

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>THE ESTATE OF SUSAN FARRELL, by its Administrator, Jesse Farrell, and as Representative for the Claims of JESSE FARRELL, Individually, JESSE FARRELL, as Next Friend of R.F., a Minor, PEGGY MASCHKE, Individually, and STEPHEN MICHALSKI, Individually,</p> <p>Plaintiffs,</p> <p>v.</p> <p>CITY OF WAUKEE, IOWA; CITY OF WEST DES MOINES, IOWA; PETERSON CONTRACTORS, INC.; ROADSAFE TRAFFIC SYSTEMS, INC.; VOLTMER ELECTRIC, INC.; PAR ELECTRICAL CONTRACTORS, INC.; MIDAMERICAN ENERGY COMPANY; and KIRKHAM, MICHAEL &amp; ASSOCIATES, INC.,</p> <p>Defendants.</p>	<p>Case No.</p> <p><b>PETITION AT LAW AND JURY DEMAND</b></p>
--	---

COME NOW Plaintiffs, by and through the undersigned attorneys, and for their Petition at Law and Jury Demand state as follows:

**PARTIES, VENUE, AND JURISDICTION**

1. Jesse Farrell is the duly appointed administrator for the Estate of Susan Farrell by letters of appointment granted him by the Iowa District Court in Polk County, Iowa, Docket No. ESPR020717.
2. Jesse Farrell was at all times material to this case the husband or surviving spouse of Susan Farrell.
3. Jesse Farrell resides in Warren County, Iowa.

4. R.F. is the minor daughter of Jesse and Susan Farrell and resides in Warren County, Iowa.

5. Peggy Maschke (“Maschke”) is a natural person, is the mother of Susan Farrell, and resides in Polk County, Iowa.

6. Stephen Michalski (“Michalski”) is a natural person, is the father of Susan Farrell, and resides in California.

7. The City of Waukee, Iowa (“Waukee”) is an Iowa municipality located in Dallas County, Iowa.

8. The City of West Des Moines, Iowa (“West Des Moines”) is an Iowa municipality located in Polk, Dallas, and Warren County, Iowa.

9. Peterson Contractors, Inc. (“PCI”) is an Iowa corporation with its principal place of business in Reinbeck, Grundy County, Iowa.

10. Roadsafe Traffic Systems, Inc. (“Roadsafe”) is a Delaware corporation with its principal place of business in Chicago, Cook County, Illinois.

11. Voltmer Electric, Inc. (“Voltmer”) is an Iowa corporation with its principal place of business in Decorah, Winneshiek County, Iowa.

12. Par Electrical Contractors, Inc. (“Par”) is a Missouri Corporation with its principal place of business in Kansas City, Jackson County, Missouri.

13. MidAmerican Energy Company (“MEC”) is an Iowa corporation with its principal place of business in Des Moines, Polk County, Iowa.

14. Kirkham, Michael & Associates, Inc. (“KMAI”) is a Nebraska corporation with its principal place of business in Omaha, Douglas County, Nebraska.

15. Venue is proper in Polk County under Iowa Code sections 616.17 and 616.18 because some of the defendants are located in Polk County.

16. Plaintiffs' damages exceed the jurisdictional requirement for the amount in controversy in an Iowa District Court proceeding.

### **FACTS**

17. In 1992, Waukee included in its Comprehensive Plan an interchange at Interstate 80 and Alice's Road.

18. In 1993, West Des Moines also included in its Comprehensive Plan an interchange at Interstate 80 and Alice's Road.

19. In 1994, the Des Moines Area Metropolitan Planning Organization included in its Long Range Transportation Plan an interchange at Interstate 80 and Alice's Road.

20. In 2001, Waukee and West Des Moines (collectively "the Cities") entered into a formal agreement for the design and construction of an interchange at Interstate 80 and Alice's Road ("the Interchange").

21. In 2005, the Cities contracted with the Iowa Department of Transportation ("IDOT") for design and construction of the Interchange.

22. The federal government provided the Cities millions of dollars in funding for the Interchange.

23. In 2007, the Cities began construction on an Interstate 80 overpass at the site of the Interchange. The Cities finished construction of this overpass in 2010.

24. The Cities and/or IDOT contracted with KMAI for the design of the Interchange and to be the engineer for the Interchange project.

25. The Cities contracted with PCI to serve as the general contractor for the construction of the Interchange.

26. The Cities contracted with Roadsafe, or PCI subcontracted with Roadsafe, to furnish labor and materials to paint traffic markings at the Interchange.

27. The Cities contracted with Voltmer, or PCI subcontracted with Voltmer, to furnish labor and materials to install lighting and signage at the Interchange.

28. The Cities contracted with Par, or PCI subcontracted with Par, to furnish labor and materials to install lighting at the Interchange.

29. The Cities contracted with MEC, or PCI subcontracted with MEC, to furnish labor and materials to install lighting at the Interchange.

30. Around 2011, the Cities began exploring a diverging diamond interchange (“DDI”) design for the Interchange.

31. In January 2013, the Cities officially selected a DDI design for the Interchange.

32. Construction on the Interchange officially began in approximately October 2014.

33. The Cities and IDOT ordered KMAI, PCI, Roadsafe, Voltmer, Par, MEC, and other contractors to have the Interchange open to traffic by the end of 2015.

34. As of December 2015, KMAI, PCI, Roadsafe, Voltmer, Par, and MEC had not yet completed certain basic safety features on the Interchange.

35. Despite construction not yet being complete, the Cities and IDOT opened the Interchange on December 1, 2015.

36. The Interchange was the first DDI design in Iowa’s history.

37. The DDI design requires drivers to drive on the left side of oncoming traffic for an extended period.

38. Because of the unnatural feel of driving on the left side of oncoming traffic, drivers unfamiliar with the design experience confusion when entering the intersection of the DDI that causes them to move from the right-hand side to the left-hand side of the street.

39. This confusion makes safety features like road markings, lighting, and signage all the more important to the DDI design.

40. Prior to the Interchange's opening, the Cities, IDOT, KMAI, PCI, Roadsafe, Voltmer, Par, and MEC were made aware of numerous public concerns regarding the confusing nature of the DDI design.

41. At the time the Cities and IDOT opened the Interchange, the Cities, IDOT, KMAI, PCI, Roadsafe, Voltmer, Par, and MEC had not completed and remedied basic safety features and requirements that were part of the Interchange's design plans and were required under the Interchange project's contract documents, such as lighting, road markings, and signage, and they failed to maintain these features in a safe and proper condition.

42. When opened to the public, the Interchange as constructed did not comply with contractual requirements for the Interchange project or with generally recognized engineering and safety standards, criteria, and design theories in existence at the time.

43. The Cities, IDOT, KMAI, PCI, Roadsafe, Voltmer, Par, and MEC shared joint responsibility for these safety features.

44. The Cities, IDOT, KMAI, PCI, Roadsafe, Voltmer, Par, and MEC continued working on, completing, and remedying these basic safety features and requirements into late 2016. The Interchange remained open to traffic this entire time.

45. On March 26, 2016 (prior to the Cities, IDOT, KMAI, PCI, Roadsafe, Voltmer, Par, and MEC completing and remedying the Interchange's basic safety features and

requirements), Benjamin Beary was driving on the Interchange, took an incorrect right turn, and began traveling Westbound in the Eastbound lanes on Interstate 80.

46. At the same time, Officer Susan Farrell (“Officer Farrell”) and another officer were traveling Eastbound on Interstate 80, transporting a prisoner between counties in the course of her employment as a police officer.

47. Mr. Beary collided head-on into the police cruiser transporting Officer Farrell, resulting in a catastrophic impact.

48. Officer Farrell died at the scene, leaving behind her daughter, R.F., her husband, Jesse, and her parents, Michalski and Maschke.

**COUNT I – NEGLIGENCE**  
**Against City of West Des Moines and City of Waukee**

49. Plaintiffs replead paragraphs 1-48 as if fully set forth herein.

50. The Cities were negligent and/or grossly negligent by choosing to open the Interchange to traffic prior to completing and maintaining basic safety features on the Interchange, including safety features that the Interchange project’s contracts and design plans required. These safety features included proper signage, lighting, and road markings.

51. The Cities were negligent and/or grossly negligent by failing to close the Interchange upon discovering dangerous conditions on the Interchange. These dangerous conditions included inadequate signage, lighting, and road markings, all of which were the result of the Cities, KMAI, PCI, Roadsafe, Voltmer, Par, and MEC constructing the Interchange in a negligent manner and, in some cases, in a manner that did not conform with the Interchange project’s contract and design requirements, and in failing to maintain the Interchange in a safe and proper condition.

52. The Cities were negligent and/or grossly negligent by constructing the Interchange in a manner that failed to comply with the Interchange project's contract and design requirements and with generally recognized engineering or safety standards, criteria, or design theories in existence at the time.

53. The Cities were negligent and/or grossly negligent by failing to coordinate and communicate among responsible parties to assure the Interchange was completed in a safe manner and in accordance with the Interchange project's contract and design requirements and to assure the Interchange was closed upon discovering dangerous conditions on the Interchange.

54. The Cities were negligent and/or grossly negligent by failing to maintain the Interchange in a safe and proper condition, including but not limited to failing to maintain paint and road markings.

55. The Cities' negligence and/or gross negligence was the actual and proximate cause of damages to Plaintiffs.

56. Plaintiffs' damages include medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

WHEREFORE, Plaintiffs respectfully request judgment against the Cities, jointly and severally, in an amount that will fairly and adequately compensate Plaintiffs for their damages, including medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

**COUNT II – NEGLIGENCE**

**Against Peterson Contractors, Inc., Roadsafe Traffic Systems, Inc., Voltmer Electric, Inc., Par Electrical Contractors, Inc., MidAmerican Energy Company, and Kirkham, Michael & Associates, Inc.**

57. Plaintiffs plead paragraphs 1-56 as if fully set forth herein.

58. KMAI, PCI, Roadsafe, Voltmer, Par, and MEC were negligent by failing to comply with their contractual duties to complete important safety features on the Interchange in a proper and timely manner, including but not limited to:

- a. Using paint and other materials on the Interchange that were inadequate for the conditions and the purpose for which they were intended;
- b. Constructing and installing inadequate signage, lighting, and road markings;
- c. Failing to remedy their negligent work on the Interchange in a timely manner with knowledge of the dangerous conditions resulting from this negligent work;
- d. Failing to coordinate and communicate among responsible parties to assure the Interchange was completed in a safe manner and to assure the Interchange was closed upon discovering dangerous conditions on the Interchange; *and*
- e. Failing to exercise proper supervision over construction on the Interchange so as to complete the Interchange in a safe and proper manner and in accordance with the Interchange project's contract and design requirements, and failing to maintain work in a safe and proper condition.

59. KMAI's, PCI's, Roadsafe's, Voltmer's, Par's, and MEC's negligence was the actual and proximate cause of damages to Plaintiffs.



60. KMAI's, PCI's, Roadsafe's, Voltmer's, Par's, and MEC's negligence constituted a reckless disregard for the rights and safety of others.

61. Plaintiffs' damages include medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, punitive damages, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

WHEREFORE, Plaintiffs respectfully request judgment against KMAI, PCI, Roadsafe, Voltmer, Par, and MEC, jointly and severally, in an amount that will fairly and adequately compensate Plaintiffs for their damages, including medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, punitive damages, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

**COUNT III – NUISANCE**

**Against Peterson Contractors, Inc., Roadsafe Traffic Systems, Inc., Voltmer Electric, Inc., Par Electrical Contractors, Inc., MidAmerican Energy Company, and Kirkham, Michael & Associates, Inc.**

62. Plaintiffs plead paragraphs 1-61 as if fully set forth herein.

63. KMAI's, PCI's, Roadsafe's, Voltmer's, Par's, and MEC's failures to comply with their contractual duties to complete and maintain important safety features on the Interchange in a proper and timely manner was injurious to health and an obstruction to the free use of property.

64. KMAI's, PCI's, Roadsafe's, Voltmer's, Par's, and MEC's failures to comply with their contractual duties to complete and maintain important safety features on the Interchange in a proper and timely manner resulted in the Interchange interfering unreasonably with the comfortable enjoyment of life or property for drivers navigating the area near the Interchange, including Officer Farrell.

65. KMAI's, PCI's, Roadsafe's, Voltmer's, Par's, and MEC's failures to comply with their contractual duties to complete and maintain important safety features on the Interchange in a

proper and timely manner, and the Interchange's resulting interference with Officer Farrell's enjoyment of life and property, is the cause of damages to Plaintiffs.

66. KMAI's, PCI's, Roadsafe's, Voltmer's, Par's, and MEC's failures to comply with their contractual duties to complete and maintain important safety features on the Interchange in a proper and timely manner constituted a reckless disregard for the rights and safety of others.

67. Plaintiffs' damages include medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, punitive damages, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

WHEREFORE, Plaintiffs respectfully request judgment against KMAI, PCI, Roadsafe, Voltmer, Par, and MEC, jointly and severally, in an amount that will fairly and adequately compensate Plaintiffs for their damages, including medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, punitive damages, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

**COUNT IV – NUISANCE**  
**Against City of West Des Moines and City of Waukee**

68. Plaintiffs replead paragraphs 1-67 as if fully set forth herein.

69. The Cities chose to open the Interchange to traffic prior to completing and maintaining basic safety features on the Interchange, including safety features that the Interchange project's contracts and design plans required. These safety features included proper signage, lighting, and road markings.

70. The Cities failed to close the Interchange upon discovering dangerous conditions on the Interchange. These dangerous conditions included inadequate signage, lighting, and road markings, all of which were the result of the Cities failing to maintain the Interchange in a safe and proper condition, including but not limited to failing to maintain paint and road markings, and

the Cities, KMAI, PCI, Roadsafe, Voltmer, Par, and MEC constructing the Interchange in a negligent manner and, in some cases, in a manner that did not conform with the Interchange project's contract and design requirements.

71. The Cities' decisions resulted in the Interchange being injurious to health and an obstruction to the free use of property.

72. The Cities' decisions resulted in the Interchange interfering unreasonably with the comfortable enjoyment of life or property for drivers navigating the area near the Interchange, including Officer Farrell.

73. The Cities' decisions, and the Interchange's resulting interference with Officer Farrell's enjoyment of life and property, is the cause of damages to Plaintiffs.

74. Plaintiffs' damages include medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

WHEREFORE, Plaintiffs respectfully request judgment against the Cities, jointly and severally, in an amount that will fairly and adequately compensate Plaintiffs for their damages, including medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

**COUNT V – PREMISES LIABILITY**  
**Against City of West Des Moines and City of Waukee**

75. Plaintiffs replead paragraphs 1-74 as if fully set forth herein.

76. The Cities were the owners of the Interchange at all times material to this case.

77. The Cities knew, or in the exercise of reasonable care should have known, that the Interchange was in a dangerous condition at the time of Officer Farrell's death.

78. The Cities knew, or in the exercise of reasonable care should have known, that opening the Interchange without completing and maintaining planned and required lighting, paint, and signage created an unreasonable risk of injury to persons in the vicinity of the Interchange.

79. The Cities knew, or in the exercise of reasonable care should have known, that passing motorists in the vicinity of the Interchange would not have a reasonable opportunity to protect themselves from the Interchange's dangerous condition, including dangers related to drivers turning down the "wrong" lane of the Interchange as a result of the Cities opening the Interchange before completing and maintaining required painting, lighting, and signage, and the Cities failing to maintain the Interchange in a safe and proper condition, including failing to maintain paint and road markings.

80. The Cities were negligent and/or grossly negligent in failing to remedy the Interchange's unreasonably dangerous condition at the time of Officer Farrell's death.

81. The Cities' negligence and/or gross negligence was the actual and proximate cause of damages to Plaintiffs.

82. Plaintiffs' damages include medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

WHEREFORE, Plaintiffs respectfully request judgment against the Cities, jointly and severally, in an amount that will fairly and adequately compensate Plaintiffs for their damages, including medical expenses, bodily injury, pain and suffering, lost earnings, loss of consortium, interest as provided by law, the costs of this action, and all other relief the Court determines is appropriate.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

Respectfully submitted,

WHITFIELD & EDDY, P.L.C.  
699 Walnut St. Suite 2000  
Des Moines, IA 50309-4195  
Telephone: (515) 288-6041  
Fax: (515) 246-1474

By: /s/ Stephen D. Marso  
Stephen D. Marso  
[marso@whitfieldlaw.com](mailto:marso@whitfieldlaw.com)

By: /s/ Zach Hermsen  
Zach Hermsen  
[hermsen@whitfieldlaw.com](mailto:hermsen@whitfieldlaw.com)

ATTORNEYS FOR PLAINTIFFS