other device, or an explosive or poison or injurious gas, or any other instrument or weapon apparently capable of producing bodily harm, whether the instrument or weapon is concealed or not.

Ordinance No. _____
 Page 27 of 44

(2) The provisions of this section shall not apply to or affect the following:

(a) A lawful act committed by a person while in the person's fixed place of business;

(b) A person who by virtue of the person's office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, whether during regular duty hours or not; or

(c) A person making or assisting in making a lawful arrest for the commission of a felony.

(3) Penalty.

(a) A violation of or failure to comply with this section is a misdemeanor.

(b) Upon conviction, the weapon or instrument involved may be confiscated by order of the court and shall thereafter be disposed of in accordance with statutes or ordinances governing the disposal of confiscated or found weapons.

Sec. 23. DMMC 9.36.040 and section 33 of Ordinance No. 1036 are amended to read as follows:

Firearms prohibited - Additional places - Penalty.

(1) It is unlawful for a person to enter the following places when the courtroom or judge's chamber while either is being used for any judicial proceeding when he or she person

Ordinance No. ____
 Page 28 of 44

knowingly possesses or knowingly has under the
~~person's~~ this or her control a firearm.

~~(a) The council chambers of the
 Des Moines city council; or~~

~~(b) The courtroom of the Des Moines
 municipal court.~~

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

(a) A person engaged in military
 activities sponsored by the federal or state
 governments, while engaged in official duties;

(b) Commissioned law enforcement
 personnel; or

(c) Security personnel while
 engaged in official duties.

(3) A violation of or failure to comply
 with this section is a misdemeanor.

Sec. 24. DMMC 9.44.010 and section 58 of Ordinance
 No. 1036 are amended to read as follows:

Frauds and swindles. The following state statutes
 are adopted by reference and are applicable with
 the City:

RCW

9.04.010	False advertising.
9.26A.090	Telephone company credit cards - Prohibited acts.
9.26A.100	Definitions.
9.26A.110	Fraud in obtaining telecommunications service - Penalty.

Ordinance No. ____
Page 29 of 44

9.26A.120	Fraud in operating coin-box telephone or other receptacle.
9.26A.130	Penalty for manufacture or sale of slugs to be used for coin.
9.45.060	Encumbered, leased, or rented personal property - Construction.
9.45.062	Failure to deliver leased personal property - Requisites for prosecution - Construction.
9.45.070	Mock auctions.
9.45.080	Fraudulent removal of property.
9.45.090	Knowingly receiving fraudulent conveyance.
9.45.100	Fraud in assignment for benefit of creditors.
9A.60.010	Definitions.
9A.60.040 <u>5</u>	Criminal impersonation <u>in the second degree.</u>
9A.60.050	False certification.
9A.60.070	<u>False academic credentials - Unlawful issuance or use - Definitions - Penalties.</u>

Sec. 25. DMMC 9.48.010 and section 61 of Ordinance No. 1036 are amended to read as follows:

RCW

9.46.010	Legislative declaration.
9.46.0201	Amusement game.
9.46.0205	Bingo.
9.46.0209	Bona fide charitable or nonprofit organization.
9.46.0213	Bookmaking.
9.46.0217	Commercial stimulant.
9.46.0221	Commission.
9.46.0225	Contest of chance.
9.46.0229	Fishing derby.
9.46.0233	Fund raising event.

Ordinance No. ____
Page 30 of 44

9.46.0237	Gambling.
9.46.0241	Gambling device.
9.46.0245	Gambling information.
9.46.0249	Gambling premises.
9.46.0253	Gambling record.
9.46.0257	Lottery.
9.46.0261	Member, bona fide member.
9.46.0265	Player.
9.46.0269	Professional gambling.
9.46.0273	Punch boards, pull-tabs.
9.46.0277	Raffle.
9.46.0281	Social card game.
9.46.0285	Thing of value.
9.46.0289	Whoever, person.
9.46.0305	Dice or coin contests for music, food, or beverage payment.
9.46.0311	Charitable, nonprofit organizations - Authorized gambling activities.
9.46.0315	Raffles - No license required, when.
9.46.0321	Bingo, raffles, amusement games - No license required, when.
9.46.0325	Social card games, punch boards, pull-tabs authorized.
9.46.0331	Amusement games authorized - Minimum rules.
9.46.0335	Sports pools authorized.
9.46.0341	Golfing sweepstakes authorized.
9.46.0345	Bowling sweepstakes authorized.
9.46.0351	Social card, dice games - Use of premises of charitable, nonprofit organizations.
9.46.0355	Promotional contests of chance authorized.
9.46.0361	Turkey shoots authorized.
9.46.130	Inspection and audit of premises, paraphernalia, books, and records - Reports for the commission.

Ordinance No. _____
 Page 31 of 44

- 9.46.150 Injunctions - Voiding of licenses, permits, or certificates.
- 9.46.153 Applicants and licensees - Responsibilities and duties - Waiver of liability - Investigation statement as privileged.
- 9.46.158 Applicants, licensees, operators - Commission approval for hiring certain persons.
- 9.46.170 False or misleading entries or statements, refusal to produce records.
- 9.46.185 Causing person to violate rule or regulation.
- 9.46.190 Violations relating to fraud or deceit.
- 9.46.192 Cities and towns - Ordinance enacting certain sections of chapter - Limitations - Penalties.
- 9.46.193 Cities and towns - Ordinance adopting certain sections of chapter - Jurisdiction of courts.
- 9.46.195 Obstruction of public servant ~~in administration or enforcement as violation~~ - Penalty.
- 9.46.196 Cheating - Defined.
- 9.46.1962 Cheating in the second degree.
- 9.46.198 Working in gambling activity without license as violation - Penalty.
- 9.46.200 Action for money damages due to violations - Interest - Attorneys' fees - Evidence for exoneration.
- 9.46.210 Enforcement - Commission as a law enforcement agency.
- 9.46.222 Professional gambling in the third degree.
- 9.46.225 Professional gambling - Penalties not applicable to authorized activities.

Ordinance No. _____
 Page 32 of 44

- 9.46.235 Slot machines, antique - Defenses concerning - Presumption created.
- 9.46.240 Gambling information, transmitting or receiving.
- 9.46.250 Gambling property or premises - Common nuisances, abatement - Termination of mortgage, contract, or leasehold interests, licenses interests, licenses - Enforcement.
- 9.46.260 Proof of possession as evidence of knowledge of its character.
- 9.46.285 ~~Chapter as exclusive authority for~~ Licensing and regulation of gambling activity authority, exclusive.
- 9.46.291 ~~Chapter not applicable to state~~ lottery. State lottery exemption.
- 9.46.293 Fishing derbies exempted.
- 9.46.350 Civil action to collect fees, interest, penalties, or tax - Writ of attachment - Records as evidence.

Sec. 26. DMMC 9.56.010 and section 65 of Ordinance No. 1036 are amended to read as follows:

Ordinance No. ____
Page 33 of 44

Littering and polluting.

(1) Litter defined. As used in this chapter, unless the context or subject matter clearly requires otherwise, "litter" means all waste material, including but not limited to, garbage as defined in chapter 7.08 DMMC, recyclable materials, disposable packages, and containers thrown or disposed as prohibited in this chapter.

(2) The following state statutes are adopted by reference and are applicable within the City:

RCW

70.54.010	Polluting water supply - Penalty.
70.54.020	Furnishing impure water - Penalty.
70.93.030	Definitions.
70.93.060	Littering prohibited - Penalties. <u>Litter cleanup restitution payment.</u>
70.93.080	Notice to public - Contents of chapter - Required.
70.93.100	Litter bags - Design and distribution by department authorized - Violations - Penalties.
70.93.110	Removal of litter - Responsibility.
70.93.230	Violations of chapter - Penalties.

Sec. 27. DMMC 9.68.010 and section 72 of Ordinance No. 1336 are amended to read as follows:

Assault and crimes involving physical harm. The following state statutes are adopted by reference and are applicable within the City:

RCW

9A.36.041	Assault in the fourth degree.
9A.36.050	Reckless endangerment in the second degree.

Ordinance No. _____
 Page 34 of 44

9A.36.070 Coercion.
 9A.36.150 Interfering with the reporting of
 domestic violence.

Sec. 28. DMMC 9.68.040 and section 75 or Ordinance No. 1036 are amended to read as follows:

Harassment. The following state statutes are adopted by reference and are applicable within the City:

RCW

9.61.230 Telephone ~~calls to harass,~~
~~intimidate, torment, or embarrass~~
harassment.

9.61.240 Telephone calls to harass,
 intimidate, torment, or embarrass
harassment - Permitting telephone to
 be used.

9.61.250 Telephone calls to harass,
 intimidate, torment, or embarrass -
 Offense, where deemed committed.

9.61.260 Cyberstalking

9A.46.020 Definition - Penalties.

9A.46.030 Place where committed.

9A.46.040 Court-ordered requirements upon
 person charged with crime -
 Violation.

9A.46.050 Arraignment - No-contact order.

9A.46.060 Crimes included in harassment.

9A.46.070 Enforcement of orders restricting
 contact.

9A.46.080 Order restricting contact -
 Violation.

9A.46.085 Stalking no-contact orders-Appearance
 before magistrate required.

9A.46.090 Nonliability of peace officer.

9A.46.100 "Convicted," time when.

9A.46.110 Stalking.

Ordinance No. _____
Page 35 of 44

Sec. 29. DMMC 9.68.060 and section 77 of Ordinance No. 1036 are amended to read as follows:

Custodial interference. The following state statutes are adopted by reference and are applicable within the City:

RCW

- 9A.40.010 Definitions.
- 9A.40.070 Custodial interference in the second degree.
- 9A.40.080 Custodial interference - Assessment of costs - Defense - Consent defenses, restricted.

Sec. 30. DMMC 9.68.070 and section 78 of Ordinance No. 1036 are amended to read as follows:

Domestic violence. The following state statutes are adopted by reference and are applicable within the City:

RCW

- 10.99.020 Definitions.
- 10.99.030 Law enforcement officers - Training, powers, duties. Domestic violence reports.
- 10.99.040 ~~Restrictions upon and~~ Duties of court ~~No contact orders.~~
- 10.99.045 Appearances by defendant ~~Orders prohibiting contact~~ Defendant's history ~~No contact order.~~
- 10.99.050 Restriction, or prohibition ~~of contact with victim~~ Violation, penalties - Written order - Procedures ~~Notice of change.~~
- 10.99.055 Enforcement of orders ~~against defendants.~~

Ordinance No. _____
 Page 36 of 44

10.99.060	Notification of victim of prosecution decision <u>Prosecutor's notice to victim</u> --Description of available procedures available to institute eriminal proceedings.
10.99.070	Liability of peace officers.
26.50.010	Definitions.
26.50.020	Commencement of action - Jurisdiction - Venue.
26.50.030	Petition for an order for protection - Availability of forms and instructional brochures Filing fee, when required --Bond not required.
26.50.040	Application for leave to proceed in forma pauperis <u>Fees not permitted</u> <u>Filing, service of process, certified copies.</u>
26.50.050	Hearing - Service - Time.
26.50.060	Relief --Duration --Realignment of designation of parties <u>Award of costs, service fees, and attorney's fees.</u>
26.50.070	Ex parte temporary order for protection.
26.50.080	Issuance of order - Assistance of peace officer - Designation of appropriate law enforcement agency.
26.50.090	Order - Service - Fees.
26.50.100	Order - Transmittal to law enforcement agency - Record in law enforcement information system - Enforceability.
26.50.110	Violation of order - Penalties.
26.50.120	Violation of order - Prosecuting attorney or attorney for municipality may be requested to assist - Costs and attorney's fee.

26.50.140 Peace officers - Immunity.

Theft. The following state statutes are adopted by reference and are applicable with the City.

9.54.130	Restoration of stolen property - Duty of officers.
9A.56.010	Definitions.
9A.56.020	Theft - Definition, defense.
9A.56.050	Theft in the third degree.
9A.56.060	Unlawful issuance of checks or drafts.
9A.56.063	<u>Making or possessing motor vehicle theft tools.</u>
9A.56.096	<u>Theft of rental, leased, lease-purchased, or loaned property.</u>
9A.56.100	Theft and larceny equated.
9A.56.140	Possessing stolen property - Definition-- Access devices, <u>Presumption.</u>
9A.56.170	Possessing stolen property in the third degree.
9A.56.180	Obscuring the identity of a machine.
9A.56.220	Theft of cable <u>subscription</u> television services.
9A.56.230	Unlawful sale of cable <u>subscription</u> television services.
9A.56.240	Forfeiture and disposal of device used to commit violation.
9A.56.260	Connection of channel converter.
9A.56.270	Shopping cart theft.

Ordinance No. ____
Page 38 of 44

9A.56.330	Possession of another's <u>identification.</u>
19.48.110	Obtaining hotel, restaurant, lodging house, ski area, etc., accommodations by fraud - Penalty.
70.54.090	Attachment of objects to utility poles-- <u>Penalty.</u>
70.54.100	Penalty for violation of RCW 70.54.100.

Sec. 32. DMMC 9.76.070 and section 89 of Ordinance No. 1036 are amended to read as follows:

Sexual exploitation of children. The following state statutes are adopted by reference and are applicable within the City:

RCW

9.68A.011	Definitions.
9.68A.080	Processors <u>Reporting</u> of depictions of minor engaged in sexually explicit conduct -- Report required <u>Civil</u> <u>immunity.</u>
9.68A.090	Communication with minor for immoral purposes-- <u>Penalties.</u>
9.68A.110	Certain defenses barred, permitted.
9.68A.120	Seizure and forfeiture of property.
9.68A.130	Recovery of costs of suit by minor.
9.68A.140	Definitions.
9.68A.150	Allowing minor on premises of live erotic performance-- <u>Definitions--</u> <u>Penalty.</u>
9.68A.160	Penalty

Sec. 33. DMMC 9.84.030 and section 98 of Ordinance No. 1036 are amended to read as follows:

RCW

9.73.010	Divulging telegram.
----------	---------------------

Ordinance No. _____
 Page 39 of 44

- 9.73.020 Opening sealed letter.
- 9.73.030 Intercepting, recording, or divulging private communication - Consent required - Exceptions.
- 9.73.070 Persons and activities excepted from chapter.
- 9.73.080 ~~Intercepting, recording, or divulging private communication -~~
PenaltyPenalties.
- 9.73.090 Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080 - Standards - Court authorizations - Admissibility.
- 9.73.100 Recordings available to defense counsel.
- 9.73.110 Intercepting, recording, or disclosing private communications - Not unlawful for building owner - Conditions.
- 9.73.120 Reports - Required, when, contents.
- 9.73.130 Recording private communications - Authorization - Application for, contents.
- 9.73.140 Recording private communications - Authorization of or application for - Inventory, contents, service - Availability of recording, applications, and orders.
- 9.73.200 Intercepting, transmitting, or recording conversations concerning controlled substances - Findings.
- 9.73.210 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor---
 Authorization - Monthly report - Admissibility - Destruction of information.

Ordinance No. _____
 Page 40 of 44

9.73.230 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor---Conditions - Written reports required - Judicial review - Notice - Admissibility - Penalties.

Sec. 34. DMMC 9.88.010 and section 99 of Ordinance No. 1036 are amended to read as follows:

Offenses relating to school property and personnel.
 The following state statutes are adopted by reference and are applicable with the City:

RCW

28A.635.010 Abusing or insulting teachers, liability for - Penalty.

28A.635.020 Willfully disobeying school administrative personnel or refusing to leave public property, violations, when - Penalty.

28A.635.030 Disturbing school, school activities or meetings - Penalty.

28A.635.040 Examination questions - Disclosing - Penalty.

28A.635.090 ~~Interfering~~ence by force or violence with any administrator, teacher, ~~classified employee, or student~~ unlawful--Penalty.

28A.635.100 Intimidating any administrator, teacher, classified employee, or student by threat of force or violence unlawful--Penalty.

28A.635.110 Violations under RCW 28A.635.090 and 28A.635.100 - Disciplinary authority exception.

~~28A.635.120 Violations under RCW 28A.635.090 and 28A.635.100 - Penalty.~~

Ordinance No. ____
Page 41 of 44

Sec. 35. DMMC 9.92.010 and section 100 of Ordinance No. 1036 are amended to read as follows:

Conduct prohibited. The following state statutes are adopted by reference and are applicable within the City:

RCW

- 9.91.010 Denial of civil rights - Terms defined.
- 9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated.
- 9.91.025 Unlawful ~~bus~~ transit conduct.
- 9.91.060 Leaving children unattended in parked automobile.
- ~~9.91.110 Metal buyers - Records of purchases - Penalty.~~
- 9.91.130 Disposal of trash in charity donation receptacle.
- 9.91.140 Food ~~coupons~~ stamps - Unlawful sale.

Sec. 36. DMMC 9.92.020 and section 101 of Ordinance No. 1036 are amended to read as follows:

State parks-State provisions adopted.

(1) The following state codes are adopted by reference and are applicable within the City:

WAC

- 352-12-005 Definitions.
- 352-12-010 Moorage and use of marine and inland water facilities.
- 352-12-020 Moorage fees.
- 352-12-030 Annual moorage permits.
- 352-12-040 Use of onshore campsites.
- 352-12-050 Self-registration.

Ordinance No. _____
 Page 42 of 44

352-20-010	Parking Stopping, standing or parking prohibited in specific areas.
352-20-020	Motor vehicles on roads and trails.
352-20-030	Speed limits.
352-20-040	Vehicles in snow areas.
352-20-050	Trucks and commercial vehicles.
352-20-060	Definitions.
352-32-010	Definitions.
352-32-030	Camping.
352-32-040	Picnicking.
352-32-045	Reservations for group day use of designated group facilities.
352-32-050	Park periods.
352-32-053	Park capacities.
352-32-056	Peace and quiet.
352-32-060	Pets.
352-32-070	Horseback riding Use of horses, llamas, sled dogs or similar animals for recreation.
352-32-075	Use of nonmotorized cycles or similar devices in state parks.
352-32-080	Swimming.
352-32-090	Games <u>or activities.</u>
352-32-100	Disrobing.
352-32-110	Tents, etc., on beaches.
352-32-120	Firearms and/or weapons.
352-32-121	<u>Other weapons.</u>
352-32-130	Aircraft.
352-32-140	Fireworks.
352-32-150	Fishing.
352-32-170	Rubbish.
352-32-180	Sanitation.
352-32-195	Solicitation.
352-32-200	Penalties. Expulsion from state park areas.
352-32-210	Consumption of alcohol in state park areas.
352-32-220	Intoxication in state park areas.

Ordinance No. ____
 Page 43 of 44

352-32-230	Food and beverage containers on swimming beaches.
352-32-235	Use of metal detectors in state parks.
352-32-240	Nondiscrimination certification.
352-32-255	Self-registration.
352-32-290	Wood debris collection permit Fee.

(2) Except as otherwise provided for in this section, a violation of or failure to comply with this section is a misdemeanor.

NEW SECTION. Sec. 37. 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.

NEW SECTION. Sec. 38. 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:

Ordinance No. _____
Page 44 of 44

Assistant City Attorney

ATTEST:

City Clerk

Published: _____

Effective: _____

OPINIONS

Rob McKenna | 2005-2012 | Attorney General of Washington

**CITIES AND TOWNS – FIREARMS – PREEMPTION -
Authority of city to enact a local law prohibiting possession of
firearms on city property or in city-owned facilities.**

**RCW 9.41.290 preempts a city's authority to enact local laws that prohibit
possession of firearms on city property or in city-owned facilities.**

9

October 13, 2008

Honorable Bob Morton
State Senator, 7th District
P. O. Box 40407
Olympia, WA 98504-0407
Honorable Kevin Van De Wege
State Representative, 24th District
P. O. Box 40600
Olympia, WA 98504-0600

**Cite As:
AGO 2008 No. 8**

Dear Senator Morton and Representative Van De Wege:

By letter previously acknowledged, you have asked the following paraphrased question:

Does a city in Washington have the authority to enact a local law that prohibits possession of firearms on city property or in city-owned facilities?

BRIEF ANSWER

The answer to your question is no. RCW 9.41.290 “fully occupies and preempts the entire field of firearms regulation” and preempts a city’s authority to adopt firearms laws or regulations of application to the general public, unless specifically authorized by state law. Accordingly, RCW 9.41.290 preempts a city’s authority to enact local laws that prohibit possession of firearms on city property or in city-owned facilities.

BACKGROUND

Your question deals with the authority of cities to enact laws relating to firearms. Article XI, section 11 of the Washington Constitution provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” Const. art. XI, § 11. “This is a direct delegation of the police power as ample within its limits as that possessed by the Legislature itself. It requires no legislative sanction for its exercise so long as the subject-matter is local, and the regulation reasonable and consistent with the general laws.” *City of Spokane v. Portch*, 92 Wn.2d 342, 346, 596 P.2d 1044 (1979). However, the “plenary police power in regulatory **[Original Page 2]** matters accorded municipalities by Const. Art. 11, § 11, ceases when the State enacts a general law upon the particular subject, unless there is room for concurrent jurisdiction.” *Id.* “Preemption occurs when the Legislature states its intention either expressly or by necessary implication to preempt the field.” *Brown v. City of Yakima*, 116 Wn.2d 556, 560, 807 P.2d 353 (1991). Thus, a city’s authority to enact laws relating to firearms depends upon the general firearms laws enacted by the State.

RCW 9.41 sets forth a comprehensive scheme of state firearms regulations. This statutory scheme includes preemption. RCW 9.41.290 provides:

The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

RCW 9.41.290 preempts the authority of cities to adopt laws regulating firearms. The question is whether the scope of this preemption extends to prohibiting cities from enacting local law that prohibits possession of firearms on city property or in city-owned facilities.

ANALYSIS

In determining the scope of the preemption in RCW 9.41.290, the “objective is to determine the legislature’s intent. If the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *See State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). “The ‘plain meaning’ of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Id.* A statute is ambiguous if it is “subject to more than one reasonable interpretation.” *In re the Marriage of Kovacs*, 121 Wn.2d 795, 804, 854 P.2d 629 (1993).

In this case, the plain meaning of RCW 9.41.290 establishes that the preemptive effect of the statute is substantial. “Preemption occurs when the Legislature states its intention . . . expressly . . . to preempt the field.” *Brown*, 116 Wn.2d at 560. RCW 9.41.290 expressly preempts the field. RCW 9.41.290 provides in part that the “state of Washington *hereby fully occupies and preempts* the entire field of firearms regulation within the boundaries of the state”. (Emphasis added.) Not only does RCW 9.41.290 use the words of preemption—“fully occupies and preempts”—it broadly defines the field of firearms regulation to include “the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of **[Original Page 3]** firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components.” RCW 9.41.290.

Standing alone, the language of RCW 9.41.290 quoted above would establish substantial field preemption. However, RCW 9.41.290 goes on to specifically address the authority of cities to regulate firearms and provides, in part, that “[c]ities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter.”

Under RCW 9.41.290, cities may only enact laws and ordinances relating to firearms if two conditions are met. First, cities may only enact laws “that are specifically authorized by state law, as in RCW 9.41.300”. RCW 9.41.290. Second, the cities’ laws must be “consistent with this chapter.” *Id.* Subject to conditions in the statute, RCW 9.41.300 authorizes cities to enact laws restricting the discharge of firearms in any portion of their respective jurisdictions, restricting the possession of firearms in any stadium or convention center, operated by a city, restricting the areas in their respective jurisdictions in which firearms may be sold, and restricting the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds. RCW 9.41.300(2)(a)-(b), (3)(a)-(b). [1]

The requirement in RCW 9.41.290 that firearms laws adopted by cities be “consistent with this chapter” necessarily implies that inconsistent laws are invalid. RCW 9.41.290 contains additional language, however, that renders this implication explicit. RCW 9.41.290 provides, in part:

Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

(Emphasis added.) In our judgment, the plain language of RCW 9.41.290 demonstrates that the Legislature intended to broadly preempt local laws relating to firearms.

Although the language of RCW 9.41.290 is broad, it does not preempt all city authority with respect to firearms. The Supreme Court has considered RCW 9.41.290 on two occasions. In *Cherry v. Municipality of Metropolitan Seattle*, 116 Wn.2d 794, 808 P.2d 746 (1991), the Court considered whether the Municipality of Metropolitan Seattle (Metro) could discharge an employee who violated Metro’s policy prohibiting employees from carrying concealed weapons. The Court held that “RCW 9.41.290 is intended to preempt regulatory city, town or county firearms laws and ordinances, but does not address internal employment rules limiting on-duty possession of

firearms by public employees in the workplace.” *Id.* at 798 (emphasis added). The Court concluded that “RCW 9.41.290 was enacted to reform that situation in which counties, cities, and towns could each enact conflicting local criminal codes regulating the general public’s possession of firearms.” *Id.* at 801. Thus, the purpose of RCW 9.41.290 was “to eliminate a **[Original Page 4]** multiplicity of local laws relating to firearms and to advance uniformity in criminal firearms regulation.” *Id.*

The Supreme Court next considered RCW 9.41.290 in *Pacific Northwest Shooting Park Association v. City of Sequim*, 158 Wn.2d 342, 144 P.3d 276 (2006). In *Pacific Northwest Shooting Park*, the Association wanted to hold a gun show in the city convention center. The conditional use permit issued by the City of Sequim imposed three conditions on the ability of licensed and unlicensed gun dealers to sell or exchange firearms. The Association argued that these conditions were preempted by RCW 9.41.290. The Court disagreed. According to the Court, “*Cherry* supports the general proposition that when a municipality acts in a capacity that is comparable to that of a private party, the preemption clause does not apply.” *Pacific Northwest Shooting Park*, 158 Wn.2d at 357. The Court concluded that a “municipality acts in a proprietary capacity when it acts as the proprietor of a business enterprise for the private advantage of the municipality and it may exercise its business powers in much the same way as a private individual or corporation.” *Id.* (citations and internal quotation marks omitted). Therefore, “[b]y issuing a temporary use permit, the city was leasing its property to PNSPA and acting in its private capacity as a property owner.” *Id.* The Court held that RCW 9.41.290

does not prohibit a private property owner from imposing conditions on the sale of firearms on his or her property. RCW 9.41.290. Applying our reasoning in *Cherry*, it follows that a municipal property owner like a private property owner may impose conditions related to firearms for the use of its property in order to protect its property interests. For the same reason that a municipal employer may enact policies regarding possession of firearms in the workplace because a private employer may do so, a municipal property owner should be allowed to impose conditions related to sales of firearms on its property if a private property owner may impose them.

Pacific Northwest Shooting Park, 158 Wn.2d at 357. The Court explained that the “critical point is that the conditions the city imposed related to a permit for private use of its property. They were not laws or regulations of application to the general public.” *Id.*

Under *Cherry* and *Pacific Northwest Shooting Park*, RCW 9.41.290 does not preempt a city’s ability to impose conditions when it is acting in a private capacity. The question is whether this reasoning would apply if a city prohibited the general public from possessing firearms on city property. It is certainly true that RCW 9.41.290 would not preempt a private citizen from prohibiting possession of firearms on his or her property. This prohibition might be enforced by simply refusing to permit someone entry on to the private property with a firearm. However, in this respect, a city is not in the same position as a private citizen. Large parts of city property are generally open to the public. Indeed, citizens may be required to enter city property, for example, to apply for a building permit. For these reasons, neither *Cherry* nor *Pacific Northwest Shooting Park* support the view that cities may prohibit the general public from possessing firearms on city property.

[Original Page 5] It has been suggested that such a prohibition on the possession of firearms on city property might be enforced through the state's criminal trespass laws. RCW 9A.52.070 governs first degree criminal trespass and provides:

(1) A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a building.

(2) Criminal trespass in the first degree is a gross misdemeanor.

RCW 9A.52.080 governs second degree criminal trespass and provides:

(1) A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor.

A person "enters or remains unlawfully" when a person is "in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain." RCW 9A.52.010(3). It is a defense to criminal trespass if the "premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises". RCW 9A.52.090(2) (emphasis added).

Under the criminal trespass approach, a city would post signs or otherwise notify the public that possession of firearms was prohibited on city property. [2] If an individual did not comply with this requirement, he or she would be charged with criminal trespass.

In our judgment, a city does not have the authority to generally prohibit the possession of firearms on city property except to the extent authorized by RCW 9.41.290. Even in the case of criminal trespass, a member of the public is only required to comply with "lawful conditions". RCW 9A.52.090(2). Prohibiting possession of firearms on city property would not be a lawful condition, because RCW 9.41.290 preempts the power of a city to impose such a prohibition. We reach this conclusion for three reasons.

First, breadth of the language in RCW 9.41.290 persuades us that the Legislature intended to prohibit cities from generally prohibiting firearms. Even though *Cherry* and *Pacific Northwest Shooting Park* recognized that RCW 9.41.290 does not preempt all city authority to regulate firearms, both cases hold that the purpose of RCW 9.41.290 was "to reform that situation in which counties, cities, and towns could each enact conflicting local criminal codes regulating the general public's possession of firearms." *Cherry*, 116 Wn.2d at 801 (emphasis added); *Pacific Northwest Shooting Park*, 158 Wn.2d at 356. Thus, the regulation in those cases **[Original Page 6]** was not directed at the general public's possession of firearms. As the Court explained, the "critical point is that the conditions the city imposed related to a permit for private use of its property. They were not laws or regulations of application to the general public." *Pacific Northwest Shooting Park*, 158 Wn.2d at 357 (emphasis added). Under the facts of your question, the city would prohibit the general public from possessing firearms on city property.

Prior to the enactment of RCW 9.41.290, it might have been legal to possess a firearm at a particular place in one city and a crime to possess a firearm in the same

place in another city. RCW 9.41.290 was enacted to prevent these conflicting criminal codes. Allowing a city to use criminal trespass to enforce a ban on firearms allows conflicting criminal codes regulating the general public's possession of firearms. In this respect, it makes little difference to a citizen who is subjected to conflicting criminal codes whether he or she is being prosecuted for the gross misdemeanor of first degree trespass, or for the crime of possession of a firearm.

Second, in interpreting a statute "each provision of a statute should be read together (in *pari materia*) with other provisions in order to determine the legislative intent underlying the entire statutory scheme." *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282 (2000). "The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes." *Id.* Reading RCW 9.41.290 together with other firearms statutes persuades us that the Legislature did not intend to permit cities to prohibit the general public from possessing firearms. The Legislature has expressly prohibited the possession of firearms in specific places. These include (a) restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a certain person, (b) the areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings, (c) the restricted access areas of certain public mental health facilities, (d) that portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age, and (e) the restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration. RCW 9.41.300(1)(a)-(e). The Legislature also prohibited possession of firearms "while on the site of an outdoor music festival." RCW 70.108.150. The Legislature has also expressly authorized cities to prohibit firearms in certain places. This includes restricting the discharge of firearms in any portion of their respective jurisdictions, restricting the possession of firearms in any stadium or convention center, operated by a city, restricting the areas in their respective jurisdictions in which firearms may be sold, and restricting the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds. RCW 9.41.300(2)(a)-(b), (3)(a)-(b).

The Legislature has carefully set out the places where the general public is prohibited from possessing firearms. "Where a statute specifically designates the things upon which it operates, there is an inference that the Legislature intended all omissions." *In re Hopkins*, 137 Wn.2d 897, 901, 976 P.2d 616 (1999). We conclude that the Legislature did not intend that the possession of firearms would be prohibited in the places that were not listed. This conclusion is buttressed by the fact that the Legislature's prohibition of firearms is very narrow. The Legislature prohibited the possession of firearms in the "restricted access areas of a jail, or of a [Original Page 7] law enforcement facility, or any place used for the confinement of [certain] person [s]" but "[r]estricted access areas do not include common areas of egress or ingress open to the general public". RCW 9.41.300(1)(a). The Legislature prohibited possession of firearms in certain "restricted areas" of courthouses. However, the Legislature provided that the "restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection". RCW 9.41.300(1)(b). The Legislature prohibited possession of firearms in the restricted areas of certain mental health facilities but, again, the Legislature provided that "[r]estricted access areas do not include common areas of egress and

ingress open to the general public". RCW 9.41.300(1)(c). Even the restricted areas of airports where firearms are prohibited do not include "airport drives, general parking areas and walkways, and shops and areas of the terminal that are outside the screening checkpoints and that are normally open to unscreened passengers or visitors to the airport." RCW 9.41.300(1)(e). Thus, even when the Legislature prohibited the possession of firearms, it did so only in restricted areas. The Legislature did not intend to impose a general prohibition on a citizen's ability to possess a firearm.

Third, the evolution of the preemption of local firearms laws establishes that the Legislature intended RCW 9.41.290 to broadly preempt local authority and to prohibit local government from prohibiting citizens from possessing firearms. In 1935, Washington adopted firearms laws "modeled after the uniform firearms act which was approved by the National Conference of Commissioners on Uniform State Laws, in 1930. See 1930 Handbook of National Conference of Commissioners on Uniform State Laws and Proceedings, 562-567." *Olsen v. Delmore*, 48 Wn.2d 545, 548, 295 P.2d 324 (1956). Laws of 1935, ch. 172. The 1935 law did not contain a provision similar to RCW 9.41.290 that addressed the preemption of local authority to adopt firearms laws. In 1961, the Legislature reenacted the state's firearms laws. Laws of 1961, ch. 124. The 1961 law provided that "[a]ll laws or parts of laws of the state of Washington, its subdivisions and municipalities inconsistent herewith are hereby preempted and repealed." Laws of 1961, ch. 124, § 14.

Although the 1961 law preempted and repealed inconsistent local law, it did not generally preempt local authority to adopt firearms laws that were not inconsistent with state firearms law. This was the holding in *Second Amendment Foundation v. City of Renton*, 35 Wn. App. 583, 668 P.2d 596 (1983). In *Second Amendment Foundation*, Renton adopted an ordinance prohibiting the possession of firearms where alcoholic beverages are dispensed by the drink. The plaintiff argued that this ordinance was preempted by section 12 of the 1961 law. The Court of Appeals rejected this argument, because the "provision served only to repeal inconsistent municipal legislation in effect in 1961, and has no bearing on the present case." *Second Amendment Foundation*, 35 Wn. App. at 588. The court held that there was no express preemption of local authority to regulate firearms. The court explained that a "careful examination of the Uniform Firearms Act, RCW Ch. 9.41, demonstrates no express preemption concerning the possession of firearms on premises where liquor is sold by the drink. The legislature has not indicated an intention to preempt municipal regulation in all areas of gun control. The power of municipalities to so legislate survives." *Second Amendment Foundation*, 35 Wn. App. at 588.

[Original Page 8] The Court next considered whether there was a conflict between state law and the Renton ordinance. The Court concluded that there was no conflict, because Washington laws "do not expressly state an unqualified right to be in possession of a firearm at any time or place. The Renton ordinance does not purport to contradict or restrict any provision of the statute. Therefore, the statute and ordinance are not inconsistent." *Id.* at 588-89. Thus, "[w]hile an absolute and unqualified local prohibition against possession of a pistol by the holder of a state permit would conflict with state law, an ordinance which is a limited prohibition reasonably related to particular places and necessary to protect the public safety, health, morals and general welfare is not preempted by state statute." *Id.* at 589.

In 1983, the Legislature adopted RCW 9.41.290. Laws of 1983, ch. 232, § 12. The 1983 version of RCW 9.41.290 provided that "[c]ities, towns, and counties may enact only those laws and ordinances relating to firearms that are consistent with this

chapter. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted.” Laws of 1983, ch. 232, § 12. Although RCW 9.41.290 was enacted after *Second Amendment Foundation* was argued, the Court explained that section 12 “prohibits the enactment of local ordinances inconsistent with the requirements of RCW Ch. 9.41. It does not militate against the result reached here.” *Second Amendment Foundation*, 35 Wn. App. at 588 n.3. Thus, the 1983 version of RCW 9.41.290 only preempted inconsistent local firearms laws.

In an addendum to AGO 1983 No. 14 (Addendum dated September 22, 1983), we discussed the limited scope of the preemptive language of section 12. We noted that the

critical issue involves *the very limited preemptive effect of the language employed in § 12 of SSB 3782 (now chapter 232, Laws of 1983)*. It has, unfortunately, become apparent to us since AGO 1983 No. 14 was issued that some proponents and many supporters of that bill were misled into thinking that the language of § 12 was sufficient to prevent the continuing enactment or enforcement of local ordinances addressing the kinds of places where weapons might be possessed-with or without a permit. Such ordinances, in the minds of many, have led to a confusing patchwork of prohibitions from one locality to the next, across the state.

AGO 1983 No. 14 (Addendum dated September 22, 1983) at 1 (emphasis added). We explained that it “is most certainly within the power of the legislature to effect a policy that such a patchwork situation will not exist.” *Id.* Also, we suggested that language such as “preemption” or “occupies the field” would accomplish this goal:

If the legislature intends to accomplish this policy through the technique of “preemption” there are numerous judicial decisions, both within our own state and elsewhere, that contain examples of appropriate terminology that should be used. For, quite simply, *preemption indicates a complete take over of a field of activity to the exclusion of all local actions, regulations or interference-and thus, if that is the intention of the legislature, the best and most effective way to manifest that intent would be to use the term “preemption” or “occupies the field” or similar terms.*

[Original Page 9] AGO 1983 No. 14 (Addendum dated September 22, 1983) at 1-2 (emphasis added).

In 1985, the Legislature amended RCW 9.41.290. Laws of 1985, ch. 428, § 1. The amendment included the use of both of the terms “preemption” and “occupies the field” suggested in AGO 1983 No. 14. The amendment, in bill draft form, provided:

The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws

and ordinances relating to firearms that are specifically authorized by state law and are consistent with this chapter. Such local ordinances shall have the same or lesser penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

Laws of 1985, ch. 428, § 1 (italicized emphasis added). The 1985 legislation also added RCW 9.41.300 to RCW 9.41. Laws of 1985, ch. 428, § 2. RCW 9.41.300 prohibited possession of firearms in certain places. Laws of 1985, ch. 428, § 2(1). The statute also provided: “*Notwithstanding RCW 9.41.290*, cities, towns, counties, and other municipalities may enact laws and ordinances” restricting the discharge and possession of firearms in certain places. Laws of 1985, ch. 428, § 2(2). The sequence of events leading to the 1985 amendment of RCW 9.41.290 persuades us that the Legislature intended to preempt all local authority to impose a prohibition on the public’s ability to possess firearms. The use of the terms “preempt” and “occupies the field” confirm that RCW 9.41.290 was intended to broadly preempt local authority to adopt a ban on the possession of firearms.

The 1994 amendment to RCW 9.41.290 and .300 also confirms this view. In 1993, the Court of Appeals decided *City of Seattle v. Ballsmider*, 71 Wn. App. 159, 856 P.2d 1113 (1993). In *Ballsmider*, the defendant violated a Seattle ordinance by standing on the back porch of his Seattle residence and firing a gun into the air. The Seattle Municipal Court imposed a sentence of 365 days’ confinement with 360 days suspended and a \$5,000 fine with \$4,500 suspended. The defendant argued that “the penalty imposed by local firearms ordinances cannot exceed that imposed by the State firearms statutes, and that his sentence was therefore contrary to law because his sentence and the maximum penalty under SMC 12A.28.050 (365 days and \$5,000) exceed the maximum penalty allowed under RCW 9.41.230 (90 days and \$1,000).” *Ballsmider*, 71 Wn. App. at 161. The Court rejected this argument, pointing to the language in RCW 9.41.300(2): “Notwithstanding RCW 9.41.290.” According to the Court:

The definition of “notwithstanding” is “in spite of”, which in turn is defined as “in defiance of, *regardless of*. . .” Under these definitions, “notwithstanding RCW 9.41.290” means “regardless of anything in RCW 9.41.290.” Had the Legislature **[Original Page 10]** intended that local governments disregard only contrary provisions or restrictions in the preemption statute, it could have easily said “notwithstanding any contrary provisions or restrictions in RCW 9.41.290” instead of “notwithstanding RCW 9.41.290.” *Thus, the effect of “notwithstanding RCW 9.41.290” is that the preemption statute and its restrictions, including its penalty restrictions, are to be disregarded and have absolutely no bearing on laws enacted pursuant to RCW 9.41.300(2)(a).*

Ballsmider, 71 Wn. App. at 162–163 (emphasis added) (citations omitted). The Court concluded that this reading of RCW 9.41.300(2) was consistent with RCW 9.41.290. According to the Court, the preemption language in RCW 9.41.290

applies to the entire range of firearms regulation, including “registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and

transportation of firearms . . .” (Emphasis added). RCW 9.41.300(2) and its “[n]otwithstanding RCW 9.41.290” language merely give local governments authority, without penalty or other restrictions, to enact laws regarding the discharge of firearms in areas where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. This limited exception does not swallow or render meaningless the general preemption statute which, as noted above, applies to much more than the regulation of the discharge of firearms.

Ballsmider, 71 Wn. App. at 163-64.

In 1994, the Legislature amended RCW 9.41.290 and RCW 9.41.300. Laws of 1994, 1st Sp. Sess., ch. 7, §§ 428, 429. In bill draft form, the amendments to RCW 9.41.290 provided:

The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter. Such local ordinances shall have the same ~~((or lesser))~~ penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

Laws of 1994, 1st Sp. Sess., ch. 7, § 428. In bill draft form, RCW 9.41.300, which provides limited authority to municipalities to enact ordinances relating to firearms was amended in part to provide:

[Original Page 11] (2) ~~((Notwithstanding RCW 9.41.290,))~~ Cities, towns, counties, and other municipalities may enact laws and ordinances:

....

(4) Violations of local ordinances adopted under subsection (2) of this section must have the same penalty as provided for by state law.

Laws of 1994, 1st Sp. Sess., ch. 7, § 429(2), (4).

The 1994 amendments had the effect of changing the law as it was interpreted by the court in Ballsmider, which read the phrase “notwithstanding RCW 9.41.290” in RCW 9.41.300 as “allow[ing] local governments relatively unlimited authority” in the specific areas covered by RCW 9.41.300(2). *Ballsmider*, 71 Wn. App. at 163. The repeal of the “notwithstanding” language supports the interpretation that the Legislature intended that local governments have limited ability to regulate firearms. The 1994 amendments require that the penalties be the same as provided for by state

law. The amendments even eliminate the authority of local governments to impose lesser penalties. The addition of the phrase “as in RCW 9.41.300” to RCW 9.41.290 further limits local authority to regulate firearms. Local governments may only regulate if “specifically authorized by state law, as in RCW 9.41.300”. Laws of 1994, 1st Sp. Sess., ch. 7, § 428.

To summarize, RCW 9.41.290 “fully occupies and preempts the entire field of firearms regulation within the boundaries of the state”. While RCW 9.41.290 does not preempt all city authority with regard to firearms, it does preempt a city’s authority to adopt firearms laws or regulations of application to the general public, unless specifically authorized by state law. Accordingly, RCW 9.41.290 preempts a city’s authority to enact local laws that prohibit possession of firearms on city property or in city-owned facilities.

We trust that this opinion will be of assistance to you.

Sincerely,

ROB MCKENNA
Attorney General

WILLIAM B. COLLINS
Deputy Solicitor General

:pmd

[1] The complete text of RCW 9.41.300 is attached.

[2] There are different ways in which a city might take action to prohibit firearms on city property. One would be for the city legislative authority to enact an ordinance imposing the prohibition. Another would be for a city official to impose the prohibition, if he or she were authorized by city law to impose conditions on access to city property. In our view, the answer to this question does not turn on the manner in which the prohibition might be imposed.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Authorization to write-off
Uncollectible Accounts Receivable

FOR AGENDA OF: September 11, 2014

DEPT. OF ORIGIN: Finance

ATTACHMENTS:

DATE SUBMITTED: August 26, 2014

1. Draft Resolution No. 14-142
2. Schedule 1

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this Agenda Item is to request City Council approval and adoption of Draft Resolution No. 14-142 authorizing the write-off of certain uncollectible accounts receivable.

Suggested Motion:

"I move to adopt Draft Resolution No. 14-142 authorizing the write-off of certain uncollectible accounts receivable in the amount of \$88,602.47."

Background

The periodic purging of delinquent, uncollectible accounts receivable is a fiscally responsible method to ensure an accurate position of the City's expected cash flow. In the past, the Finance Department has not brought forth for the City Council's approval any recommended uncollectible accounts receivable for write-off. These past due accounts have been assigned to a collection agency. The efforts to collect on these outstanding delinquent accounts receivable is now deemed to be exhausted, and the Finance Department recommends writing off the uncollectible accounts receivable listed on the attached Schedule 1.

The Parks, Recreation and Senior Services Department delinquent, uncollectible accounts receivable represents 57% of the total uncollectible accounts receivable recommended for write-off. The dates of these uncollectible accounts receivable range from 1999 to current, a span of 15 years. On average, \$3,333 per year, is recognized as uncollectible, or approximately 0.4% of the Parks, Recreation, and Senior Services Department's annual \$900,000 budget.

In 2008, Park and Recreation purchased a new CLASS software system and staff did due diligence and brought over all bad debt from the former RecWare system to the CLASS system. It was at that time that staff found out that the City had a contract with Alliance One Collection Agency and assigned a bulk of the past due accounts to collections. This has resulted in an on-going relationship with the agency. Alliance One has been very successful in collecting on the City's behalf and they continue to work on accounts assigned. Approximately \$12,000 has been collected since 2008 on the department's behalf.

Programs that take place at multiple times and locations continue to be a challenge for the Department. Youth and adult sports are organized by teams with participants placed on a roster that is coached by a volunteer. In some cases a parent will ask a coach directly to put their child on his/her team. Club KHAOS before and after school programs staffed by temporary part time leaders take place at all Des Moines elementary schools. In some cases a parent will drop off a child at a program site without prior registration. These situations require a great deal of communication and follow up with the responsible parties to ensure that each participant has officially signed up and made payment to play.

Customer policies now in place do not allow program participation prior to payment, and therefore have achieved a drastic reduction in collections. Customers who do not properly register or who have outstanding debt are blocked from future program registration and may not participate until proper paperwork is submitted and/or past debt is settled. For customer convenience, participants are offered payment options such as scheduled automatic payments using their debit or credit cards.

Recommendation

It is recommended that the City Council adopt Draft Resolution No. 14-142.

FINANCE DIRECTOR'S FIRST DRAFT 08/26/14

DRAFT RESOLUTION NO. 14-142

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the write-off of certain uncollectible accounts receivable in the amount of \$88,602.47 due to various funds.

WHEREAS, diligent efforts are made to collect on delinquent, uncollectible, accounts receivable, and

WHEREAS, the write-off of uncollectible accounts receivable is necessary to provide an accurate measure of the City's financial position, and

WHEREAS, it is fiscally responsible to write-off uncollectible accounts receivable; now therefore,

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

Sec. 1. The above recitals are found to be true and correct.

Sec. 2. A listing of delinquent accounts receivable recommended for write-off is set forth in the attached Schedule 1, which is by this reference incorporated herein, and the Finance Director is hereby authorized to write-off these uncollectible accounts receivable accordingly.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFT RESOLUTION 14-142
SCHEDULE 1
ACCOUNTS RECEIVABLE RECOMMENDED FOR WRITE-OFF

Invoice Date	Invoice Number	Name	Date Assigned to Collection	Amount	Remarks	Dept	Fund
6/16/2000	1433	ANDERSON, DENNIS	12/4/2007	662.50	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
4/14/2003	2314	JOHNSON, HOLLY C.	12/4/2007	280.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
10/16/2003	2453	PIERARSKI, GREGORY	12/4/2007	268.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
1/15/2004	2544	GONZALEZ, STEPHANIE L.	12/4/2007	1,040.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
2/6/2004	2569	MACKIN, GREGORY J.	12/4/2007	400.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
12/20/2004	2821	OLDS, LEAH MARIE	12/4/2007	230.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
1/20/2005	2853	CARLEN, MEGAN	12/4/2007	232.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
4/8/2005	2923	PIMPLETON, OTIS	12/4/2007	80.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
7/21/2005	3013	ANDERSON, THOMAS	12/4/2007	56.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
9/8/2005	3059	FAULAFO, FAY S.	12/4/2007	568.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
11/7/2005	3120	SKYLES, BRANDI L.	12/4/2007	488.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
3/7/2006	3231	RAYMOND, CHERIE J.	12/4/2007	256.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
3/7/2006	3230	OSOIRO-SOTO, ELENO	12/4/2007	280.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
1/8/2007	3529	HEUSTIS, ERIK J	12/4/2007	218.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
3/31/2007	3588	LEE, LATEASHIA	12/4/2007	493.70	DAMAGE TO POLICE VEHICLE	POLICE	GENERAL
3/16/2007	3591	JINKA, JEFFERY W.	12/4/2007	256.00	KENNEL SERVICES	POLICE - ANIMAL CONTROL	GENERAL
Totals				5,808.20			
5/23/2001	1718	MIKE'S ROOFING	11/30/2007	4,391.43	RETAINAGE REFUND ERROR	CAPITAL - PARKS PROJECT	MCI
12/31/2004	None	VANDAI, KEITH	12/4/2007	8,553.48	DEPOSIT REFUND ERROR	PBPW - BUILDING DIVISION	GENERAL
2/15/2006	3214	LEWIS, ROBERT L. (SOUTHPAW MARINE	12/4/2007	1,047.03	TRAFFIC SIGNAL DAMAGE	PBPW - TRANSPORTATION	STREET
4/8/2008	3952	RAMIREZ, JAMIE	3/30/2010	15,465.78	GUARDRAIL DAMAGE-3/6/08 ACCIDENT	PBPW - TRANSPORTATION	STREET
Totals				16,512.81			
11/7/2005	3122	MCGILVEREY, BOB	12/4/2007	362.50	STORM DRAINAGE WORK	PBPW - SURFACE WTR MGT	SWM OPS
5/5/2006	3289	JETT, CAMERON	12/4/2007	436.00	STORM DRAINAGE WORK	PBPW - SURFACE WTR MGT	SWM OPS
10/16/2006	3441	DOYLE, SHANNON	12/4/2007	580.71	STORM DRAINAGE WORK	PBPW - SURFACE WTR MGT	SWM OPS
6/21/2007	3673	REYNOLDS, JOE	12/4/2007	289.08	STORM DRAINAGE WORK	PBPW - SURFACE WTR MGT	SWM OPS
Totals				1,668.29			
11/7/2005	3122	MCGILVEREY, BOB	12/4/2007	80.00	STORM DRAINAGE WORK-PERMIT	PBPW - SURFACE WTR MGT	GENERAL
5/5/2006	3289	JETT, CAMERON	12/4/2007	80.00	STORM DRAINAGE WORK-PERMIT	PBPW - SURFACE WTR MGT	GENERAL
10/16/2006	3441	DOYLE, SHANNON	12/4/2007	40.00	STORM DRAINAGE WORK-PERMIT	PBPW - SURFACE WTR MGT	GENERAL
6/21/2007	3673	REYNOLDS, JOE	12/4/2007	80.00	STORM DRAINAGE WORK-PERMIT	PBPW - SURFACE WTR MGT	GENERAL
Totals				280.00			
8/25/2004	2701	SAHAGUN, ARGELA	12/4/2007	412.68	DAMAGE TO CITY VEHICLE	PBPW - EQUIPMENT RENTAL	EQP RENTAL
5/5/2006	3287	GRIFFITH, KURT	12/4/2007	776.41	DAMAGE TO CITY VEHICLE	PBPW - EQUIPMENT RENTAL	EQP RENTAL
Totals				1,189.09			

Attachment #2

DRAFT RESOLUTION 14-142
SCHEDULE 1
ACCOUNTS RECEIVABLE RECOMMENDED FOR WRITE-OFF

Invoice Date	Invoice Number	Name	Date Assigned to Collection	Amount	Remarks	Dept	Fund
2/28/2009		CLIFT, GERRY	9/20/2011	70.00	BASKETBALL	PARKS RECREATION & SR. SVCs	GENERAL
12/4/2009		LARABEE, MICHELLE	9/20/2011	70.00	BASKETBALL	PARKS RECREATION & SR. SVCs	GENERAL
2/12/2011		ELLISON, ANGELA	9/20/2011	60.00	BASKETBALL	PARKS RECREATION & SR. SVCs	GENERAL
1/30/2012		REID, MAYA	9/20/2012	30.00	BASKETBALL	PARKS RECREATION & SR. SVCs	GENERAL
1/4/2012		REYNOLDS, EZEKIEL	9/24/2012	60.00	BASKETBALL	PARKS RECREATION & SR. SVCs	GENERAL
Totals				290.00			
Prior to 2008		HENDERSON, JEFF	6/25/2004	330.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		HETTICK, TERRI	2/5/2005	525.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		HEDMAN, TATANYSHA	4/27/2005	14.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		DORE, LINDA	3/24/2006	790.70	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		HARRINGTON, ELAINE	3/24/2006	2,997.06	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		ZAK, ARIANA	5/10/2006	855.79	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		GUILLEN, CATALINA	5/10/2006	513.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		COLEMAN, DEBBIE	5/14/2008	245.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		DUNLAP, CATRINA	8/12/2008	170.80	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		MILLER, DIANE	9/19/2008	1,822.80	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		HARDY, TINA	9/19/2008	240.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		EGGERT, JOEL	9/19/2008	54.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		BENSON, TYRA	12/4/2008	130.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		HERNANDEZ, CYNTHIA	12/4/2008	114.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
CONVERSION		ALLEN, ALFRED	12/4/2008	330.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
6/20/2008		GARCIA, MARIA	2/25/2009	242.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
9/4/2008		GAUDETTE, AMY	1/10/2009	634.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
9/4/2008		HOLT, OLIVER	2/25/2009	929.40	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
9/9/2008		STAFFORD, DIANA	8/16/2010	150.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
1/26/2009		BERTOMEU, VINCENT	7/22/2009	775.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
5/4/2010		LEWIS, LORRAINE	9/21/2010	1,167.50	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
6/17/2010		HYKEL, EJ	2/14/2011	3,583.81	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
6/17/2010		HYKEL, MARTHA	2/14/2011	2,832.99	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
7/6/2010		HODGE, MARY	5/3/2011	447.82	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
10/19/2010		SWETT, OLGA	2/14/2011	47.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
12/14/2010		LEE, JODIE	5/3/2011	376.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
12/14/2010		BARNETT, GINA	5/3/2011	249.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
12/23/2010		ABDULAMIR, ALI	9/20/2011	425.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
12/23/2010		ROCHA, JOANNE	9/20/2011	350.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
2/1/2011		AKERS-DELACRUZ, VENUS	9/20/2011	67.50	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
2/1/2011		SOUERS, CHRIS	9/20/2011	360.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
3/9/2011		DRAKE, ERIKA	10/24/2012	615.25	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
4/3/2011		BRUEMMER, DANYEL	9/20/2011	1,177.50	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
4/4/2011		MERSEREAU, TERESE	9/20/2011	605.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL
4/6/2011		DISLERES, CHRISTINA	2/15/2012	15.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCs	GENERAL

176

180

DRAFT RESOLUTION 14-142
SCHEDULE 1
ACCOUNTS RECEIVABLE RECOMMENDED FOR WRITE-OFF

Invoice Date	Invoice Number	Name	Date Assigned to Collection	Amount	Remarks	Dept	Fund
5/28/2011		WEDDINGTON, ISIS	9/20/2011	406.50	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/8/2011		FONTILLAS, LEA	2/15/2012	440.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/30/2011		JACOBS, LAJOY	9/20/2011	631.45	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/30/2011		EKLUND, BRUCE	2/15/2012	1,460.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/30/2011		HORNER, CHARLES	4/12/2012	90.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
7/7/2011		EARL, VANESSA	9/20/2011	2,524.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
7/7/2011		FROST, WENDY	9/20/2011	605.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
7/7/2011		MCGARR, ROB	2/15/2012	595.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
7/7/2011		NUEVA, PUALANI	2/15/2012	789.20	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
7/7/2011		FULMORE, RONDA	2/15/2012	344.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
7/22/2011		OPEDAL, CHERIE	10/24/2012	326.52	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
10/24/2011		GIBONEY, STACIE	5/15/2012	150.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
12/7/2011		SCHADEBERG, STACEY	4/18/2012	202.50	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
12/7/2011		VONTRESS, STACIE	5/15/2012	90.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
1/3/2012		FORRAR, BETH	4/12/2012	180.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
1/6/2012		LUAFATASAGE, FETI	9/24/2012	64.80	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
1/9/2012		JACOBSON, BRACK	6/16/2012	974.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
3/5/2012		MORGAN, NICOLE	10/24/2012	45.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
5/9/2012		HOLM, CHAD	9/24/2012	295.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/29/2012		BRANHAM, SARA	9/20/2012	1,393.41	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/29/2012		BEDELL, MARK	10/24/2012	390.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/29/2012		WILKINS, YUVONKA	10/24/2012	225.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/29/2012		TAYLOR-HILL, VIETA	10/24/2012	138.75	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/29/2012		GRISSOM, KIMBERLY	10/24/2012	1,073.55	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/29/2012		REYES, ELISA	10/24/2012	884.40	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
6/29/2012		TUPOU, KALANITE	10/24/2012	4,200.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
8/20/2012		BEALS, JENERA	6/3/2013	177.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
12/14/2012		DENTON, AMY	6/3/2013	493.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
1/15/2013		BUCK, FELICIA	6/3/2013	360.00	BEFORE AFTER SCHOOL	PARKS RECREATION & SR. SVCS	GENERAL
Totals				43,730.00			
CLASS PRG		KELLY, AMY	2/5/2005	132.00	CAMP KHAOS	PARKS RECREATION & SR. SVCS	GENERAL
CONVERSION		PAIGE, GINGER	10/10/2005	150.00	CAMP KHAOS	PARKS RECREATION & SR. SVCS	GENERAL
CONVERSION		SWAIM, SCOTT	10/26/2006	390.00	CAMP KHAOS	PARKS RECREATION & SR. SVCS	GENERAL
7/13/2010		RUSSELL, TROY	2/14/2011	32.00	CAMP KHAOS	PARKS RECREATION & SR. SVCS	GENERAL
7/22/2010		LOVETT, JOSEPH	2/14/2011	1,130.00	CAMP KHAOS	PARKS RECREATION & SR. SVCS	GENERAL
10/19/2010		ROCKWELL, AUDREY	9/20/2011	157.00	CAMP KHAOS	PARKS RECREATION & SR. SVCS	GENERAL
8/12/2011		SCHLESINGER, RANDALL	2/15/2012	225.00	CAMP KHAOS	PARKS RECREATION & SR. SVCS	GENERAL
7/12/2012		DAVIS, CONNIE	6/3/2013	107.00	CAMP KHAOS	PARKS RECREATION & SR. SVCS	GENERAL
Totals				2,323.00			
4/15/2010		SCHADE, ROBERT	2/14/2011	70.00	FIELD RENTAL	PARKS RECREATION & SR. SVCS	GENERAL

**DRAFT RESOLUTION 14-142
SCHEDULE 1
ACCOUNTS RECEIVABLE RECOMMENDED FOR WRITE-OFF**

Invoice Date	Invoice Number	Name	Date Assigned to Collection	Amount	Remarks	Dept	Fund
11/28/2010		NORISTON, JOE	2/14/2011	295.00	FIELD RENTAL	PARKS RECREATION & SR. SVC	GENERAL
4/4/2011		ESKENAZI, RANDY	11/28/2011	1,490.00	FIELD RENTAL	PARKS RECREATION & SR. SVC	GENERAL
4/26/2011		UNBEWAST, MICHAEL	9/20/2011	100.00	FIELD RENTAL	PARKS RECREATION & SR. SVC	GENERAL
Totals				1,955.00			
6/19/2008		ZIETZ, AMY	5/22/2009	270.00	YOUTH SOCCER	PARKS RECREATION & SR. SVC	GENERAL
7/3/2010		ALDRIDGE, CHRIS	2/14/2011	650.00	SOFTBALL	PARKS RECREATION & SR. SVC	GENERAL
10/19/2010		LIVINGSTON, KRYSTAL	9/20/2011	75.00	SOCCER	PARKS RECREATION & SR. SVC	GENERAL
10/19/2010		STALLWORTH, TODD	9/20/2011	440.00	SOFTBALL	PARKS RECREATION & SR. SVC	GENERAL
11/18/2010		SMITH, DANIEL	9/20/2011	60.00	GYMNASTICS	PARKS RECREATION & SR. SVC	GENERAL
2/23/2012		DOUGLAS, CHARLES	9/20/2012	43.67	T-BALL	PARKS RECREATION & SR. SVC	GENERAL
5/29/2012		MEAN, SOPHEA	10/24/2012	67.50	PRE_SCHOOL	PARKS RECREATION & SR. SVC	GENERAL
CONVERSION		MCQUEEN, JEANETTE	2/5/2005	220.00	YOUTH B-BALL	PARKS RECREATION & SR. SVC	GENERAL
CONVERSION		DECAMP, STEFANI	8/23/2008	75.00	TIGER KIDS	PARKS RECREATION & SR. SVC	GENERAL
Totals				1,901.17			
TOTAL ACCOUNTS RECEIVABLE WRITE-OFF				88,602.47			

178