

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Suite C.
Des Moines, Washington
Thursday, January 9, 2025 - 6:00 PM**

City Council meeting can be viewed live on the City's website, Comcast Channel 21/321 or on the City's [YouTube](#) channel.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

COMMENTS FROM THE PUBLIC

COMMITTEE CHAIR REPORT

- TRANSPORTATION COMMITTEE MEETING UPDATE: Chair Matt Mahoney
- ENVIRONMENT COMMITTEE MEETING UPDATE: Chair JC Harris

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

Item 1. PETER PHILIPS MARINA ACTIVATION

CONSENT AGENDA

Item 1. APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through December 26, 2024 and payroll transfers through December 20, 2024 in the attached list and further described as follows:

EFT Vendor Payments	#11085-11210	\$ 964,502.26
Wires	#2789-2823	\$2,793,150.28
Accounts Payable Checks	#166263-166334	\$ 359,132.52
Payroll Checks	#19915-19915	\$ 1,728.11
Payroll Advice	#11946-12112	\$ 508,233.64

Total Checks and Wires for A/P & Payroll: \$4,626,746.81

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES

Motion is to approve the October 24, and November 21, 2024 City Council Regular Meeting, the November 14, 2024 City Council Retreat, and the December 05, 2024 City Council Study Session Meeting Minutes.

[Approval of Minutes](#)

Item 3. HUMAN TRAFFICKING AWARENESS DAY PROCLAMATION

Motion is to approve the Proclamation recognizing January 11, 2025 as Human Trafficking Awareness Day.

[Human Trafficking Awareness Day Proclamation](#)

Item 4. KOREAN AMERICAN DAY PROCLAMATION

Motion is to approve the Proclamation recognizing January 13, 2025 as Korean American Day.

[Korean American Day Proclamation](#)

Item 5. CO-RESPONDER GRANT AWARD

Motion is to ratify and affirm the Grant Award Agreement in the amount of \$69,000 to provide funding for the City's co-responder position for the first six months of 2025.

[Co-Responder Grant Award](#)

Item 6. DRAFT RESOLUTION NO. 24-108 IN SUPPORT OF REDONDO BOAT RAMP GRANT APPLICATION

Motion is to enact Draft Resolution 24-108 naming the City Manager as the designated representative/agent for the City in order to apply for grant funding for the Redondo Boat Launch Improvement Project.

[Draft Resolution No. 24-108 in support of Redondo Boat Ramp Grant Application](#)

PUBLIC HEARING/CONTINUED PUBLIC HEARING

Item 1. PUBLIC RECORDS FEE SCHEDULE UPDATE

Staff Presentation by City Prosecutor Tara Vaughn

[Public Records Fee Schedule Update](#)

UNFINISHED BUSINESS

Item 1. CITY OF DES MOINES MISSION, VISION & VALUES

[City of Des Moines Mission, Vision & Values](#)

NEW BUSINESS

Item 1. DES MOINES MARINA STEPS PROJECT

Staff Presentation by Public Works Director Michael P. Slevin III, P.E.

[Des Moines Marina Steps Project](#)

- Item 2. DES MOINES CREEK ESTUARY PROJECT UPDATE
Staff Presentation by Surface Water and Environmental Engineering
Manager Tyler Beekley, P.E.
[Des Moines Creek Estuary Project Update](#)
- Item 3. TELECOM FRANCHISE AGREEMENT WITH EZEE FIBER
Staff Presentation by City Attorney Tim George
[Telecommunications Franchise Agreement with Ezee Fiber](#)
- Item 4. TELECOM FRANCHISE AGREEMENT WITH ZIPLY FIBER
Staff Presentation by City Attorney Tim George
[Telecommunications Franchise Agreement with Ziply Fiber](#)
- Item 5. CITY LOGO DISCUSSION
Led by Council
[City Logo Discussion](#)
- Item 6. DISCUSSION ON NON-PROFIT SUMMIT HOSTED BY CITY OF DES
MOINES
Led by Council
- Item 7. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

NEXT MEETING DATE

January 23, 2025 City Council Regular Meeting

ADJOURNMENT

[Projected Future Agenda Items](#)

CITY OF DES MOINES
Voucher Certification Approval

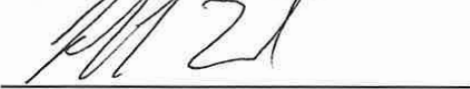
January 9, 2025

Auditing Officer Certification

Voucher 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 **January 9, 2025** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through December 26, 2024 and payroll transfers through December 20, 2024 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:



Jeff Friend, Finance Director

			# From	# To	Amounts
Claims Vouchers:					
EFT's			11085	11210	964,502.26
Wires			2789	2823	2,793,150.28
AP Checks			166263	166334	359,132.52
Total Vouchers paid					4,116,785.06
Payroll Vouchers					
Payroll Checks	12/20/2024		19915	19915	1,728.11
Payroll Advice			11946	12112	508,233.64
Total Paychecks & Direct Deposits					509,961.75
Total checks and wires for A/P & Payroll					4,626,746.81

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, October 24, 2024 - 6:00 PM**

CALL TO ORDER

Mayor Traci Buxton called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Yoshiko Grace Matsui.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; Councilmember Matt Mahoney; and Councilmember Jeremy Nutting

Staff Present:

Interim City Manager Tim George; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Director of Community/Administrative Services Bonnie Wilkins; Police Chief Ted Boe; Public Works Director Michael Slevin; City Engineer Tommy Owen; Civil Engineer II Tyler Beekley; Chris Pauk; Judge Lisa Leone; Director of Court Administration Melissa Patrick; Harbormaster Scott Wilkins; Finance Director Jeff Friend; Community Development Director Rebecca Deming; Building Official Dan Hopp; City Prosecutor Tara Vaughn; Human Resource Analyst Shawna Thomas; Director of Emergency Management and Workplace Safety Shannon Kirchberg; Executive Administrative Analyst Rochelle Caton; and City Clerk Taria Keane

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

- There was no additional correspondence outside of the emails already received by Council.

COMMENTS FROM THE PUBLIC

- Bonnie Wilkins, City Manager
- Steve Quinn, Budget (Prop 1)

Regular Meeting Minutes
October 24, 2024

- Nadya Curtis, Proposition 1
- Lloyd Lytle, Masonic Home
- George Pettibone, Masonic Home
- Catherine Barashkoff, Utility Tax
- Diane Hoyer, Human Services

COMMITTEE CHAIR REPORT

- MUNICIPAL FACILITIES COMMITTEE
 - Councilmember Jeremy Nutting provided an update on the recent Municipal Facilities Committee meeting held on October 24, 2024.
- ECONOMIC DEVELOPMENT COMMITTEE
 - Councilmember Jeremy Nutting provided an update on the recent Economic Development Committee meeting held on October 24, 2024.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

PRESENTATION OF DRAFT NEPA ENVIRONMENTAL ASSESSMENT

- Dave Kaplan, Local Government Relations Manager for the Port of Seattle, presented a PowerPoint to the Council on the Environmental Review of Near-Term Projects in the Sustainable Airport Master Plan.

AD HOC AIRPORT COMMITTEE DISCUSSION

- Council discussed if there should be an Ad Hoc Airport Committee.

Direction/Action

Motion made by Mayor Traci Buxton to form an Airport Committee in the 1st Quarter of 2025, for staff and experts to create a strong list of comments from the council, and for staff to plan a community outreach and comment forum; seconded by Councilmember JC Harris.
Motion passed 7-0.

HUMAN SERVICES UPDATE

- Executive Administrative Analyst Rochelle Caton presented a PowerPoint to the Council, providing an update on Human Services.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through October 10, 2024 and payroll transfers through October 18, 2024 in the attached list and

Regular Meeting Minutes
October 24, 2024

further described as follows:

EFT Vendor Payments	#10798-10846	\$ 191,843.38
Wires	#2718-2743	\$3,466,300.81
Accounts Payable Check Void	#164792	\$ (50.00)
Payroll Checks	#19903-19904	\$ 5,418.75
Payroll Advice	#11269-11433	\$ 489,769.72

Total Checks and Wires for A/P & Payroll: \$4,153,282.66

Item 2: APPROVAL OF MINUTES

Motion is to approve the minutes from the September 5, 2024 Study Session.

Item 3: DES MOINES CREEK RESTORATION PROJECTS – INTERLOCAL AGREEMENT V

Motion is to approve the Interlocal Agreement V between the Des Moines Creek Basin Committee members, and further authorize the City Manager to sign said Interlocal Agreement substantially in the form as submitted.

Item 4: KING COUNTY FLOOD REDUCTION GRANT AMENDMENT

Motion is to accept the King County Flood Control District's Flood Reduction Grant Amendment for the Massey Creek Pocket Estuary Restoration/Fish Passage Project and the Marine View Drive South Pond Retrofit Project and authorize the City Manager to sign the Grant Amendment substantially in the form as submitted.

Item 5: GRANT ACCEPTANCE - PASSENGER FERRY STUDY

Motion is to approve the Federal Interagency Agreement accepting grant funds of \$160,000 for passenger ferry service studies, and authorize the City Manager to sign the agreement substantially in the form presented.

Item 6: 2024 SENIOR ACTIVITY CENTER UPPER ROOF REPLACEMENT

Motion is to approve the Public Works Contract with Allied Roofing Installation Services LLC for the 2024 Senior Activity Center Upper Roof Replacement in the amount of \$71,630.00, authorize of project construction contingency in the amount of \$8,370.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.

Item 7: PET LICENSE FEES

Motion is to approve Draft Resolution 24-072 setting license fees for dog and cat licenses in the City of Des Moines.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda as read; seconded by Councilmember Matt Mahoney.

Councilmember JC Harris pulled Consent Agenda Item #5.

The remainder of the Consent Agenda passed 7-0.

Council discussed Consent Agenda item #5.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda Item #5 as read; seconded by Deputy Mayor Harry Steinmetz.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui, Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

Against: Councilmember JC Harris.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

PUBLIC HEARING - 2025-2026 PRELIMINARY BIENNIAL BUDGET
Staff Presentation by Finance Director Jeff Friend

At 7:38 p.m. Mayor Traci Buxton opened the Public Hearing.

Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2025-2026 Preliminary Biennial Budget.

Mayor Traci Buxton asked 3 times if anyone wished to speak.

Seeing none, Mayor Traci Buxton asked Council if they had any questions.

At 8:25 p.m. Mayor Traci Buxton closed the the Public Hearing.

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to pass Draft Ordinance No. 24-089 to a second reading on November 21, 2024 for further City Council consideration and approval; seconded by Councilmember Jeremy Nutting.

Regular Meeting Minutes
October 24, 2024

Motion passed 7-0.

NEW BUSINESS

Item 1: WATER UTILITY TAX
Staff Presentation by Interim City Attorney Matthew Hutchins

Interim City Attorney Matthew Hutchins gave Council a PowerPoint Presentation on Water Utility Tax.

Direction/Action

Motion made by Councilmember Jeremy Nutting to direct staff to bring back on November 21st either a proposal for the 6% utility tax or an amended agreement for the franchise agreement between Water District 54 and the City of Des Moines; seconded by Councilmember Matt Mahoney.

Motion passed 7-0.

Item 2: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

- There were no new items for future consideration.

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

COUNCILMEMBER YOSHIKO GRACE MATSUI

- Senior Services Advisory Committee Shred Event
- Recology Partnership
- Lighthouse Northwest Fundraiser Dinner
- Budget Townhall Meeting

COUNCILMEMBER JEREMY NUTTING

- No Report

COUNCILMEMBER GENE ACHZIGER

- Police Department Meet and Greet at Redondo
- Levy lid Lift

COUNCILMEMBER JC HARRIS

- No Report

Regular Meeting Minutes
October 24, 2024

COUNCILMEMBER MATT MAHONEY

- Trunk or Treat
- Trick or Treat Path
- Veterans Day Event
- Thanked Interim City Manager Tim George

DEPUTY MAYOR HARRY STEINMETZ

- Trick or Treat Path
- Sound Cities Association
- Thanked Interim City Manager Tim George

PRESIDING OFFICER'S REPORT

- Mayor's Minute
- Des Moines Holiday Farmers Market
- Election Day
- SAMP Presentation at Mount Rainier High School

EXECUTIVE SESSION

NEXT MEETING DATE

November 14, 2024 City Council Study Session

ADJOURNMENT

The meeting adjourned at 9:00 p.m.

MINUTES

DES MOINES CITY COUNCIL
CITY COUNCIL RETREAT
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, November 14, 2024 - 5:00 PM

CALL TO ORDER

Mayor Traci Buxton called the meeting to order at 5:02 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Jeremy Nutting.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; Councilmember Matt Mahoney; and Councilmember Jeremy Nutting

Staff Present:

City Manager Katherine Caffrey; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Police Chief Ted Boe; Director of Community/Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Finance Director Jeff Friend; Public Works Director Michael Slevin; Community Development Director Rebecca Deming; Communications Director Nicole Nordholm; and Deputy City Clerk Sara Lee

DISCUSSION ITEMS

CITY COUNCIL "MISSION, VISION, VALUES" RETREAT DISCUSSION

- Andrew Ballard, President and Chief Growth Strategist at Marketing Solutions, facilitated the City Council's work on their Mission, Vision, and Values Statement.

EXECUTIVE SESSION

NEXT MEETING DATE

November 21, 2024 City Council Regular Meeting

City Council Retreat Minutes
November 14, 2024

ADJOURNMENT

Direction/Action

Motion made by Councilmember Jeremy Nutting to adjourn; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

The meeting adjourned at 8:41 p.m.

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, November 21, 2024 - 6:00 PM**

CALL TO ORDER

Mayor Traci Buxton called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Gene Achziger.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; Councilmember Matt Mahoney; and Councilmember Jeremy Nutting

Staff Present:

City Manager Katherine Caffrey; Assistant City Manager Adrienne Johnson-Newton; City Attorney Tim George; Assistant City Attorney Matt Hutchins; Harbormaster Scott Wilkins; Director of Community/Administrative Services Bonnie Wilkins; Director of Court Administration Melissa Patrick; Public Works Director Michael Slevin; City Engineer Tommy Owen; Civil Engineer II Tyler Beekley; Civil Engineer I Brandon Pitts; Engineering Technician - SWM Michael Posey; Community Development Director Rebecca Deming; Finance Director Jeff Friend; Principal Accountant Jackson Sweigart; City Prosecutor Tara Vaughn; Interim IT Director Chris Pauk; Communications Director Nicole Nordholm; and City Clerk Taria Keane

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

- There were no additional correspondence outside of the emails already received by Council.

CEREMONIAL SWEARING IN OF CITY MANAGER KATHERINE CAFFREY

- Mayor Traci Buxton called City Manager Katherine Caffrey to be sworn in by City Clerk Taria Keane.

COMMENTS FROM THE PUBLIC

- No one signed up to speak.

EXECUTIVE SESSION

Mayor Traci Buxton called the Executive Session to order at 6:04 p.m. in the Council Chambers.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; Councilmember Matt Mahoney; and Councilmember Jeremy Nutting

Others Present:

City Manager Katherine Caffrey; Assistant City Attorney Matthew Hutchins; Summit Law Employment Attorney Evan Chin

PURPOSE

The purpose of the Executive Session was to discuss Potential Litigation under RCW 42.30.110(1)(i) The Executive Session was expected to last 20 minutes.

At 6:21 p.m. Mayor Traci Buxton extended the Executive Session for an additional 15 minutes until 6:36 p.m.

The Executive Session lasted 32 minutes.

The Executive Session adjourned at 6:36 p.m.

COMMITTEE CHAIR REPORT

- ~~FINANCE COMMITTEE: Chair Matt Mahoney~~
- ~~PUBLIC SAFETY/EMERGENCY MANAGEMENT: Chair Traci Buxton~~
- TRANSPORTATION COMMITTEE:
 - Councilmember Matt Mahoney provided an update on the recent Transportation Committee meeting held on November 21, 2024.
- ENVIRONMENT COMMITTEE

Regular Meeting Minutes
November 21, 2024

- Councilmember JC Harris provided an update on the recent Environment Committee meeting held on November 21, 2024.
- HIGHLINE FORUM
 - Councilmember JC Harris provided an update on the recent Highline Forum meeting held on November 20, 2024.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- Sustainable Airport Master Plan Community Meeting
- Coffee/Chat with the City Manager

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through November 07, 2024 and payroll transfers through November 05, 2024 in the attached list and further described as follows:

EFT Vendor Payments	#10847-11005	\$1,486,749.47
Wires	#2744-2783	\$2,882,787.40
Accounts Payable Checks	#166151-166211	\$2,259,847.28
Payroll Checks	#19905-19908	\$15,002.39
Payroll Advice	#11434-11606	\$522,913.46

Total Checks and Wires for A/P & Payroll: \$7,167,300.00

Item 2: APPROVAL OF MINUTES

Motion is to approve the September 11, 2024 Special City Council Meeting, the September 12, September 26, and the October 10, 2024 City Council Meeting, and the October 03, 2024 City Council Study Session Meeting Minutes.

Item 3: SMALL BUSINESS SATURDAY PROCLAMATION

Motion is to approve the Proclamation recognizing the Saturday after Thanksgiving as Small Business Saturday.

Item 4: SB 5290 LOCAL PROJECT REVIEW REQUIREMENTS

Motion is to approve Draft Resolution 24-095 documenting compliance with SB 5290 Local Project Review Requirements for the City of Des Moines.

Item 5: STORMFEST – INTERLOCAL AGREEMENT

Regular Meeting Minutes
November 21, 2024

Motion is to approve the Interlocal Agreement between City of Des Moines and the Cities of Burien, Normandy Park, Seatac and King County for Highline StormFest, and authorize the City Manager to sign said Agreement substantially in the form as submitted.

Item 6: BIRD DETERRENT BALL PURCHASE

Motion is to approve the purchase of Bird-X Bird Deterrent Balls, for a total estimated amount of \$124,191.00, and to authorize the City Manager or the City Manager's designee to sign the purchase order at the time they are created.

Item 7: MARINE VIEW DRIVE POND RETROFIT

Motion 1 is to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-03 with Parametrix to provide design and permitting services for the Marine View Drive Pond Retrofit Project in the amount of \$295,106.83, and authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

Motion 2 is to direct Administration to submit a CIP budget amendment for the Marine View Drive Pond Retrofit Project to incorporate the funding sources of the King County Flood Control Grant funding and Surface Water Utility funds.

Item 8: **GRANT ACCEPTANCE: DEPARTMENT OF COMMERCE
PASSENGER FERRY BENEFITS STUDY**

Motion is to approve federal interagency agreement #f24-51701-006, accepting grant funds of \$160,000 to support community engagement and environmental analysis for the electric taxi initiative and to authorize the city manager to sign the agreement substantially as presented.

Item 9: **MARINA VEHICLE CHARGING STATION AGREEMENT**

Motion is to approve the Site Host Agreement with EV Charging Solutions for the design, construction and installation of 9 electric vehicle charging stations at the Marina, and authorize the City Manager to sign the agreement substantially in the form as attached.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda; seconded by Councilmember Matt Mahoney.

Councilmember JC Harris pulled Consent Agenda Item #6.

The remainder of the Consent Agenda passed 7-0.

Regular Meeting Minutes
November 21, 2024

Mayor Traci Buxton read the Small Business Saturday Proclamation into the records.

Council discussed Consent Agenda Item #6

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda as read; seconded by Councilmember Matt Mahoney. Motion passed 7-0.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

2025 PROPERTY TAX LEVIES

Staff Presentation by Finance Director Jeff Friend

At 7:02 p.m. Mayor Traci Buxton opened the Public Hearing.

Finance Director Jeff Friend gave Council a PowerPoint on the 2025 Property Tax Levy.

Mayor Traci Buxton asked 3 times if anyone wished to speak.

Seeing none, Mayor Traci Buxton asked Council if they had any questions.

At 7:09 p.m. Mayor Traci Buxton closed the Public Hearing.

Direction/Action

Motion 1 made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 24-091, determining the amount of funds to be raised by ad valorem taxes for the year 2025 for general City expenditures; seconded by Councilmember Matt Mahoney. Motion passed 7-0.

Motion 2 made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 24-090, authorizing the increase in ad valorem taxes for the year 2025 for general City expenditures; seconded by Deputy Mayor Harry Steinmetz. Motion passed 7-0.

2024 ANNUAL BUDGET AMENDMENTS

Staff Presentation by Finance Director Jeff Friend

Regular Meeting Minutes
November 21, 2024

At 7:13 p.m. Mayor Traci Buxton opened the Public Hearing.

Finance Director Jeff Friend gave Council a PowerPoint on the 2024 Annual Budget Amendments.

Mayor Traci Buxton asked 3 times if anyone wished to speak.

Seeing none, Mayor Traci Buxton asked Council if they had any questions.

At 7:27 p.m. Mayor Traci Buxton closed the Public Hearing.

Direction/Action

Motion 1 made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 24-096 relating to municipal finance, amending the 2024 Annual Budget adopted in Ordinance No. 1779; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

UNFINISHED BUSINESS

WATER DISTRICT 54 FRANCHISE AMENDMENT

Staff Presentation by Assistant Attorney Matthew Hutchins

Assistant Attorney Matthew Hutchins gave a PowerPoint Presentation on Draft Ordinance No. 24-099 Water District 54 Franchise Amendment.

Direction/Action

Motion made by Councilmember Jeremy Nutting to pass Draft Ordinance 24-099 to a second reading on the next available regular City Council agenda; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 6-1.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz;
Councilmember Gene Achziger, Councilmember JC Harris,
Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

Against: Councilmember Yoshiko Grace Matsui

NEW BUSINESS

Item 1: **SQUARE FOOTAGE TAX**
Staff Presentation by Assistant City Attorney Matthew Hutchins

Regular Meeting Minutes
November 21, 2024

Assistant Attorney Matthew Hutchins gave a PowerPoint Presentation on Square Footage Tax.

Direction/Action

Motion made by Councilmember Jeremy Nutting to to pass Draft Ordinance 24-082 to a second reading on the next available regular City Council agenda; seconded by Deputy Mayor Harry Steinmetz. Motion passed 7-0.

- Item 2: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes
- Councilmember Gene Achziger proposed establishing a set of guidelines for Major Projects called 'Total Cost of Operation.' This would not only provide an estimate of the project's initial cost but also include the ongoing maintenance expenses. Council did not support at this time.

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

COUNCILMEMBER GENE ACHZIGER

- Levy Lid Lift

COUNCILMEMBER JC HARRIS

- Sustainable Airport Master Plan
- Highline Forum

COUNCILMEMBER MATT MAHONEY

- Veteran's Day Event
- Happy Thanksgiving

COUNCILMEMBER YOSHIKO GRACE MATSUI

- Senior Advisory Committee
- Sustainable Airport Master Plan Town Hall

COUNCILMEMBER JEREMY NUTTING

- No Report

DEPUTY MAYOR HARRY STEINMETZ

- Sound Cities Association Deputy Mayor's Phone Call
- Sound Cities Association Public Interest Committee

Regular Meeting Minutes
November 21, 2024

- Destination Des Moines Meeting
- Des Moines Holiday Market
- Coffee with City Manager Event
- Happy Thanksgiving

PRESIDING OFFICER'S REPORT

- Mayor's Minutes
- Veteran's Day Event
- Sustainable Airport Master Plan Town Hall
- South King Housing and Homelessness Partners Executive Board Meeting
- Sound Cities Executive Board Meeting

NEXT MEETING DATE

December 05, 2024 City Council Study Session

ADJOURNMENT

Direction/Action

Motion made by Councilmember Gene Achziger to adjourn the meeting; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

The meeting adjourned at 8:24 p.m.

MINUTES

DES MOINES CITY COUNCIL
STUDY SESSION
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, December 5, 2024 - 6:00 PM

CALL TO ORDER

Mayor Traci Buxton called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Deputy Mayor Harry Steinmetz.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; Councilmember Matt Mahoney; and Councilmember Jeremy Nutting

Staff Present:

City Manager Katherine Caffrey; Assistant City Manager Adrienne Johnson-Newton; City Attorney Tim George; Assistant City Attorney Matt Hutchins; Director of Community/Administrative Services Bonnie Wilkins; Police Chief Ted Boe; Finance Director Jeff Friend; Harbormaster Scott Wilkins; Community Development Director Rebecca Deming; Judge Lisa Leone; Director of Court Administration Melissa Patrick; Recreation Manager Kyle Ehlers; Director of Emergency Management and Workplace Safety Shannon Kirchberg; Communications Director Nicole Nordholm; Legislative Advocate Anthony Hemstad; Interim IT Director Chris Pauk; and City Clerk Taria Keane

CORRESPONDENCE

- There was no additional correspondence outside of the emails already received by Council.

COMMENTS FROM THE PUBLIC

Comments from the public must be limited to the items of business on the Study Session Agenda. Please sign in prior to the meeting and limit your comments to three (3) minutes.

Study Session Minutes
December 5, 2024

- Jeff Gross, Des Moines/Normandy Park Rotary Club and Resolution 1281

DISCUSSION ITEMS

Item 1: DISCUSSION OF 2025 CITY LEGISLATIVE PRIORITIES

Legislative Advocate Anthony Hemstad gave Council a PowerPoint Presentation on the 2025 City of Des Moines Legislative Priorities.

Council discussed the Legislative Priorities.

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to change the words in the Public Safety section from Behavioral Health to In Particular Behavioral Health.

Motion passed 7-0.

Motion made by Councilmember Jeremy Nutting to adopt the 2025 City of Des Moines Legislative Priorities substantially in the form as amended; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

Item 2: 2024 3RD QUARTER FINANCIAL REPORT
Staff Presentation by Finance Director Jeff Friend

Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2024 3rd Quarter Financial Report.

Item 3: BUDGET WORKSHOP
Staff Presentation by Finance Director Jeff Friend

City Manager Katherine Caffrey along with Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2025-2026 Biennial Budget.

EXECUTIVE SESSION

NEXT MEETING DATE

December 12, 2024 City Council Regular Meeting

Study Session Minutes
December 5, 2024

ADJOURNMENT

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to adjourn the meeting;
seconded by Councilmember Matt Mahoney.
Motion passed 7-0.

The meeting adjourned at 7:46 p.m.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Human Trafficking Awareness Day
Proclamation

ATTACHMENTS:
1. Proclamation

FOR AGENDA OF: January 09, 2025

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 02, 2025

CLEARANCES:

☒ City Clerk *JK*
☐ Community Development ____
☐ Courts ____
☐ Director of Marina Redevelopment ____
☐ Emergency Management ____
☐ Finance ____
☐ Human Resources ____
☐ Legal ____
☐ Marina ____
☐ Police ____
☐ Parks, Recreation & Senior Services ____
☐ Public Works ____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this agenda item is to observe Human Trafficking Awareness Day, which reaffirms the City of Des Moines' zero-tolerance policy for human trafficking, and encourage all to raise awareness and work collaboratively with law enforcement agencies and community organizations to combat this terrible crime.

Suggested Motion

Motion: "I move to approve the Proclamation recognizing January 11, 2025 as Human Trafficking Awareness Day."

Background

In 2007 the U.S. Senate designated annually that January 11th would be recognized as a National Day of Human Trafficking Awareness in an effort to raise consciousness about this global, national and local issue. On January 11, 2012, the Washington State Senate followed, and unanimously adopted Senate Resolution 8663, which honors people and organizations that fight against human trafficking and encourages Washingtonians to observe National Slavery and Human Trafficking Prevention month, as well as the National Day of Human Trafficking.



City of Des Moines

CITY COUNCIL
21630 11th AVENUE S, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D: (206) 824-6024 FAX: (206) 870-6540



Proclamation

WHEREAS, human trafficking occurs when someone uses force, fraud or coercion to cause another person to engage in forced labor, involuntary servitude, or a commercial sex act; and

WHEREAS, human trafficking is second only to narcotics trafficking in international crime; and

WHEREAS, the International Labor Organization estimates that there are upwards of 20 million victims of modern day slavery worldwide, with children making up 27 percent of the victims; and

WHEREAS, victims of human trafficking may be young, old, male, female, US citizens, or foreign nationals; and

WHEREAS, aggressively identifying and prosecuting the buyers and sellers of trafficking victims is an effective strategy to end the commission of human trafficking; and

WHEREAS, assisting victims of human trafficking requires a coordinate community response among community groups, social services, schools, and law enforcement; and

WHEREAS, Washington State recognizes a National Day of Human Trafficking Awareness, which is designated annually as January 11th; now therefore

THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS January 11th to be

HUMAN TRAFFICKING AWARENESS DAY

in the City of Des Moines, and reaffirms the City of Des Moines' zero-tolerance policy for human trafficking, and encourages all to raise awareness about human trafficking and work collaboratively with law enforcement agencies and community organizations to combat this terrible crime.

SIGNED this 9th day of January, 2025

Traci Buxton, Mayor

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Korean American Day Proclamation

FOR AGENDA OF: January 9, 2025

ATTACHMENTS:

1. Proclamation

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 02, 2024

CLEARANCES:

- ☒ [X] City Clerk *SK*
☐ [] Community Development ____
☐ [] Courts ____
☐ [] Emergency Management ____
☐ [] Finance ____
☐ [] Human Resources ____
☐ [] Legal ____
☐ [] Marina ____
☐ [] Police ____
☐ [] Parks, Recreation & Senior Services ____
☐ [] Public Works ____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this item is for the Council to approve a proclamation recognizing January 13, 2025 as Korean American Day.

Suggested Motion

Motion: "I move to approve the Proclamation recognizing January 13, 2025 as Korean American Day."

Background

January 13th was designated as Korean American Day by the Washington State Legislature and Governor Christine Gregoire in April, 2007. On January 13, 1903 the first Korean immigrants arrived in the United States. These first immigrants and their descendants faced and overcame difficult conditions and created a vibrant and successful community that has fought for our nation's freedom and democratic way of life and has been characterized by a strong and diligent work ethic, a value for education, and an entrepreneurial spirit

In a spirit of unity to celebrate the first pioneers that paved the way for the vibrant Korean-American community that thrives today and to recognize the invaluable contributions that Korean Americans make that enrich our City, it has been proposed that the City of Des Moines recognize January 13th 2025 as Korean American Day.

City of Des Moines



CITY COUNCIL
21630 11th AVENUE S, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D: (206) 824-6024 FAX: (206) 870-6540



Proclamation

WHEREAS, Korean American Day is celebrated worldwide on January 13th to commemorate the first Korean immigrants to the United States in 1903; and

WHEREAS, on January 13, 1903 the first Korean immigrants arrived in the United States. These first immigrants and their descendants faced and overcame difficult conditions and created a vibrant and successful community that has fought for our nation's freedom and democratic way of life and has been characterized by a strong and diligent work ethic, a value for education, and an entrepreneurial spirit; and

WHEREAS, it is fitting that we celebrate and honor Korean immigration to the United States, the State of Washington and the City of Des Moines and recognize the Korean American community's invaluable contributions to our rich cultural diversity, economic strength and proud heritage; and

WHEREAS, achievements and contributions of Korean Americans can be seen throughout the Nation and Washington state in business, academia, arts, science, engineering, medicine, literature, journalism, government, the military and numerous other areas; and

WHEREAS, we come together as a community in a spirit of unity to celebrate the first pioneers that paved the way for the vibrant Korean-American community that thrives today and the invaluable contributions that enrich our City;

NOW THEREFORE, THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS
January 13th to be

KOREAN AMERICAN DAY

SIGNED this 9th day of January, 2025

Traci Buxton, Mayor

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Co-Responder Grant Award

FOR AGENDA OF: Jan 9, 2025

ATTACHMENTS:

1. WASPC Grant Award #AJA-23-007

DEPT. OF ORIGIN: Police

DATE SUBMITTED: Dec 26, 2024

CLEARANCES:

- [X] City Clerk *SK*
[] Community Development ____
[] Courts ____
[X] Finance *MT*
[] Human Resources ____
[X] Legal */s/TG*
[] Marina ____
[] Police ____
[] Parks, Recreation & Senior Services ____
[] Public Works ____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this agenda item is for the Council to ratify and affirm the Grant Award from the Washington Association of Sheriffs and Police Chiefs (WASPC) in the amount of \$69,000 to provide funding for the City's co-responder position for the first six months of 2025. The following motion will appear on the consent calendar:

Suggested Motion

Motion: "I move to ratify and affirm the Grant Award Agreement in the amount of \$69,000 to provide funding for the City's co-responder position for the first six months of 2025."

Background

Des Moines Police Department identified a grant opportunity to reimburse the City for the cost of the Police/ Mental Health Co-responder Position from Jan 1, 2025 through June 30, 2025. The grant application was awarded to the City of Des Moines by the Washington Association of Sheriffs and Police Chiefs.

Discussion

The Des Moines Police Department added a mental health co-responder position in 2023, branded as Getting People Services (GPS) and hired Monica Ortiz Lara to fill the role. During the 2025 bi-annual budget planning, it was apparent that we had a revenue shortfall and Des Moines Police leadership prioritized identifying funding sources to maintain this critical service. This grant will allow us to maintain the GPS program for the first half of 2025 with outside funding.

This grant has several benchmarks for us to achieve in order to receive reimbursement. These benchmarks will be time intensive but DMPD believes they are able to meet the reporting requirements necessary.

Alternatives

Des Moines could elect not to accept this grant. This would require either finding alternative funding or reducing the program.

Financial Impact

This grant will add up to \$69,000 in revenue to the City general fund.

Recommendation

Staff recommends we accept this grant award and maintain the Police/ Mental Health Co-responder Program in it's current format.



Washington Association of
**SHERIFFS &
POLICE CHIEFS**

3060 Willamette Drive NE
Lacey, WA 98516
360-486-2380 (Phone)
360-486-2381 (Fax)
www.waspc.org

President
Chief Darrell Lowe
City of Redmond

President-Elect
Sheriff John Nowels
Spokane County

Vice President
Chief Rafael Padilla
City of Kent

Past President
Sheriff Kevin Morris
Douglas County

Treasurer
Chief Damon Simmons
City of Liberty Lake

Executive Board

Chief Michelle Bennett
City of Edmonds

Chief Rebecca Mertzig
City of Bellingham

Sheriff Clay Myers
Kittitas County

Chief Greg Cobb
Union Gap Police
Department

Sheriff James Raymond
Franklin County

Sheriff Brad Thurman
Cowlitz County

Chief Sam White
Lower Elwha Klallam
Police Department

Chief John Batiste
Washington State Patrol

Richard Collodi, SAC
FBI—Seattle

Steven D. Strachan
Executive Director

December 20, 2024

Sergeant Scott Oak
Des Moines Police Department
21900 11th Ave S
Des Moines, WA 98198

Deliver to: soak@desmoineswa.gov

Dear Sergeant Oak,

Subject: AJA-23-007 Award

Congratulations! WASPC has awarded the Des Moines Police Department \$69,000 to support implementation of an Arrest and Jail Alternatives Grant per RCW 36.28A.450.

Please sign the required documents via DocuSign. You will receive a copy of all completed materials via email. Please save a copy for your records.

I will reach out after the first of the year to introduce you to the LEAD NSB Technical Assistance Team and schedule re-occurring monthly check-ins. I am working to add Des Moines to invoice, report, and survey templates. Links to these resources will be provided to you by mid-January.

I look forward to working with you. Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Jamie Weimer".

Jamie Weimer, Projects and Programs Manager

Leading collaboration among law enforcement professionals to enhance public safety.

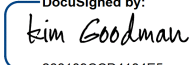
 Washington Association of SHERIFFS & POLICE CHIEFS	Grant Award Agreement for Arrest and Jail Alternatives	WASPC Grant Award Number: AJA-23-007
---	--	--

This Grant Award Agreement is made by and between the Washington Association of Sheriffs and Police Chiefs (WASPC) and Des Moines Police Department (Grantee).

Grantee Name Des Moines Police Department		Grantee Doing Business as (DBA) N/A	
Grantee Address 21900 11 TH AVE S		City Des Moines	State WA
Grantee Primary Contact Scott Oak		Primary Contact Telephone (206) 870-7602	Primary Contact Email Address soak@desmoineswa.gov
Is the grantee a sub-recipient under this agreement? ☐ YES ☒ NO		Grantee Tax Identification Number 91-6016496	

WASPC Grant Program Arrest and Jail Alternatives	WASPC Division/Section Projects and Programs
WASPC Primary Contact Name and Title Jamie Weimer Projects and Programs Manager	WASPC Primary Contact Address 3060 Willamette Dr. NE, STE 200 Lacey, WA 98516
WASPC Contact Telephone (360) 486-2414	WASPC Contact Email Address aja@waspc.org

Grant Start Date January 1, 2025	Grant End Date June 30, 2025	Authority for Award RCW 36.28A.450	Total Award Amount \$69,000
PURPOSE OF AWARD: To provide services to communities in Washington State as set forth in RCW 36.28A.450 and the grantee's grant application.		FUNDING SOURCE(S): ☒ Substance Abuse Block Grant (Federal) (\$10,350.00) ☒ General Fund (State) (\$58,650.00)	
SERVICE AREA: City of Des Moines and surrounding areas			

Grantee SIGNATURE  Signed by: 4DD4FDCF8209445...	PRINTED NAME AND TITLE Scott Oak Detective Sergeant	DATE SIGNED 12/24/2024
WASPC SIGNATURE  DocuSigned by: 266109CCD4184E5...	PRINTED NAME AND TITLE Kim Goodman, Chief of Staff	DATE SIGNED 12/23/2024

GRANT AWARD AJA-23-007

Page 2 of 45

1 CONTENTS

RECITALS	4
1 STATEMENT OF WORK (SOW)	4
2 DEFINITIONS	4
3 SPECIAL TERMS AND CONDITIONS	6
3.1 PERFORMANCE EXPECTATIONS	6
3.2 TERM.....	7
3.3 DATA COLLECTION.....	7
3.4 COMPENSATION.....	8
3.5 INVOICE AND PAYMENT	8
3.6 Grantee and WASPC GRANT MANAGERS	9
3.7 LEGAL NOTICES	9
3.8 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE	10
3.9 INSURANCE	10
3.10 UNALLOWABLE COSTS	11
4 GENERAL TERMS AND CONDITIONS.....	11
4.1 ACCESS TO DATA.....	11
4.2 ADVANCE PAYMENT PROHIBITED	12
4.3 AMENDMENTS	12
4.4 ASSIGNMENT	12
4.5 ATTORNEYS' FEES	12
4.6 AUDIT	12
4.7 CHANGE IN STATUS	12
4.8 CONFIDENTIAL INFORMATION PROTECTION.....	13
4.9 Grantee'S PROPRIETARY INFORMATION	13
4.10 CONFORMANCE WITH 2 CFR § 200 AND RELEVANT STATE AND LOCAL LAWS.....	13
4.11 COVENANT AGAINST CONTINGENT FEES.....	14
4.12 DEBARMENT	14
4.13 DISPUTES.....	14
4.14 ENTIRE AGREEMENT	15
4.15 FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA).....	15
4.16 FORCE MAJEURE	15
4.17 FUNDING WITHDRAWN, REDUCED OR LIMITED	15
4.18 GOVERNING LAW	16
4.19 HUMAN SUBJECTS PROTECTION.....	16
4.20 WASPC NETWORK SECURITY	16
4.21 INDEMNIFICATION	16

GRANT AWARD AJA-23-007

Page 3 of 45

4.22	INDEPENDENT CAPACITY OF THE Grantee.....	17
4.23	INDUSTRIAL INSURANCE COVERAGE	17
4.24	LEGAL AND REGULATORY COMPLIANCE	17
4.25	LIMITATION OF AUTHORITY	17
4.26	NO THIRD-PARTY BENEFICIARIES	17
4.27	NONDISCRIMINATION.....	18
4.28	NON-SUPPLANTING CERTIFICATION	18
4.29	OVERPAYMENTS TO Grantee.....	18
4.30	PAY EQUITY.....	18
4.31	PUBLICITY.....	19
4.32	RECORDS AND DOCUMENTS REVIEW.....	19
4.33	REMEDIES NON-EXCLUSIVE	19
4.34	RIGHT OF INSPECTION	19
4.35	RIGHTS IN DATA/OWNERSHIP	20
4.36	RIGHTS OF STATE AND FEDERAL GOVERNMENTS.....	20
4.37	SERVICES TO PERSONS WITH LIMITED ENGLISH PROFICIENCY.....	21
4.38	SEVERABILITY	21
4.39	SITE SECURITY	21
4.40	SUBGRANTING	21
4.41	SURVIVAL	22
4.42	CORRECTIVE ACTION PLAN/SUSPENSION/TERMINATION	22
4.43	TERMINATION PROCEDURES	24
4.44	WAIVER	24
4.45	WARRANTIES.....	25
ATTACHMENT 2: FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) DATA COLLECTION FORM.....		34
ATTACHMENT 3: FEDERAL AWARD IDENTIFICATION.....		36
ATTACHMENT 4: 45 CFR § 96.135 - Restrictions on expenditure of grant.		37
SCHEDULE A: STATEMENT OF WORK.....		40
EXHIBIT A: SERVICE DEFINITIONS		43
EXHIBIT B: 2023-2025 GRANT APPLICATION PACKET		45

GRANT AWARD AJA-23-007

Page 4 of 45

GRANT AWARD AJA-23-007

RECITALS

The Arrest and Jail Alternatives (AJA) grant program is established via RCW 36.28A.450. The Washington Association of Sheriffs and Police Chiefs (WASPC), in consultation with the Law Enforcement Assisted Diversion (LEAD) National Support Bureau (NSB) was tasked with the development and implementation of a grant program aimed at supporting local initiatives to properly identify criminal justice system-involved persons with substance use disorders and other behavioral health needs and engage those persons with therapeutic interventions and other services, the efficacy of which have been demonstrated by experience, peer-reviewed research, or which are credible promising practices, prior to or at the time of jail booking, or while in custody.

WASPC has determined that entering into an Agreement with Des Moines Police Department will meet WASPC's needs.

NOW THEREFORE, WASPC awards to Des Moines Police Department this Grant Award Agreement, the terms and conditions of which will govern Grantee's providing to WASPC the services and data from Grantee's Arrest and Jail Alternatives program.

IN CONSIDERATION of the mutual promises as set forth in this Grant Award Agreement, the parties agree as follows:

1 STATEMENT OF WORK (SOW)

The Grantee will provide the services and staff as described in Schedule A: Statement of Work.

2 DEFINITIONS

"Agreement" or **"Award"** means the same as "Grant" or "Grant Agreement" or "Grant Award Agreement."

"Authorized Representative" means a person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

"Breach" means the unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

"business days and Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"CFR" means the Code of Federal Regulations. All references in this Agreement to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.ecfr.gov>.

"Community Agency" means an organization that works with and supports people working through behavioral health challenges but does not directly provide treatment. The organization can be a nonprofit or government/public agency as defined in the application.

"Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes or regulations. Confidential Information includes, but is not limited to, any information identifiable to an

GRANT AWARD AJA-23-007

Page 5 of 45

individual that relates to a natural person's health, (see also Protected Health Information); finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, software source code or object code, or WASPC or State security information.

"Contract" where used, shall have the same meaning as "grant" "grant agreement" and "grant award agreement".

"Contractor" where used shall mean the same as "Grantee."

"Data" means information produced, furnished, acquired, or used by Grantee in meeting requirements under this Agreement.

"Effective Date" means the first date this Agreement is in full force and effect.

"Government/Public Agency" means an educational service district, school district, law enforcement agency, therapeutic court or probation office, public health district, a recognized American Indian organization, an Urban Indian Health Organization, or a Tribe.

"Grant" or "Grant Agreement" or "Grant Award Agreement" means this grant document and all schedules, exhibits, attachments, incorporated documents and amendments.

"Grantee" means Des Moines Police Department, D/B/A/: N/A, its employees, officers, and agents. Grantee includes any firm, provider, organization, individual or other entity performing services under this Grant Award Agreement. It also includes any Subgrantee retained by Grantee as permitted under the terms of this Agreement.

"Law Enforcement Assisted Diversion/Let Everyone Advance with Dignity" LEAD is a community based diversion approach with the goals of improving public safety and public order and reducing unnecessary justice system involvement for people who participate in the program. LEAD is a registered trademark and refers to programs adhering to a set of core principles involving police-led precharging diversion, intensive field based case management, community voice, harm reduction, and interagency information sharing and collaboration. LEAD is recognized as an evidence based best practice in the Washington Medicaid Waiver toolkit and falls under the Office of Justice Programs standards for evidence based practices.

"LEAD Program" means a pre-booking, jail diversion program in the criminal justice system. The LEAD Diversion Program leverages assistance from local law enforcement organizations to identify and refer individuals committing non-violent crimes into an intensive case management program.

"LEAD National Support Bureau" or "NSB" means project of the Public Defender Association (PDA). The LEAD National Support Bureau will be providing strategic guidance and Technical Assistance to the Pilot Sites developing LEAD Programs under this Agreement. Including providing guidance on implementation with a commitment to the LEAD Core Principles.

"WASPC Grant Manager" means the individual identified on the cover page of this Agreement who will provide oversight of the Grantee's activities conducted under this Agreement.

"Overpayment" means any payment or benefit to the Grantee in excess of that to which the Grantee is entitled by law, rule, or this Award, including amounts in dispute.

"Public Defender Association," or Purpose, Dignity, & Action" or "PDA" means the agency that will provide Technical Assistance for LEAD site selection, implementation and evaluation.

"Pilot Site" or "Site" means the city, county, or tribe that will be implementing an Arrest and Jail Alternatives program through the execution of this Agreement and per RCW 36.28A.450.

"Proprietary Information" means information owned by Grantee to which Grantee claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

"Protected Health Information" or "PHI" means individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR § 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR § 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC § 1232g(a)(4)(b)(iv).

"RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcw/>.

"Statement of Work" or "SOW" means a detailed description of the work activities the Grantee is required to perform under the terms and conditions of this Agreement, including the deliverables and timeline, and is Schedule A hereto.

"Subgrantee" means a person or entity that is not in the employment of the Grantee, who is performing all or part of the business activities under this Agreement under a separate Agreement with Grantee. The term "Subgrantee" means Subgrantee(s) of any tier.

"Subrecipient" shall have the meaning given in 45 CFR § 75.2, or any successor or replacement to such definition, for any federal award from HHS; or 2 CFR § 200.93, or any successor or replacement to such definition, for any other federal award.

"USC" means the United States Code. All references in this Agreement to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>.

"WAC" means the Washington Administrative Code. All references to WAC chapters or sections will include any successor, amended, or replacement regulation. Pertinent WACs may be accessed at: <http://app.leg.wa.gov/wac/>.

3 SPECIAL TERMS AND CONDITIONS

3.1 PERFORMANCE EXPECTATIONS

Expected performance under this Agreement includes, but is not limited to, the following:

GRANT AWARD AJA-23-007

Page 7 of 45

- 3.1.1 Knowledge of applicable state and federal laws and regulations pertaining to subject of the Agreement;
- 3.1.2 Use of professional judgment;
- 3.1.3 Collaboration with WASPC staff in Grantee's conduct of the services;
- 3.1.4 Conformance with WASPC directions regarding the delivery of the services;
- 3.1.5 Timely, accurate and informed communications;
- 3.1.6 Regular completion and updating of project plans, reports, documentation and communications;
- 3.1.7 Regular, punctual attendance at all meetings;
- 3.1.8 Provision of high-quality services, and
- 3.1.9 Prior to payment of invoices, WASPC will review and evaluate the performance of Grantee in accordance with Agreement and these performance expectations and may withhold payment if expectations are not met or Grantee's performance is unsatisfactory as defined and evaluated by WASPC.

3.2 TERM

- 3.2.1 The initial term of the Award shall be January 1, 2025 and continue through June 30, 2025, unless terminated sooner as provided herein.
- 3.2.2 Work performed without an award or amendment signed by the Authorized Representatives of both parties will be at the sole risk of the Grantee. WASPC will not pay any costs incurred before the effective date listed on the facesheet attached to this agreement.
- 3.2.3 A completed Agreement is expected within 30 days following the letter of intent to award. In the event an Agreement is not signed (through no fault of WASPC) by the Grantee within 30 days, WASPC may elect to cease negotiations, and withdraw the award.

3.3 DATA COLLECTION

- 3.3.1 The Grantee shall utilize the data collection tool selected by WASPC, hereinafter referred to as the WASPC Data Collection Tool, which is the JULOTA Reach Software. The Grantee must provide sufficient resources to establish the administrative permissions necessary for the WASPC Data Collection Tool to be fully operational at the time services begin at the site(s). The Grantee, if they have not already done so, shall execute the JULOTA "SaaS Use Agreement", which will be separately executed between the Grantee and JULOTA within 30 days of the execution of this Agreement.
- 3.3.2 Section 3.3.1 does not apply to this award. The grantee shall submit monthly program reports detailing the number of unique individuals served; number of contacts made

GRANT AWARD AJA-23-007

Page 8 of 45

during the reporting period; narrative information on program status; and any other information requested by WASPC.

3.4 COMPENSATION

- 3.4.1 The Maximum Compensation payable to Grantee is \$69,000 for the period of January 1, 2025-June 30, 2025.
- 3.4.2 Funds that are not utilized WILL NOT carryover to any other period and are no longer able to be claimed by the Grantee under any circumstances.
- 3.4.3 Grantee's compensation for services rendered will be based in accordance with Schedule A: Statement of Work.
- 3.4.4 Federal funds disbursed through this Agreement were received by WASPC through OMB Catalogue of Federal Domestic Assistance (CFDA) Number: 93.959, Substance Abuse Prevention & Treatment, Substance Abuse Prevention & Treatment Block Grant. Grantee agrees to comply with applicable rules and regulations associated with these federal funds and has signed Attachment 2: Federal Compliance, Certification and Assurances.

3.5 INVOICE AND PAYMENT

- 3.5.1 Grantee must submit accurate invoices to WASPC utilizing the online billing tool made available to Grantee by WASPC. Invoices are due monthly and should be submitted no later than thirty (30) calendar days following the period for which services are billed. WASPC reserves the right to deny payment for invoices that are submitted forty-Five (45) calendar days beyond the period for which services were provided. An exception to this requirement may be found in 3.5.5.
- 3.5.2 Invoices must describe and document to WASPC's satisfaction a description of the work performed, the progress of the project, fees, and a statement that includes the following language: "We certify pursuant to 2 CFR § 200.201(1)(iii)(3) that the activities described in this invoice and associated report(s) have been completed,". If expenses are invoiced, invoices must provide a detailed breakdown of each type. All invoices will be reviewed and must be approved by WASPC prior to payment.
- 3.5.3 Grantee must submit properly itemized invoices to include the following information, as applicable:
 - WASPC Award number "AJA-23-007"
 - Grantee name, address, phone number
 - Description of Services
 - Date(s) of delivery
 - Net invoice price for each item
 - Applicable taxes
 - Total invoice cost
- 3.5.4 WASPC will return incorrect or incomplete invoices to the Grantee for correction and reissue. The Award Number must appear on all invoices, bills of lading, packages, and

GRANT AWARD AJA-23-007

Page 9 of 45

correspondence relating to this Agreement.

- 3.5.5 Invoices for services rendered under this Agreement from January 1, 2025 to June 30, 2025 MUST be submitted by the Grantee to WASPC by July 14, 2025. WASPC is under no obligation to pay any claims for the period mentioned above that are submitted on or after July 15, 2024 ("Belated Claims"). WASPC will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

3.6 GRANTEE AND WASPC GRANT MANAGERS

- 3.6.1 Grantee's Grant Manager will have prime responsibility and final authority for the services provided under this Agreement and be the principal point of contact for the WASPC Grant Manager for all business matters, performance matters, and administrative activities.
- 3.6.2 WASPC's Grant Manager is responsible for monitoring the Grantee's performance and will be the contact person for all communications regarding Agreement performance and deliverables. The WASPC Grant Manager has the authority to accept or reject the services provided and must approve Grantee's invoices prior to payment.
- 3.6.3 The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

Grantee: Grant Manager Information		WASPC: Grant Manager Information	
Name:	Scott Oak	Name:	Jamie Weimer
Address:	21900 11th AVE S Des Moines, WA 98198	Address:	3060 Willamette Dr NE, STE 200 Lacey, WA 98516
Phone:	(206) 870-7602	Phone:	(360) 486-2414
Email:	soak@desmoineswa.gov	Email:	aja@waspc.org

3.7 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

- 3.7.1 In the case of notice to the Grantee:
Scott Oak
Des Moines Police Department
21900 11th AVE S
Des Moines, WA 98198
- 3.7.2 In the case of notice to WASPC:
Attention: Chief of Staff
Washington Association of Sheriffs and Police Chiefs

GRANT AWARD AJA-23-007

Page 10 of 45

3060 Willamette Drive NE, STE 200
Lacey, WA 98516

3.7.3 Notices are effective upon receipt or four (4) business days after mailing, whichever is earlier.

3.7.4 The notice address and information provided above may be changed by written notice of the change given as provided above.

3.8 INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

Each of the documents listed below is by this reference incorporated into this Agreement. In the event of an inconsistency, the inconsistency will be resolved in the following order of precedence:

- 3.8.1 Applicable Federal and State of Washington statutes and regulations;
- 3.8.2 Recitals
- 3.8.3 Special Terms and Conditions;
- 3.8.4 General Terms and Conditions;
- 3.8.5 Attachment 1: Federal Compliance, Certifications and Assurances;
- 3.8.6 Attachment 2: Federal Funding Accountability and Transparency Act Data Collection Form;
- 3.8.7 Attachment 3: Federal Award Identification;
- 3.8.8 Attachment 4: Restrictions on Expenditure of Grant;
- 3.8.9 Schedule A: Statement of Work;
- 3.8.10 Any other provision, term, exhibit or material incorporated herein by reference or otherwise incorporated.

3.9 INSURANCE

The Grantee must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the WASPC should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of Grantee or Sub-grantee, Subgrantee, or agents of either, while performing under the terms of this Agreement. The Grantee must provide insurance coverage that is maintained in full force and effect during the term of this Award, as follows:

- 3.9.1 Commercial General Liability Insurance Policy—Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of Agreement activity but no less than \$1 million per occurrence/\$2 million general aggregate. Additionally, the Grantee is responsible for ensuring that any Sub-grantees and Subgrantees provide adequate insurance coverage

GRANT AWARD AJA-23-007

Page 11 of 45

for the activities arising out of subgrants and subcontracts.

- 3.9.2 Business Automobile Liability—In the event that services delivered pursuant to this Agreement involve the use of vehicles, either owned, hired, or non-owned by the Grantee, automobile liability insurance is required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- 3.9.3 Professional Liability Errors and Omissions—Provide a policy with coverage of not less than \$1 million per claim/\$2 million general aggregate.
- 3.9.4 The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name WASPC, its agents and employees as additional insureds under any Commercial General and/or Business Automobile Liability policy/ies. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Agreement, the Grantee must provide written notice of such to WASPC within one (1) Business Day of Grantee's receipt of such notice. Failure to buy and maintain the required insurance may, at WASPC's sole option, result in this Agreement's termination.
- 3.9.5 The Grantee shall submit to WASPC a certificate of insurance that outlines the coverage and limits defined in the Insurance section before any work is performed and will not receive any payment or reimbursement until such certificate of insurance is provided to WASPC. Grantee must submit renewal certificates as appropriate during the term of the Award Agreement.
- 3.9.6 If the Grantee certifies that it is self-insured, is a member of a risk pool, or maintains the types and amounts of insurance identified above, Grantee will provide certificates of insurance to that effect to WASPC upon request.

3.10 UNALLOWABLE COSTS

- 3.10.1 Unallowable costs are those that do not meet the criteria of reasonableness, allowability, allocability, and consistency and those that have not received prior written approval from WASPC.
- 3.10.2 While only a portion of the total award comes from restricted sources (Federal funds), WASPC has chosen to apply the most restrictive regulations to all funds made available through this Agreement. These restrictions include but are not limited to those found in 2 CFR § 200 and 45 CFR § 96.135.
- 3.10.3 WASPC reserves the right to recapture, recover, or to apply offsets to future payments to the Grantee for any costs WASPC deems unallowable.

4 GENERAL TERMS AND CONDITIONS

4.1 ACCESS TO DATA

GRANT AWARD AJA-23-007

Page 12 of 45

In compliance with RCW 39.26.180 (2), RCW 36.28A.450 and federal rules, the Grantee must provide access to any data generated under this Agreement to WASPC, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Grantee's reports, including computer models and methodology for those models.

4.2 ADVANCE PAYMENT PROHIBITED

No advance payment will be made for services furnished by the Grantee pursuant to this Agreement.

4.3 AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4.4 ASSIGNMENT

4.4.1 The Grantee may not assign or transfer all or any portion of this Agreement or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 4.39, Subcontracting/Subgranting, without the prior written consent of WASPC, which may be withheld at WASPC's sole discretion. Any permitted assignment will not operate to relieve the Grantee of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to WASPC that may arise from any breach of the provisions of this Agreement or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection 4.4.1 of the Agreement will be null and void.

4.4.2 WASPC may assign this Agreement to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to the Grantee.

4.4.3 This Agreement will inure to the benefit of and be binding on the parties hereto and their permitted successors and assignees.

4.5 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce the terms of this Agreement, each party agrees to bear its own attorneys' fees and costs.

4.6 AUDIT

If Grantee is required by OMB Super Circular 2 CFR § 200.501 and 45 CFR § 75.501 to have an audit of their financial statements, the Grantee must submit the results of that audit to WASPC no later than 90 (ninety) calendar days after those results are delivered to the Grantee by their auditor.

4.7 CHANGE IN STATUS

In the event of any substantive change in its legal status, organizational structure, or fiscal reporting responsibility, the Grantee will notify WASPC of the change. The Grantee must provide notice as soon

as practicable, but no later than thirty (30) calendar days after such a change takes effect.

4.8 CONFIDENTIAL INFORMATION PROTECTION

- 4.8.1 The Grantee acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of Confidential Information. The Grantee agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Agreement, to release it only to authorized employees or Subgrantees or Subgrantees requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without WASPC's express written consent or as provided by law. The Grantee agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 4.8.2 The Grantee agrees to comply with all confidentiality requirements of 42 USC section 37899 and 20 CFR § 22 that are applicable to collection, use and revelation of data or information. The Grantee further agrees, as a condition of grant approval, to submit a Privacy Certificate that is in accord with the requirements of 28 CFR § 22 and, in particular, section 22.23.
- 4.8.3 WASPC reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Grantee through this Agreement. Violation of this section by the Grantee or its Subgrantees or Subgrantees may result in termination of this Agreement and demand for return of all Confidential Information, monetary damages, or penalties.
- 4.8.4 The obligations set forth in this section will survive completion, cancellation, expiration, suspension, or termination of this Agreement.

4.9 GRANTEE'S PROPRIETARY INFORMATION

Grantee acknowledges that WASPC complies with chapter 42.56 RCW, the Public Records Act relating to public projects, and that this Agreement may be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Grantee to be Proprietary Information must be clearly identified as such by Grantee. To the extent consistent with chapter 42.56 RCW, WASPC will maintain the confidentiality of the Grantee's information in its possession that is marked Proprietary. If a public disclosure request is made to view the Grantee's Proprietary Information, WASPC will notify the Grantee of the request and of the date that such records will be released to the requester unless the Grantee obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the Grantee fails to obtain the court order enjoining disclosure, WASPC will release the requested information on the date specified.

4.10 CONFORMANCE WITH 2 CFR § 200 AND RELEVANT STATE AND LOCAL LAWS

- 4.10.1 Grantee is required to maintain compliance with 2 CFR § 200, its appendices, subparts, and state and local law.
- 4.10.2 Grantee is required to maintain compliance with 45 CFR § 96.135—Restrictions on

GRANT AWARD AJA-23-007

Page 14 of 45

expenditures of grant.

4.11 COVENANT AGAINST CONTINGENT FEES

The Grantee warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Grantee for the purpose of securing business. WASPC will have the right, in the event of breach of this clause by the Grantee, to annul this Agreement without liability or, in its discretion, to deduct from the price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

4.12 DEBARMENT

By signing this Agreement, the Grantee certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). The Grantee agrees to include the above requirement in any and all subgrants and subcontracts into which it enters, and also agrees that it will not employ debarred individuals. The Grantee must immediately notify WASPC if, during the term of this Agreement, The Grantee becomes debarred. WASPC may immediately terminate this Agreement by providing the Grantee written notice, if the Grantee becomes debarred during the term hereof.

4.13 DISPUTES

The parties will use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Agreement. Both parties will continue without delay to carry out their respective responsibilities under this Agreement while attempting to resolve any dispute. When a genuine dispute arises between WASPC and the Grantee regarding the terms of this Agreement or the responsibilities imposed herein and it cannot be resolved between the parties' Grant Managers, either party may initiate the following dispute resolution process.

4.13.1 The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) business days(email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the WASPC Director review the dispute. Any such request from the initiating party must be submitted in writing to the WASPC Director within five (5) business days after receiving the response of the responding party. The WASPC Director will have sole discretion in determining the procedural manner in which he or she will review the dispute. The WASPC Director will inform the parties in writing within five (5) business days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

4.13.2 A party's request for a dispute resolution must:

- Be in writing.
- Include a written description of the dispute.
- State the relative positions of the parties and the remedy sought.

GRANT AWARD AJA-23-007

Page 15 of 45

- State the Agreement number and the names and contact information for the parties.
- This dispute resolution process constitutes the sole administrative remedy available under this Agreement. The parties agree that this resolution process will precede any action in a judicial or quasi-judicial tribunal.

4.14 ENTIRE AGREEMENT

WASPC and the Grantee agree that this Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Agreement, except as provided in the section titled “*Warranties*”.

4.15 FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT (FFATA)

- 4.15.1 This grant is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.
- 4.15.2 To comply with the act and be eligible to enter into this Agreement, the Grantee must have a Unique Entity Identification Number (UEID). A UEID provides a method to verify data about your organization. If the Grantee does not already have one, a UEID is available free of charge by registering with www.sam.gov.
- 4.15.3 Information about the Grantee and this Grant will be made available on www.uscontractorregistration.com by WASPC as required by P.L. 109-282. WASPC’s Attachment 3: Federal Funding Accountability and Transparency Act Data Collection Form, is considered part of this Agreement and must be completed and returned along with the Agreement.

4.16 FORCE MAJEURE

A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

4.17 FUNDING WITHDRAWN, REDUCED OR LIMITED

If WASPC determines in its sole discretion that the funds it relied upon to establish this Agreement have been withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding after the effective date of this Agreement but prior to the normal completion of this Agreement, then WASPC, at its sole discretion, may:

- 4.17.1 Terminate this Agreement pursuant to the section titled: Termination for Non-Allocation of Funds;
- 4.17.2 Renegotiate the Agreement under the revised funding conditions; or

GRANT AWARD AJA-23-007

Page 16 of 45

- 4.17.3 Suspend Grantee's performance under the Agreement upon five (5) Business Days' advance written notice to the Grantee. WASPC will use this option only when WASPC determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Grantee's performance to be resumed prior to the normal completion date of this Agreement.
- 4.17.4 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
- 4.17.5 When WASPC determines in its sole discretion that the funding insufficiency is resolved, it will give the Grantee written notice to resume performance. Upon the receipt of this notice, the Grantee will provide written notice to WASPC informing WASPC whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
- 4.17.6 If the Grantee's proposed resumption date is not acceptable to WASPC and an acceptable date cannot be negotiated, WASPC may terminate this Agreement by giving written notice to the Grantee. The parties agree that the Agreement will be terminated retroactive to the date of the notice of suspension. WASPC will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the retroactive date of termination.

4.18 GOVERNING LAW

This Agreement is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Pierce County, Washington.

4.19 HUMAN SUBJECTS PROTECTION

The Grantee agrees to comply with the requirements of 28 CFR § 46 and all Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, and subject informed consent.

4.20 WASPC NETWORK SECURITY

The Grantee agrees not to attach any Grantee-supplied computers, peripherals or software to the WASPC Network without prior written authorization from WASPC's Chief Information Officer.

Unauthorized access to WASPC networks and systems is a violation of WASPC Policy and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the Agreement and other penalties.

The Grantee will have access to the WASPC visitor Wi-Fi Internet connection while on site.

4.21 INDEMNIFICATION

The Grantee shall defend, indemnify, and save WASPC harmless from and against all claims, including

GRANT AWARD AJA-23-007

Page 17 of 45

reasonable attorneys' fees resulting from such claims arising from intentional or negligent acts or omissions of the Grantee, its officers, employees, or agents, subgrantees, or Subgrantees, their officers, employees, or agents, in the performance of this Agreement. This indemnification shall include, but not be limited to, any or all injuries to persons or damage to property, or breach of confidentiality and notification obligations under the section titled "Confidential Information Protection" and the section titled "Confidentiality Breach-Required Notification."

For purposes of the indemnification provisions above, and limited to this section only, the Grantee waives its protections under RCW Title 51 for employee claims. This limited waiver was specifically negotiated and bargained for.

4.22 INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that a Grantor to Grantee relationship will be created by this Agreement with WASPC being the Grantor. The Grantee and its employees or agents performing under this Agreement are not employees, officers, or agents of WASPC. The Grantee will not hold itself out as or claim to be an officer or employee of WASPC by reason hereof, nor will Grantee make any claim of right, privilege or benefit that would accrue to such employee, officer, or agent under law. Conduct and control of the work will be solely with Grantee.

4.23 INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Agreement, the Grantee must provide or purchase industrial insurance coverage for the Grantee's employees, as may be required of an "employer" as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this Agreement.

4.24 LEGAL AND REGULATORY COMPLIANCE

- 4.24.1 During the term of this Agreement, the Grantee must comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Agreement and all other applicable federal, state and local laws, rules, and regulations.
- 4.24.2 While on WASPC's premises, the Grantee must comply with WASPC operations and process standards and policies (e.g., ethics, Internet/email usage, data, network and building security, harassment, as applicable).
- 4.24.3 Failure to comply with any provisions of this section may result in the termination of this Agreement.

4.25 LIMITATION OF AUTHORITY

Only the WASPC Authorized Representative has the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the WASPC Authorized Representative.

4.26 NO THIRD-PARTY BENEFICIARIES

GRANT AWARD AJA-23-007

Page 18 of 45

WASPC and the Grantee are the only parties to this Agreement. Nothing in this Agreement gives or is intended to give any benefit of this Agreement to any third parties.

4.27 NONDISCRIMINATION

During the performance of this Agreement, the Grantee must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Grantee's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Grantee may be declared ineligible for further contracts with WASPC.

4.28 NON-SUPPLANTING CERTIFICATION

No Grant funds will be used to supplant existing state, local, or other non-federal funding already in place to support current services. Violation of the non-supplanting requirement can result in a range of penalties, including suspension of future funds under this grant, recoupment of monies provided under this grant, and civil and/or criminal penalties.

4.29 OVERPAYMENTS TO GRANTEE

In the event that overpayments or erroneous payments have been made to the Grantee under this Agreement, WASPC will provide written notice to the Grantee and the Grantee will refund the full amount to WASPC within thirty (30) calendar days of the notice. If Grantee fails to make timely refund, WASPC may charge Grantee one percent (1%) per month on the amount due, until paid in full. If the Grantee disagrees with WASPC's actions under this section, then it may invoke the dispute resolution provisions of Section 4.13 Disputes.

4.30 PAY EQUITY

- 4.30.1 Grantee represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this agreement, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Grantee, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.
- 4.30.2 Grantee may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.
- 4.30.3 Bona fide job-related factor(s)" may include, but not be limited to, education, training, or experience, which is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.
- 4.30.4 A "bona fide regional difference in compensation level" must be (i) consistent with

GRANT AWARD AJA-23-007

Page 19 of 45

business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.

- 4.30.5 Notwithstanding any provision to the contrary, upon breach of warranty and Grantee's failure to provide satisfactory evidence of compliance within thirty (30) Days of WASPC's request for such evidence, WASPC may suspend or terminate this Agreement.

4.31 PUBLICITY

- 4.31.1 The award of this Grant to Grantee is not in any way an endorsement of Grantee or Grantee's Services by WASPC and must not be so construed by Grantee in any advertising or other publicity materials.
- 4.31.2 Grantee agrees to submit to WASPC, all advertising, sales promotion, and other publicity materials relating to this Agreement or any Service furnished by Grantee in which WASPC's name is mentioned, language is used, or Internet links are provided from which the connection of WASPC's name with Grantee's Services may, in WASPC's judgment, be inferred or implied. Grantee further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of WASPC prior to such use.

4.32 RECORDS AND DOCUMENTS REVIEW

- 4.32.1 The Grantee must maintain books, records, documents, magnetic media, receipts, invoices or other evidence relating to this Agreement and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. At no additional cost, these records, including materials generated under this Agreement, are subject at all reasonable times to inspection, review, or audit by WASPC, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement [See 42 USC 1396a(a)(27)(B); 42 USC 1396a(a)(37)(B); 42 USC 1396a(a)(42)(A); 42 CFR 431, Subpart Q; and 42 CFR § 447.202].
- 4.32.2 The Grantee must retain such records for a period of six (6) years after the date of final payment under this Agreement.
- 4.32.3 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

4.33 REMEDIES NON-EXCLUSIVE

The remedies provided in this Agreement are not exclusive, but are in addition to all other remedies available under law.

4.34 RIGHT OF INSPECTION

The Grantee must provide right of access to its facilities to WASPC, or any of its officers, or to any other

GRANT AWARD AJA-23-007

Page 20 of 45

authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

4.35 RIGHTS IN DATA/OWNERSHIP

- 4.35.1 WASPC and Grantee agree that all data and work products (collectively "Work Product") produced pursuant to this Agreement and received by WASPC will be considered a work for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and will be owned by WASPC. Grantee is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 4.35.2 If for any reason the Work Product would not be considered a work for hire under applicable law, Grantee assigns and transfers to WASPC, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 4.35.3 Grantee will execute all documents and perform such other proper acts as WASPC may deem necessary to secure for WASPC the rights pursuant to this section.
- 4.35.4 Grantee will not use or in any manner disseminate any Work Product to any third party, or represent in any way Grantee ownership of any Work Product, without the prior written permission of WASPC. Grantee will take all reasonable steps necessary to ensure that its agents, employees, or Subgrantees will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 4.35.5 Material that is delivered under this Agreement, but that does not originate therefrom ("Preexisting Material"), must be transferred to WASPC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Grantee agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. WASPC will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Grantee.
- 4.35.6 Grantee must identify all Preexisting Material when it is delivered under this Agreement and must advise WASPC of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Grantee must provide WASPC with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Grantee with respect to any Preexisting Material delivered under this Agreement.

4.36 RIGHTS OF STATE AND FEDERAL GOVERNMENTS

In accordance with 45 C.F.R. 95.617, all appropriate state and federal agencies, including but not limited to the Centers for Medicare and Medicaid Services (CMS), will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use, and to authorize others to use for Federal Government purposes: (i) software, modifications, and documentation designed, developed or installed with Federal Financial Participation (FFP) under 45 CFR Part 95, subpart F; (ii) the Custom Software and modifications of the Custom Software, and associated Documentation designed, developed, or installed with FFP under this Agreement; (iii) the copyright in any work developed under this Agreement; and (iv) any rights of copyright to which Grantee purchases ownership under this Agreement.

4.37 SERVICES TO PERSONS WITH LIMITED ENGLISH PROFICIENCY

The Grantee must certify that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI of the Safe Streets Act, the Grantee is required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The US Department of Justice has issued guidance for grantees to help them comply with Title VI requirements. The guidance document can be accessed on the internet at www.lep.gov.

4.38 SEVERABILITY

If any provision of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity will not affect the other provisions or applications of this Agreement that can be given effect without the invalid provision, and to this end the provisions or application of this Agreement are declared severable.

4.39 SITE SECURITY

While on WASPC premises, Grantee, its agents, employees, or Subgrantees must conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. WASPC reserves the right and authority to immediately revoke security access to Grantee staff for any real or threatened breach of this provision. Upon reassignment or termination of any Grantee staff, Grantee agrees to promptly notify WASPC.

4.40 SUBGRANTING

- 4.40.1 Neither Grantee, nor any Subgrantees, may enter into subcontracts for any of the work contemplated under this Agreement without prior written approval of WASPC. WASPC has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Grantee to WASPC for any breach in the performance of Grantee's duties.
- 4.40.2 Grantee agrees that any proposed subcontracts must be provided to WASPC for review no later than 10 (ten) business days before such a subcontract's effective date.
- 4.40.3 Grantee is responsible for ensuring that all terms, conditions, assurances and

GRANT AWARD AJA-23-007

Page 22 of 45

certifications set forth in this Agreement are included in any subcontracts.

- 4.40.4 If at any time during the progress of the work WASPC determines in its sole judgment that any Subgrantee is incompetent or undesirable, WASPC will notify Grantee, and Grantee must take immediate steps to terminate the Subgrantee's involvement in the work.
- 4.40.5 The rejection or approval by WASPC of any Subgrantee or the termination of a Subgrantee will not relieve Grantee of any of its responsibilities under the Agreement, nor be the basis for additional charges to WASPC.
- 4.40.6 WASPC has no contractual obligations to any Subgrantee or vendor under Agreement to the Grantee. The Grantee is fully responsible for all obligations, financial or otherwise, to its Subgrantees.

4.41 SURVIVAL

The terms and conditions contained in this Agreement that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Agreement will survive. The right of WASPC to recover any Overpayments will also survive the termination of this Agreement.

4.42 CORRECTIVE ACTION PLAN/SUSPENSION/TERMINATION

- 4.42.1 **CORRECTIVE ACTION PLAN**—In the event that WASPC determines that the Grantee has failed or is reasonably likely to fail to comply with any term(s) or condition(s) of this Agreement (to include any and all attachments, references, appendices, or other documents included or referenced herein), then WASPC will immediately take steps to mitigate any harmful effects of such failure(s), and promptly prepare a Corrective Action Plan (CAP) with respect to such failure(s) and outline the steps WASPC believes to be necessary to remedy such failure(s). In the event that the Grantee is unable to complete the CAP, WASPC reserves it's right to proceed with Termination or Suspension as outlined in the General Terms of this Agreement.

SUSPENSION—If WASPC reasonably determines that the Grantee has failed or is reasonably likely to fail to comply with any term(s) or condition(s) of this Agreement (to include any and all attachments, references, appendices, or other documents included or referenced herein), WASPC reserves the right to issue a Notice of Suspension to the Grantee. A Notice of Suspension acts to suspend this Agreement in its entirety, including suspending payment for future services provided by Grantee.

In the event a notice of suspension is issued, WASPC agrees to pay Grantee for all services provided under this Agreement prior to the issuance of the Notice of Suspension.

WASPC reserves the right to reinstate an Agreement at its discretion by issuing a Notice of Reinstatement, or to move forward with Termination as outlined in Section 4.40 of the General Terms of this agreement.

TERMINATION FOR DEFAULT—In the event WASPC determines that Grantee has failed to comply with the terms and conditions of a corrective action plan or the terms of this

Agreement, WASPC has the right to suspend or terminate this Agreement. WASPC will notify Grantee in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties, the Agreement may be terminated. WASPC reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Grantee or a decision by WASPC to terminate the Agreement.

In the event of termination for default, Grantee will be liable for damages as authorized by law including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of the competitive bidding, mailing, advertising, and staff time.

If it is determined that Grantee: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a "Termination for Convenience."

TERMINATION FOR CONVENIENCE—When, at the reasonable discretion of either WASPC or Grantee, it is in either party's best interest, both WASPC and Grantee may terminate this Agreement in whole or in part by providing ten (10) calendar days' written notice to the other party. If this Agreement is so terminated, each party will be liable only for payment in accordance with the terms of this Agreement for service rendered prior to the effective date of termination. No penalty shall accrue to either WASPC or Grantee in the event the termination option in this section is exercised.

TERMINATION FOR NONALLOCATION OF FUNDS—If funds are not allocated to continue this Agreement in any future period, WASPC may immediately terminate this Agreement by providing written notice to the Grantee. The termination will be effective on the date specified in the termination notice. WASPC will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination. WASPC agrees to notify Grantee of such nonallocation at the earliest possible time. No penalty will accrue to WASPC in the event the termination option in this section is exercised.

TERMINATION FOR WITHDRAWAL OF AUTHORITY—In the event that the authority of WASPC to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, WASPC may immediately terminate this Agreement by providing written notice to the Grantee. The termination will be effective on the date specified in the termination notice. WASPC will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination. WASPC agrees to notify Grantee of such withdrawal of authority at the earliest possible time. No penalty will accrue to WASPC in the event the termination option in this section is exercised.

TERMINATION FOR CONFLICT OF INTEREST—Both WASPC and Grantee may terminate this Agreement by written notice to the other party if either WASPC or Grantee determines, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public

GRANT AWARD AJA-23-007

Page 24 of 45

acquisitions and procurement and performance of contracts, or Grantee's internal policy. In the event this Agreement is so terminated, WASPC will be entitled to pursue the same remedies against the Grantee as it could pursue in the event Grantee breaches the Agreement.

4.43 TERMINATION PROCEDURES

- 4.43.1 Upon termination of this Agreement, WASPC, in addition to any other rights provided in this Agreement, may require Grantee to deliver to WASPC any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.
- 4.43.2 WASPC will pay Grantee the agreed-upon price, if separately stated, for completed work and services accepted by WASPC and the amount agreed upon by the Grantee and WASPC for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services that are accepted by WASPC; and (iv) the protection and preservation of property, unless the termination is for default, in which case WASPC will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 4.13 Disputes. WASPC may withhold from any amounts due the Grantee such sum as WASPC determines to be necessary to protect WASPC against potential loss or liability.
- 4.43.3 After receipt of notice of termination, and except as otherwise directed by WASPC, Grantee must:
 - Stop work under the Agreement on the date of, and to the extent specified in, the notice;
 - Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
 - Assign to WASPC, in the manner, at the times, and to the extent directed by WASPC, all the rights, title, and interest of the Grantee under the orders and subcontracts so terminated; in which case WASPC has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of WASPC to the extent WASPC may require, which approval or ratification will be final for all the purposes of this clause;
 - Transfer title to and deliver as directed by WASPC any property required to be furnished to WASPC;
 - Complete performance of any part of the work that was not terminated by WASPC; and
 - Take such action as may be necessary, or as WASPC may direct, for the protection and preservation of the records related to this Agreement that are in the possession of the Grantee and in which WASPC has or may acquire an interest.

4.44 WAIVER

GRANT AWARD AJA-23-007

Page 25 of 45

Waiver of any breach of any term or condition of this Agreement will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Agreement will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the WASPC Authorized Representative has the authority to waive any term or condition of this Agreement on behalf of WASPC.

4.45 WARRANTIES

- 4.45.1 Grantee represents and warrants that it will perform all services pursuant to this Agreement in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to WASPC.
- 4.45.2 Grantee represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.
- 4.45.3 Any written commitment by Grantee within the scope of this Agreement will be binding upon Grantee. Failure of Grantee to fulfill such a commitment may constitute breach and will render Grantee liable for damages under the terms of this Agreement. For purposes of this section, a commitment by Grantee includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Grantee to WASPC or contained in any Grantee publications, or descriptions of services in written or other communication medium, used to influence WASPC to enter into this Agreement.

GRANT AWARD AJA-23-007

Page 26 of 45

ATTACHMENT 1: FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES

In the event federal funds are included in this agreement, the following sections apply: I. Federal Compliance and II. Standard Federal Assurances and Certifications. In the instance of inclusion of federal funds, the Grantee may be designated as a sub-recipient and the effective date of the amendment shall also be the date at which these requirements go into effect.

- I. FEDERAL COMPLIANCE** - The use of federal funds requires additional compliance and control mechanisms to be in place. The following represents the majority of compliance elements that may apply to any federal funds provided under this Agreement. For clarification regarding any of these elements or details specific to the federal funds in this Agreement, contact: Jamie Weimer, Projects and Programs Manager.
- a. *Source of Funds:* Federal funds to support this agreement are identified by the Catalog of Federal Domestic Assistance (CFDA) number 93.959 and amount to Des Moines Police Department. The sub-awardee is responsible for tracking and reporting the cumulative amount expended under WASPC Grant No. **AJA-23-007**.
 - b. *Single Audit Act:* A sub-awardee (including private, for-profit hospitals and non-profit institutions) shall adhere to the federal Office of Management and Budget (OMB) Super Circular 2 CFR 200.501 and 45 CFR 75.501. A sub-awardee who expends \$1,000,000 or more in federal awards during a given fiscal year shall have a single or program-specific audit for that year in accordance with the provisions of OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501.
 - c. *Modifications:* This agreement may not be modified or amended, nor may any term or provision be waived or discharged, including this particular Paragraph, except in writing, signed upon by both parties.
 - 1. Examples of items requiring WASPC prior written approval include, but are not limited to, the following:
 - i. Deviations from the budget and Project plan.
 - ii. Change in scope or objective of the agreement.
 - iii. The absence for more than three months or a 25% reduction in time by the Project Manager/Director.
 - iv. Need for additional funding.
 - v. Inclusion of costs that require prior approvals as outlined in the appropriate cost principles.
 - vi. Any changes in budget line item(s) of greater than ten percent (10%) of the total budget in this agreement.
 - 2. No changes are to be implemented by the Sub-awardee until a written notice of approval is received from WASPC.
 - d. *Sub-Contracting:* The sub-awardee shall not enter into a sub-contract for any of the work performed under this agreement without obtaining the prior written approval of WASPC. If sub-contractors are approved by WASPC, the subcontract, shall contain, at a minimum, sections of the agreement pertaining to Debarred and Suspended Vendors, Lobbying certification, Audit requirements, and/or any other project Federal, state, and local requirements.

GRANT AWARD AJA-23-007

Page 27 of 45

- e. *Condition for Receipt of WASPC Funds:* Funds provided by WASPC to the sub-awardee under this agreement may not be used by the sub-awardee as a match or cost-sharing provision to secure other federal monies without prior written approval by WASPC.
- f. *Unallowable Payments:* Payments to the sub-awardees' shall be subject to reduction for amounts included in any prior invoice or payment therefor as determined by WASPC on the basis of audits, reviews, or monitoring of this agreement.
- g. *Federal Compliance:* The sub-awardee shall comply with all applicable State and Federal statutes, laws, rules, and regulations in the performance of this agreement, whether included specifically in this agreement or not.
- h. *Civil Rights and Non-Discrimination Obligations* During the performance of this agreement, the Grantee shall comply with all current and future federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (PL 88-352), Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683 and 1685-1686), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107), the Drug Abuse Office and Treatment Act of 1972 (PL 92-255), the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290dd-3 and 290ee-3), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), and the Americans with Disability Act (42 U.S.C., Section 12101 et seq.) <http://www.hhs.gov/ocr/civilrights>

WASPC Federal Compliance Contact Information

Chief of Staff

WA Assn of Sheriffs and Police Chiefs

3060 Willamette Dr NE, STE 200

Lacey, WA 98516

- II. **CIRCULARS 'COMPLIANCE MATRIX'** - The following compliance matrix identifies the OMB Circulars that contain the requirements which govern expenditure of federal funds. These requirements apply to WASPC, the primary recipient of federal funds and then follow the funds to the sub-awardee, **Des Moines Police Department**. The federal Circulars which provide the applicable administrative requirements, cost principles and audit requirements are identified by sub-awardee organization type.

III.

OMB CIRCULAR			
ENTITY TYPE	ADMINISTRATIVE REQUIREMENTS	COST PRINCIPLES	AUDIT REQUIREMENTS
State, Local and Indian Tribal Governments and Governmental Hospitals	OMB Super Circular 2 CFR 200.501 and 45 CFR 75.501		
Non-Profit Organizations and Non-Profit Hospitals			
Colleges or Universities and Affiliated Hospitals			
For-Profit Organizations			

GRANT AWARD AJA-23-007

Page 28 of 45

Definitions:

"Sub-recipient"; means the legal entity to which a sub-award is made and which is accountable to the State for the use of the funds provided in carrying out a portion of the State's programmatic effort under a sponsored project. The term may include institutions of higher education, for-profit corporations or non-U.S. Based entities.

"Sub-award and Sub-grant" are used interchangeably and mean a lower tier award of financial support from a prime awardee (e.g., WASPC) to a Sub-recipient for the performance of a substantive portion of the program. These requirements do not apply to the procurement of goods and services for the benefit of WASPC.

IV. STANDARD FEDERAL CERTIFICATIONS AND ASSURANCES - Following are the Assurances, Certifications, and Special Conditions that apply to all federally funded (in whole or in part) agreements administered by WASPC.

CERTIFICATIONS**1. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

The undersigned (authorized official signing for the contracting organization) certifies to the best of his or her knowledge and belief, that the Grantee, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
- b) have not within a 3-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or Agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d) have not within a 3-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

Should the Grantee not be able to provide this certification, an explanation as to why should be placed after the assurances page in the Agreement.

The Grantee agrees by signing this Agreement that it will include, without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-- Lower Tier Covered Transactions" in all lower tier covered transactions (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 45 CFR Part 76.

2. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The undersigned (authorized official signing for the contracting organization) certifies that the Grantee will, or will continue to, provide a drug-free workplace in accordance with 45 CFR Part 76 by:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b) Establishing an ongoing drug-free awareness program to inform employees about
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

GRANT AWARD AJA-23-007

Page 29 of 45

- c) Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy of the statement required by paragraph (a) above;
- d) Notifying the employee in the statement required by paragraph (a), above, that, as a condition of employment under the Agreement, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- e) Notifying the agency in writing within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every Agreement officer or other designee on whose Agreement activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d) (2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

For purposes of paragraph (e) regarding agency notification of criminal drug convictions, Authority has designated the following central point for receipt of such notices:

Chief of Staff

WASPC
3060 Willamette Dr NE
Lacey, WA 98516

3. CERTIFICATION REGARDING LOBBYING

Title 31, United States Code, Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," generally prohibits recipients of Federal grants and cooperative agreements from using Federal (appropriated) funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a SPECIFIC grant or cooperative agreement. Section 1352 also requires that each person who requests or receives a Federal grant or cooperative agreement must disclose lobbying undertaken with non-Federal (nonappropriated) funds. These requirements apply to grants and cooperative agreements EXCEEDING \$100,000 in total costs (45 CFR Part 93).

The undersigned (authorized official signing for the contracting organization) certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, or cooperative agreement.
- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. (If needed, Standard Form-LLL, "Disclosure of Lobbying Activities," its

GRANT AWARD AJA-23-007

Page 30 of 45

instructions, and continuation sheet are included at the end of this application form.)

- (3) The undersigned shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subcontracts, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4. CERTIFICATION REGARDING PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)

The undersigned (authorized official signing for the contracting organization) certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees that the contracting organization will comply with the Public Health Service terms and conditions of award if a Grant is awarded.

5. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds. The law does not apply to children's services provided in private residence, portions of

facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing the certification, the undersigned certifies that the contracting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The contracting organization agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all sub-recipients shall certify accordingly.

The Public Health Services strongly encourages all recipients to provide a smoke-free workplace and promote the non-use of tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS INSTRUCTIONS FOR CERTIFICATION

- 1) By signing and submitting this proposal, the prospective Grantee is providing the certification set out below.
- 2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective Grantee shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective Grantee to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is

GRANT AWARD AJA-23-007

Page 31 of 45

later determined that the prospective Grantee knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

- 4) The prospective Grantee shall provide immediate written notice to the department or agency to whom this Agreement is submitted if at any time the prospective Grantee learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to whom this Agreement is submitted for assistance in obtaining a copy of those regulations.
- 6) The prospective Grantee agrees by submitting this Agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Authority.
- 7) The prospective Grantee further agrees by submitting this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by HHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not

required to, check the Non-procurement List (of excluded parties).

- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, Authority may terminate this transaction for cause or default.

7. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

- 1) The prospective Grantee certifies to the best of its knowledge and belief, that it and its principals:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses

GRANT AWARD AJA-23-007

Page 32 of 45

enumerated in paragraph (1)(b) of this certification; and

- d) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective Grantee is unable to certify to any of the statements in this certification, such prospective Grantee shall attach an explanation to this proposal.

GRANT AWARD AJA-23-007

Page 33 of 45

FEDERAL COMPLIANCE, CERTIFICATIONS, AND ASSURANCES
Grantee SIGNATURE REQUIRED

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL Signed by:  4DD4FDCF8200445...	TITLE Detective Sergeant
TYPE OR PRINT NAME: Scott Oak	
ORGANIZATION NAME: (if applicable) Des Moines Police Department	DATE 12/24/2024

GRANT AWARD AJA-23-007

Page 34 of 45

ATTACHMENT 2: FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) DATA COLLECTION FORM

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

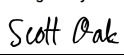
To comply with the act and be eligible to enter into this Agreement, Grantee must have a Unique Entity Identification Number (UEID). A UEID provides a method to verify data about your organization. If Grantee does not already have one, a UEID is available free of charge by registering with SAM.gov.

Grantee must complete this form and return it to WASPC.

Grantee

1. Legal Name Des Moines Police Department	2. UEID Number 91-6016496												
3. Principle Place of Performance 21900 11th AVE S													
3a. City Des Moines	3b. State Washington												
3c. Zip+4 98198	3d. Country King												
4. Are you registered in CCR (https://www.uscontractorregistration.com/)? ☐ YES (skip to page 2. Sign, date and return) ☐ NO													
5. In the preceding fiscal year did your organization: a. Receive 80% or more of annual gross revenue from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; and b. \$25,000,000 or more in annual gross revenues from federal contracts, subcontracts, grants, loans, subgrants, and/or cooperative agreements; and c. The public does not have access to information about the compensation of the executives through periodic reports filed with the IRS or the Security and Exchange Commission per 2 CFR Part 170.330 ☐ NO (skip the remainder of this section - Sign, date and return) ☐ YES (You must report the names and total compensation of the top 5 highly compensated officials of your organization). <table border="1"> <thead> <tr> <th>Name Of Official</th> <th>Total Compensation</th> </tr> </thead> <tbody> <tr><td>1.</td><td></td></tr> <tr><td>2.</td><td></td></tr> <tr><td>3.</td><td></td></tr> <tr><td>4.</td><td></td></tr> <tr><td>5.</td><td></td></tr> </tbody> </table> Note: "Total compensation" means the cash and noncash dollar value earned by the executive during the sub-recipient's past fiscal year of the following (for more information see 17 CFR 229.402 (c)(2)).		Name Of Official	Total Compensation	1.		2.		3.		4.		5.	
Name Of Official	Total Compensation												
1.													
2.													
3.													
4.													
5.													

By signing this document, the Grantee Authorized Representative attests to the information.

Signature of Grantee Authorized Representative Signed by: 	Date 12/24/2024
---	--------------------

WASPC will not endorse the Grantee's subaward until this form is completed and returned.

GRANT AWARD AJA-23-007

Page 35 of 45

FOR WASPC USE ONLY

WASPC Grant Number: **AJA-22-001**

Sub-award Project Description (see instructions and examples below)

Arrest and Jail Alternatives. Funds made available through this subaward to Des Moines Police Department will be used to carry out the purposes set forth in RCW 36.28A.450: "...support local initiatives to properly identify criminal justice system-involved persons with substance use disorders and other behavioral health needs and engage those persons with therapeutic interventions and other services..."

Instructions for Sub-award Project Description:

In the first line of the description provide a title for the sub-award that captures the main purpose of the subrecipients work. Then, indicate the name of the subrecipient and provide a brief description that captures the overall purpose of the sub-award, how the funds will be used, and what will be accomplished.

Example of a Sub-award Project Description:

Increase Healthy Behaviors: Educational Services District XYZ will provide training and technical assistance to chemical dependency centers to assist the centers to integrate tobacco use into their existing addiction treatment programs. Funds will also be used to assist centers in creating tobacco-free treatment environments.

GRANT AWARD AJA-23-007

Page 36 of 45

ATTACHMENT 3: FEDERAL AWARD IDENTIFICATION
(reference 2 CFR 200.331)

Substance Abuse Block Grant

Initial


(i) Subrecipient name (which must match the name associated with its unique entity identifier);	Washington Association of Sheriffs & Police Chiefs (WASPC)
(ii) Subrecipient's unique entity identifier; (UEID)	X624NETQGAN8
(iii) Federal Award Identification Number (FAIN);	B08TI085843
(iv) Federal Award Date (see §200.39 Federal award date);	July 1, 2023-June 30, 2025
(v) Subaward Period of Performance Start and End Date;	July 1, 2023 – June 30, 2025
(vi) Amount of Federal Funds Obligated by this action;	\$1,000,000.00
(vii) Total Amount of Federal Funds Obligated to the subrecipient;	\$1,000,000.00
(viii) Total Amount of the Federal Award;	\$30,586,435
(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Substance Abuse & Treatment Block Grant
(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,	Department of Health and Human Services Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment WA State Health Care Authority Keri Waterland, Assistant Director DBHR 626 8th Ave SE; Olympia, WA 98504-5330 Keri.waterland@hca.wa.gov
(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	93.959 Substance Abuse Prevention & Treatment Block Grant
(xii) Identification of whether the award is R&D; and	☐ Yes ☒ No
(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).	de minimis (15%)

GRANT AWARD AJA-23-007

Page 37 of 45

ATTACHMENT 4: 45 CFR § 96.135 - Restrictions on expenditure of grant.

Initial
S

The following are the federal funding guidelines for the funds from the Substance Abuse Block Grant (SABG).

§ 96.135 Restrictions on expenditure of grant.

(a) The State shall not expend the Block Grant on the following activities:

- (1) To provide inpatient hospital services, except as provided in [paragraph \(c\)](#) of this section;
- (2) To make cash payments to intended recipients of health services;
- (3) To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;
- (4) To satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;
- (5) To provide financial assistance to any entity other than a public or nonprofit private entity; or
- (6) To provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for AIDS.

(b) The State shall limit expenditures on the following:

- (1) The State involved will not expend more than 5 percent of the grant to pay the costs of administering the grant; and
- (2) The State will not, in expending the grant for the purpose of providing treatment services in penal or correctional institutions of the State, expend more than an amount prescribed by section 1931(a)(3) of the PHS Act.

(c) Exception regarding inpatient hospital services.

(1) With respect to compliance with the agreement made under [paragraph \(a\)](#) of this section, a State (acting through the Director of the principal agency) may expend a grant for inpatient hospital-based substance abuse programs subject to the limitations of [paragraph \(c\)\(2\)](#) of this section only when it has been determined by a physician that:

- (i) The primary diagnosis of the individual is substance abuse, and the physician certifies this fact;
- (ii) The individual cannot be safely treated in a community-based, nonhospital, residential treatment program;
- (iii) The Service can reasonably be expected to improve an individual's condition or level of functioning;
- (iv) The hospital-based substance abuse program follows national standards of substance abuse professional practice; and

(2) In the case of an individual for whom a grant is expended to provide inpatient hospital services described above, the allowable expenditure shall conform to the following:

- (i) The daily rate of payment provided to the hospital for providing the services to the individual will not exceed the comparable daily rate provided for community-based, nonhospital, residential programs of treatment for substance abuse; and

GRANT AWARD AJA-23-007

Page 38 of 45

Initial
SO

(ii) The grant may be expended for such services only to the extent that it is medically necessary, i.e., only for those days that the patient cannot be safely treated in a residential, community-based program.

(d) The Secretary may approve a waiver for construction under [paragraph \(a\)\(3\)](#) of this section within 120 days after the date of a request only if:

(1) The State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available;

(2) The State has carefully designed a plan that minimizes the costs of renovation or construction;

(3) The State agrees, with respect to the costs to be incurred by the State in carrying out the purpose of the waiver, to make available non-Federal contributions in cash toward such costs in an amount equal to not less than \$1 for each \$1 of Federal funds provided under the Block Grant; and

(4) The State submits the following to support paragraphs (b)(1), (2) and (3), of this section:

(i) Documentation to support [paragraph \(d\)\(1\)](#) of this section, such as local needs assessments, waiting lists, survey data and other related information;

(ii) A brief description of the project to be funded, including the type(s) of services to be provided and the projected number of residential and/or outpatient clients to be served;

(iii) The specific amount of Block Grant funds to be used for this project;

(iv) The number of outpatient treatment slots planned or the number of residential beds planned, if applicable;

(v) The estimate of the total cost of the construction or rehabilitation (and a description of how these estimates were determined), based on an independent estimate of said cost, using standardized measures as determined by an appropriate State construction certifying authority;

(vi) An assurance by the State that all applicable National (e.g., National Fire Protection Association, Building Officials and Codes Administrators International), Federal (National Environmental Policy Act), State, and local standards for construction or rehabilitation of health care facilities will be complied with;

(vii) Documentation of the State's commitment to obligate these funds by the end of the first year in which the funds are available, and that such funds must be expended by the end of the second year (section 1914(a)(2) of the PHS Act);

(viii) A certification that there is public support for a waiver, as well as a description of the procedure used (and the results therein) to ensure adequate comment from the general public and the appropriate State and local health planning organizations, local governmental entities and public and private-sector service providers that may be impacted by the waiver request;

(ix) Evidence that a State is committed to using the proposed new or rehabilitated substance abuse facility for the purposes stated in the request for at least 20 years for new construction and at least 10 years for rehabilitated facilities;

(x) An assurance that, if the facility ceases to be used for such services, or if the facility is sold or transferred for a purpose inconsistent with the State's waiver request, monies will be returned to the Federal Government in an amount proportionate to the Federal assistance provided, as it relates to the value of the facility at the time services cease or the facility sold or transferred;

GRANT AWARD AJA-23-007

Page 39 of 45

(xi) A description of the methods used to minimize the costs of the construction or rehabilitation, including documentation of the costs of the residential facilities in the local area or other appropriate equivalent sites in the State;

(xii) An assurance that the State shall comply with the matching requirements of [paragraph \(d\)\(3\)](#) of this section; and

(xiii) Any other information the Secretary may determine to be appropriate.

SIGNATURE OF AUTHORIZED OFFICIAL Signed by: <i>Scott Oak</i>	TITLE Detective Sergeant
TYPE OR PRINT NAME: Scott Oak	
ORGANIZATION NAME: (if applicable) Des Moines Police Department	DATE 12/24/2024



SCHEDULE A: STATEMENT OF WORK

PURPOSE

WASPC intends to enter into an agreement with Des Moines Police Department for purposes of establishing an AJA Program that adheres to RCW 36.28A.450, to develop and implement a grant program aimed at supporting local initiatives to properly identify criminal justice system-involved persons with substance use disorders and other behavioral health needs and engage those persons with therapeutic interventions and other services, the efficacy of which have been demonstrated by experience, peer-reviewed research, or which are credible promising practices, prior to or at the time of jail booking, or while in custody.

WASPC RESPONSIBILITIES

1. WASPC will provide a Grant Manager to monitor all progress under the program. To accomplish this monitoring function, WASPC staff may access de-identified data related to program services.
2. The Grant Manager shall provide timely response to Grantee communication.

Grantee RESPONSIBILITIES

1. Grantee must
 - 1.1. Employ tools and strategies to accurately identify individuals with substance use disorders and other behavioral health needs who are known to commit law violations, at or prior to the point of arrest, and immediately engage those individuals with appropriate community-based care and support services that have been proven to be effective for marginalized populations by experience or peer-reviewed research or that are credible promising practices; and
 - 1.2. Establish and maintain capacity to receive ongoing referrals to the same community-based care approach for persons with substance use disorders and other behavioral health needs encountered in jail, with an emphasis on securing the release of those individuals whenever possible consistent with public safety and relevant court rules.
 - 1.3. Establish and maintain an Operational Workgroup that consists of the following members:
 - Community-based organizations;
 - Local government;
 - Law enforcement;
 - Prosecutors;
 - Public health experts;
 - Organizations led by and representing individuals with past justice system involvement; and
 - Public safety advocates.
 - 1.4. Engage with the Law Enforcement Assisted Diversion National Support Bureau (LEAD NSB) for technical assistance regarding best practices for prebooking diversion programs.

Any recommendations made by LEAD NSB are to be seriously considered; however, it is up to the Grantee as to how best to operationalize recommendations. The grantee maintains final responsibility and accountability for their program and outcomes. This requirement does not create any requirement directing the Grantee to submit to monitoring by the LEAD NSB.

GRANT AWARD AJA-23-007

Page 41 of 45

1.5. Work toward at least one of the following outcomes:

- Reduction in arrests, time spent in custody, and/or recidivism for program participants;
- Increase access to and utilization of non-emergency community behavioral health and/or substance use services;
- Reduction in the utilization in emergency services;
- Increased resilience, stability, and well-being for program participants; and/or
- Reduction in cost for the justice system in comparison to processing cases as usual through the justice system.

1.6. Perform Contract Deliverables.

DELIVERABLES AND CONSIDERATION

WASPC will authorize a payment for each deliverable only upon satisfactory completion and acceptance and only for allowable costs (see section 3.10 for Unallowable Costs).

January 1, 2025 - June 30, 2025	Payment Frequency	Scheduled Payment Amount	Maximum Award
Deliverable 1: Sign and Return AJA Contract within 30 days of the Date of Issuance (10% FY'25 Award).	1	\$6,900.00	\$6,900.00
GFS:		\$5,761.50	\$ 5,865.00
SABG:		\$1,138.50	\$1,035.00
Deliverable 2: Conduct Site Development Plan in consultation with LEAD NSB within 90 days of contract effective date (10% FY'25 Award).			
<i>WASPC does not require a copy of the Plan from Grantee. Proof of completion is required for the deliverable.</i>	1	\$6,900.00	\$6,900.00
GFS:		\$5,761.50	\$5,865.00
SABG:		\$1,138.50	\$1,035.00
Deliverable 3: The Grantee is required to consult with the LEAD NSB for technical assistance each month.			
<i>Grantee will report dates of monthly technical assistance occurrences in the monthly report/invoice to WASPC.</i>	6	\$1,000.00	\$6,000.00
GFS:		\$835.00	\$5,100.00
SABG:		\$165.00	\$900.00
Deliverable 4: Monthly Data Collection and Reporting.			
<i>WASPC will provide a template for monthly reports/invoices.</i>	6	\$1,000.00	\$6,000.00
GFS:		\$835.00	\$5,100.00
SABG:		\$165.00	\$ 900.00
Deliverable 5: Monthly check-in with WASPC Team.			
<i>WASPC and grantee will connect at least monthly. For the term of this award, one on-site desk monitoring visit will be completed in Spring 2025.</i>	6	\$1,000.00	\$6,000.00
GFS:		\$835.00	\$5,100.00
SABG:		\$165.00	\$900.00

GRANT AWARD AJA-23-007

Page 42 of 45

Deliverable 6: Distribute AJA Program Surveys Provided by WASPC (April 2025).			
<i>WASPC will provide stakeholder survey for distribution.</i>	1	\$1,000.00	\$1,000.00
GFS:		\$835.00	\$850.00
SABG:		\$165.00	\$50.00
Deliverable 7: Monthly Provision of AJA Services to at least 75% of Projected Capacity.			
<i>Projected capacity for each month will be reported in the previous month's report and invoice.</i>	6	\$6,866.67	\$41,200.00
GFS:		\$5,733.67	\$35,020.00
SABG:		\$1,133.00	\$6,180.00
Deliverable 8: Submit Annual Report (due with final FY'25 Invoice).			
<i>WASPC will provide an annual report template.</i>	1	\$1,000.00	\$1,000.00
GFS:		\$835.00	\$850.00
SABG:		\$165.00	\$150.00
Total:			\$69,000.00
GFS:			\$58,650.00
SABG:			\$10,350.00

EXHIBIT A: SERVICE DEFINITIONS

The following Service Definitions encompass the range of service that are eligible under the Arrest and Jail Alternatives grant program.

While not an exhaustive list, the definitions are the basis for services provided under this contract.

Entities coming into contact with individuals

- **Contact (by AJA staff)** - encounter with and service provided to individual, categorized by type. Multiple contacts or contact types (brief outreach, case management, peer/navigator support) may occur within the same service or timeframe.
- **Contact (law enforcement)** - encounter related to criminal behavior/suspected criminal behavior, as documented by relevant law enforcement agency.
- **Contact (fire/EMS)** - field-based encounter related to emergency medical services including fire and ambulance, as documented by relevant agency.

Initiating services

- **Incoming Referral** - identification of and service request for a potential AJA participant from an authorized entity.
- **Non-participant** - any individual contacted by program staff via referral or outreach who has not formally entered services.
- **Participant** - individual referred into and actively engaged in AJA services.
- **Engagement** - sustained and active participation in program, evidenced by attending appointments, regular contact with case manager, goal-setting, reporting activity and needs, etc.
- **Principal Goal** - overarching, major theme identified by AJA participant during engagement in program, who commits to working toward completing it.
- **Behavioral Health** - any healthcare need related to possible substance use or mental health conditions or symptoms.
- **Survey Baseline** - 30 days from completion of intake/initiation of AJA service.

Types of staff contacts with individuals

- **Outreach** - a strategic set of activities that are implemented to develop an alliance with an individual for the purpose of bringing them into or keeping them in ongoing treatment or meeting basic needs.
- **Case Management** - assist individual in gaining access to needed medical, social, education, and other services.
- **Peer/Navigator Support** - provide scheduled activities that promote socialization, recovery, self-advocacy, development of natural supports, and maintenance of community living skills. Individuals actively participate in decision-making and the operation of the programmatic supports.
- **Referral to Service** - any facilitated linkage to services initiated by individual-stated goal, with or on behalf of the individual (categorized by type: mental health, substance use disorder, medical, housing, insurance, benefits, food, shelter, employment, other).

GRANT AWARD AJA-23-007

Page 44 of 45

- **Connection to Service** - individual performed intake, attended at least one appointment, or received at least one service related to a referral made by program staff (categorized by type: mental health, substance use disorder, medical, housing, insurance, benefits, food, shelter, employment, other).

Ways in which a participant may leave services

- **Service Completion** - individual's needs are being met by other long-term services that they are engaging in (residential treatment, hospitalization, etc.), resulting in program discharge. Individual may be re-referred into services in the future.
- **Graduation** - individual fully meets three or more principal goals and staff deem them to exhibit stability for pre-determined amount of time. Individual may be re-referred into services in the future.
- **Exit/Termination** - individual declines services, fails to engage with staff for pre-determined amount of time, or is discharged from services due to conduct or other concerns. Individual may be re-referred into services in the future.

GRANT AWARD AJA-23-007

Page 45 of 45

EXHIBIT B: 2023-2025 GRANT APPLICATION PACKET
(As Attached)

Form Name:	AJA 23-25 Third Round Application
Submission Time:	October 24, 2024 9:06 am
Browser:	Chrome 129.0.0.0 / Windows
IP Address:	146.129.246.3
Unique ID:	1279328509
Location:	47.3121, -122.3661

Arrest and Jail Alternatives Grant Program (AJA) 23-25 Third Funding Round Application

APPLICANT AGENCY INFORMATION

Type of Request - Program Type	Expand an Existing Program
--------------------------------	----------------------------

Please list any agencies that are partnering for this application	Des Moines Police Department
---	------------------------------

Lead Agency/Fiscal Agent Address	21900 11th AVE S Des Moines, WA 98198
----------------------------------	--

Lead Agency Tax Identification Number	91-6016496
---------------------------------------	------------

Lead Agency Project Manager's Name	Scott Oak
------------------------------------	-----------

Lead Agency Project Manager's Email	soak@desmoineswa.gov
-------------------------------------	----------------------

Lead Agency Project Manager's Phone	(206) 870-7602
-------------------------------------	----------------

ORGANIZATIONAL OVERVIEW AND KEY PERSONNEL

PROGRAM ABSTRACT

Program Abstract

The Des Moines Police Department has launched the Getting People Services (GPS) Team to address substance use disorders (SUDs) through a compassionate, treatment-oriented approach. Established in 2022, the GPS Team employs a full-time Crisis Response Specialist who collaborates with law enforcement and community organizations to connect individuals at risk of arrest with essential resources. This initiative responds to escalating substance-related emergencies, particularly during the COVID-19 pandemic, which highlighted the inadequacy of punitive measures.

The GPS Team's strategy emphasizes field response and co-response, allowing officers to divert individuals engaged in low-level offenses-such as trespassing and public drug use-away from arrest and into treatment. By assessing individuals' needs on-site, the Crisis Response Specialist provides immediate access to evaluations and counseling, significantly alleviating the burdens on the criminal justice system.

The team also prioritizes harm reduction and educational initiatives, informing individuals about medication-assisted treatment options and fostering a supportive environment through trauma-informed care. Success stories illustrate the program's effectiveness; for instance, individuals facing repeated arrests have found sustainable recovery paths through treatment connections rather than incarceration.

The GPS Team operates within a framework that prioritizes care over criminalization, recognizing that many individuals struggling with SUDs require supportive services rather than punitive measures. By aiming to increase outreach efforts, the team plans to serve 40-50 individuals per month, expanding its impact through community resource fairs and targeted awareness campaigns.

Despite challenges such as stigma and service accessibility, the GPS Team is committed to ongoing collaboration with local organizations and courts. By tracking engagement and treatment outcomes, the program seeks to demonstrate its efficacy and secure sustained support. Overall, the GPS Team represents a progressive model for addressing SUDs, aiming to influence broader systemic change while promoting long-term recovery for those in need.

PROGRAM NARRATIVE

PROGRAM OUTCOME FOCUS

PARTNERSHIPS AND COLLABORATION

**Are the following
partnerships/collaborations in place?**

Law Enforcement = Yes
Community Based/Case Management Organization = Yes
Prosecutor = Yes
Local Government = Yes
Mental Health Services Provider = Yes
Substance Use Treatment Provider = Yes
Community Rights Advocacy Group = Yes

PROGRAM BUDGET

I have reviewed and understand the SABG funding guidelines outlined in 45 CFR § 96.135. Yes

ADDITIONAL APPLICATION SUPPORT DOCUMENTS

DATA COLLECTION & REPORTING

I have reviewed and understand the Data Collection and Reporting requirements. Yes

UPLOAD FILES

Organizational Overview and Key Personnel	https://www.formstack.com/admin/download/file/17102562237
Program Narrative	https://www.formstack.com/admin/download/file/17102562239
Program Outcome Focus	https://www.formstack.com/admin/download/file/17102562240
Partnerships and Collaboration	https://www.formstack.com/admin/download/file/17102562242
Program Budget	https://www.formstack.com/admin/download/file/17102562244

GENERAL TERMS

General Terms Agreement	I Agree
-------------------------	---------

GRANT APPLICATION SIGNING AUTHORITY

Applicant Agency Signing Authority	Scott Oak
Title - Applicant Agency Signing Authority	Detective Sergeant
Electronic Signature Agreement	I Agree

Signature

A handwritten signature in black ink that reads "Scotty Oak". The signature is written in a cursive, flowing style. The first name "Scotty" is written with a large, stylized 'S' and the last name "Oak" is written with a large, stylized 'O'.

Date of Signature

Oct 24, 2024



**Arrest and Jail Alternatives Grant Program (AJA) 23-25
Grant Application
Organizational Overview and Key Personnel**

Des Moines Police Department
21900 11th AVE S
Des Moines, Washington 98198

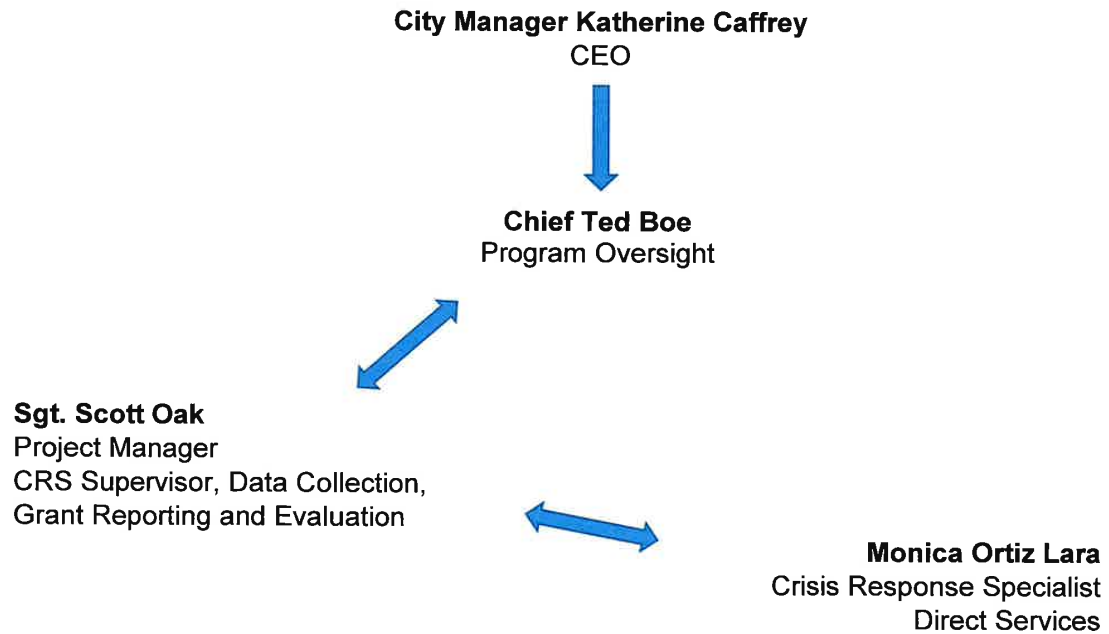
Key Project Personnel:

Chief Ted Boe – Project Oversight
Des Moines Police Department
21900 11th AVE S
Des Moines, Washington 98198
(206) 870-7601
tboe@desmoineswa.gov

Sgt. Scott Oak – Project Manager
Des Moines Police Department
21900 11th AVE S
Des Moines, Washington 98198
(206) 870-7602
soak@desmoineswa.gov

Monica Ortiz Lara – Crisis Response Specialist – Direct Services
Des Moines Police Department
21900 11th AVE S
Des Moines, Washington 98198
(206) 870-7625
mlara@desmoineswa.gov

**City of Des Moines
Organization Flow Chart
Arrest and Jail Alternatives Grant Application**





**Des Moines Police Department
Arrest and Jail Alternatives Grant Application
Program Narrative**

The Des Moines Police Department, like other police departments, responds to people with substance use disorders who engage in illegal activity. For years, the response was part of a criminal justice framework: arrest, prosecution, and punishment. Starting in 2022, however, the Department began experimenting with a different approach. A full-time Crisis Response Specialist (GPS: Getting People Services - Team) was added to the Department's staff and worked with many people at risk of arrest to connect them to resources and treatment.

In the years since the GPS Team began, the City has improved field outreach services. The Police Department hired a full-time police Crisis Response Specialist in 2022 who has nearly two years of experience. She has her own City vehicle and can work independently or in partnership with police officers and community based organizations.

Our GPS Team includes a field response and co-response program and have helped hundreds of people in Des Moines. We have learned, however, that field response/co-response is of limited use without adequate and accessible services for the people we are trying to assist. Our outreach becomes ineffective when the cost of a substance use disorder evaluation is too high for someone to pay, the wait to see a substance use professional is weeks away, mental health counselors are not accepting new clients and the only walk in medical care is the emergency room at overburdened local hospitals.

The need for low barrier, accessible substance use disorder services has become more pressing since the COVID pandemic. Des Moines and south King County is experiencing an alarming growth in emergency medical services related to opioid use. According to the Washington Department of Health, emergency medical service (EMS) opioid related overdoses experienced a 69% increase from 2022 to 2023. In King County, EMS responded to 5,821 overdose incidents in 2022 and 8,340 overdose incidents in 2023. As of the 3rd quarter of 2024, King County EMS has responded to 5,034 overdose incidents, putting us on track to exceed last year's record high.

While much focus has rightfully been on opioid use and the toxicity of fentanyl, emergency calls and deaths related to alcohol use are also significant in our area. King County's alcohol related death rate per 100,000 is 27.5%, higher than the state average and significantly higher than opioid fatalities, (King County Medical Examiner, 2024). Similarly, alcohol related deaths have gone up significantly since 2020.

As emergency calls and fatalities related to substance use increased in King County, police response has declined. State "Blake" rules in 2021 discouraging drug arrests led to reduced police contact with people struggling with substances. This reduced contact, at least in our area, correlated with criminal activity: a rise in theft (a 67% increase in Des Moines from 2021 to 2022), a rise in auto theft (a 92% increase in Des Moines from 2021 to 2022), a rise in burglaries (a 132% increase in Des Moines from 2021 to 2022) and more visible drug use in parks and other public places. It also correlated with people needing help having less access to assistance. Reduced police contact meant fewer arrests for drug related behavior, but it also meant less opportunity to engage with people needing help in a supportive way.

With the passage of new Blake legislation in 2023, and the "re-criminalization" of drug use and possession, we have the opportunity for a more engaged approach. The Des Moines Municipal Court and city prosecutor are using EHM Washington (electronic home monitoring) as an alternative to arrest now that arrest is an available option. Prosecutors are also referring people to Peer Kent, American Behavioral Health and Averhealth as an alternative to prosecution now that they are making drug related charging decisions. The lesson learned in Des Moines over the past several years is that care and treatment are essential for people struggling with substance use—but many people will not access these services unless there are criminal sanctions to motivate their behavior. We learned that diversion is only effective if there are places available.

Who We Serve

Our GPS Team will assist anyone with an interest in recovery, treatment or services and a connection to Des Moines. While we would prioritize people with criminal justice involvement, this is not a condition of assistance. American Behavioral Health and Averhealth welcome referrals from police throughout our region: Des Moines, Normandy Park and Kent officers, and deputies from King County working in the south King County area. We also work closely with the Des Moines Municipal Court. If this grant application is successful, we will begin outreach to SCORE Jail and facilitate referrals from the jail to American Behavioral Health, EHS Washington and Averhealth for people who live in our area. We have also seen these services used as a resource for people who have already been charged with crimes, and are working through their court requirements.

Structure of Program

The department employs a Crisis Response Specialist to conduct field response and co-response with police officers. We also have a Special Operations Sergeant who serves as the program manager.

American Behavioral Health, Averhealth and EHS Washington are services where individuals can access substance use and mental health recovery.

The Federal Way Day Center opened in December 2016. It provides a welcoming space to adults who are homeless and vulnerably housed. The Day Center offers showers, laundry, computers, phones, mail reception services, space for meal preparation, a full-service low barrier clinic, access to health care and social services. Case Management services are available Monday – Friday from 9 am to 4 pm.

We also have active partnerships with Healthpoint, Mobile Medical Van, Valley Cities and Sound Mental Health, which provide mental health and substance use disorder services on a monthly basis.

Our Crisis Response Specialist proactively engages with individuals in the community who are at risk of arrest for low-level offenses, such as trespassing, shoplifting and public drug use. She transports people to the Day Center or directs and refers individuals to mental health and substance abuse treatment. She also encourages people to participate by sharing information about our services, including diversion agreements with the prosecutor.

As an example, our Crisis Response Specialist has co-responded with officers on dispatched calls for service where an individual is experiencing a substance use disorder and/or crisis event. During these calls, we discovered the individual had an active arrest warrant. Rather than make an arrest, officers and the co-responder, in coordination with the court, decided to offer the individual the opportunity to receive treatment services. By creating these positive jail alternatives, we are able to lessen the burdens on the criminal justice system.

Utilizing evidence based social practices, we aim to encourage high-risk individuals to engage in services for mental health and substance use disorders. Our primary goal is harm reduction principles and encouraging any approach that reduces problematic behaviors. We also believe strongly in education. Information is readily available about medication for opioid use disorder and other treatment modalities so people can make informed decisions about their own care.

Working with our Crisis Response Specialist comes with many benefits. We have excellent relationships with the Des Moines Municipal Court and Prosecutor as well as a history of working with local health and social service providers. We have a vehicle to provide transportation to providers or resources. We also have a record of fiscal

responsibility and strict auditing practices. We expect that our efforts will have effects beyond our region as other cities have expressed interest in our GPS Team and may use our example to start their own programs.

Staffing for the 2024-2025 GPS Team is already in place. The City employs a Program Manager (Sgt. Scott Oak) and a full time Crisis Response Specialist (Monica Ortiz Lara). If this grant application is successful, funding will be used to maintain the Crisis Response Specialist position with an emphasis on court and jail outreach.

Implementation Timeline, Milestones and Challenges

The GPS Team has been in operation since July of 2022. Our key positions have been filled and relationships with multiple providers are already in place. We use our current records system to record information about users, and are evaluating options to create a custom report that captures our various activities. We work closely with area health and human service providers to host Resource Fairs where people can come to be connected to services and resources.

Since implementing our GPS Team, we have had several success stories:

An individual with a substance use disorder was arrested, charged and ultimately convicted for criminal harassment. Upon release from jail and completion of treatment, he returned to the area. Being unhoused, he began to violate the restraining order by contacting the victim and relapsed. As an alternative to arrest, our Crisis Response Specialist contacted him and he agreed to return to treatment and receive peer support through the Recovery Navigation Program (RNP). Peer support has been shown to significantly enhance recovery outcomes by providing individuals with relatable guidance and encouragement. RNP also assisted in securing funding for Oxford housing, which is an evidence-based model that offers individuals stable, supportive living environments crucial for maintaining recovery. By addressing both his treatment needs and housing instability, we aimed to facilitate a more sustainable recovery path for him.

Another individual who had both a substance use disorder along with a mental health diagnosis was evicted from his apartment. According to the Substance Abuse and Mental Health Services Administration, individuals with co-occurring disorders often face significant barriers to stable housing and supportive services, leading to increased vulnerability and risk of homelessness. This individual became unhoused without access to any supportive services.

Following his eviction, he was subsequently trespassed from the apartment complex and arrested multiple times for returning to the location. Research indicates that repeated interactions with the criminal justice system can hinder recovery efforts for individuals with mental health and substance use challenges.

After extensive efforts to engage with the family and the individual, who was initially reluctant to accept any services, he experienced a stay in the hospital. Following this period, we were able to divert the individual towards a treatment plan since he still had active warrants for trespassing. He ultimately agreed to receive assistance by completing a year-long program focused on dual diagnosis treatment, which is a critical approach for those dealing with both mental health and substance use issues.

If this grant is successful, we will maintain the Crisis Response Specialist position as part of the police department's GPS Team.

If this grant is successful, we will immediately begin coordinating with SCORE Jail and the Des Moines Municipal Court for arrest and jail alternatives.

We are currently assisting 20-25 people per month at the Resource Fair where we host community based organizations in order to connect our community members in need. Our goal, if this grant is successful, is to host two community outreach events per month and to serve 40-50 people. Our challenge, at this point, is building more familiarity about the GPS Team with courts and jail personnel, and community members inside and outside of Des Moines. Having a dedicated outreach specialist helps us with this objective.

Best practices, Evidence Based Practices

The GPS Team collaborates with the Recovery Navigator Program to assist high-risk populations with supportive services. There is a growing body of research supporting the effectiveness of peer support services in various settings, including substance abuse recovery, mental health, and chronic illness management.

Our GPS Team utilizes the following practices to achieve more successful engagement for individuals in need:

Motivational Interviewing helps people explore and resolve ambivalence about behavior change. Motivational Interviewing empowers clients to set their own goals, enhancing their sense of control and motivation.

We recognize the impact of trauma on clients and we seek to create a safer environment that promotes their healing through *Trauma-Informed Care*.

By working with a *Strengths-Based Approach*, we support clients to self-identify their strengths and resources to encourage resilience and sense of empowerment.

Solution-Focused Brief Therapy is a method that helps individuals identify solutions to their current challenges, guiding them toward their desired future and the steps needed to get there.

By utilizing *Participatory Action Research* we are able to work together to achieve an outcome where the client feels empowered and invested in the outcome. This inspires clients to take responsibility in their decision-making.

Housing:

Housing and housing stability is increasingly understood as an integral part of healthcare. This is especially true for individuals struggling with substance use disorders and mental health concerns. The GPS Team partners with community based organizations to assist with housing needs and/or coordinated entry.

How many will be served?

The GPS Team is currently assisting 20-25 people per month through the Resource Fair. If this grant is successful, we will provide services to 40-50 people per month.



**Des Moines Police Department
Arrest and Jail Alternatives Grant Application
Program Outcome Focus**

"In response to residents' and business owners' demands for action, cities often turn to punitive responses: issuing ordinances that criminalize homelessness, clearing homeless encampments, and arresting people for actions necessitated by living outside, like sleeping. As a result, people enduring unsheltered homelessness can become trapped in a cycle of homelessness and jail. And instead of solving the homelessness crisis, these costly, punitive responses are ineffective and can make homelessness worse for those experiencing it and for the communities in which they live" (Batko, Gillespie, Ballard and Cunningham, 2020, p. v).

The GPS Team goals would be to reduce arrests, time spent in custody and recidivism for individuals with substance use disorders and to increase the resilience, stability, and well-being of people served. We would achieve these goals by offering peer support and connection to clinical services as well as navigation to outside housing and services. For this grant period, we would measure success in terms of outputs: people served, people engaging in peer support, people connected to treatment, people connected to housing. In December 2024, we will start to measure outcomes such as criminal justice involvement, court agreement completion, and improvements in social determinants of health. ★



**Des Moines Police Department
Arrest and Jail Alternatives Grant Application
Partnerships and Collaboration**

Our department is a law enforcement agency and we will be providing direct services to individuals, therefore, we will not have any Memorandums of Understanding in partnerships or collaborations.



Budget Worksheet Year 1

December 1, 2024 - December 31, 2024



Budget Worksheet

Purpose: The Budget Detail Worksheet is provided for your use in the preparation of the budget and budget narrative. All required information (including narrative) must be provided. Any category of expense not applicable to your budget may be left blank. A specific area is available at the end of this spreadsheet that allows for the identification and description of funds or items to be provided as program matching funds (cost sharing).

A. Personnel - List each position by title and name of employee, if available. Show the annual salary rate and percentage of time to be devoted to the project. Compensation paid for employees engaged in grant activities must be consistent with that paid for similar work within the applicant organization. Include a description of the responsibilities and duties of each position in relationship to fulfilling the project goals and objectives. (Note: Use whole numbers as the percentages of time, an example is 25.50% should be shown as 25.50)

Name	Position	Computation				Cost
		Salary	Basis	Percentage of Time	Length of Time	
Monica Ortiz Lara	Crisis Response Specialist	7,394.96	Monthly	100	1	\$ 7,394.96
						\$ -
						\$ -
						\$ -
						\$ -
				TOTAL Personnel		\$ 7,394.96

Personnel Narrative

We propose using \$7,394.96 in grant funds to support a full-time Crisis Reponse Specialist (outreach) who increases community familiarity with the GPS Team and meets with individuals struggling with substance use disorders in local courts and at SCORE jail.

B. Fringe Benefits - Fringe benefits should be based on actual known costs. List the composition of the fringe benefit package. Fringe benefits are for the personnel listed in budget category (A) and only for the percentage of time devoted to the project. Fringe benefits on overtime hours are limited to FICA, Workman's Compensation and Unemployment Compensation. (Note: Use decimal numbers for the fringe benefit rates, an example is 7.65% should be shown as .0765)

Description	Computation		Cost
	Base	Rate	
Benefits for Monica Ortiz Lara	\$ 7,394.96		\$ 2,109.73
	\$ 7,394.96		\$ -
	\$ 7,394.96		\$ -
	\$ 7,394.96		\$ -
	\$ 7,394.96		\$ -
	\$ 7,394.96		\$ -
	\$ 7,394.96		\$ -
	\$ 7,394.96		\$ -
	\$ 7,394.96		\$ -
TOTAL Fringe Benefits			\$ 2,109.73

Fringe Benefits Narrative

Benefits for Monica Ortiz Lara for the month of December.

C. Travel - Itemize travel expense of staff and personnel by purpose (e.g., staff to training, advisory group meeting, field interviews, etc.). Describe the purpose of each travel expenditure in reference to the project objectives. Show the basis of computation (e.g., six people to 3-day training at \$X airfare, \$X lodging, \$X subsistence). In training projects, travel and meals for trainees should be listed separately. Show the number of trainees and the unit costs involved. Identify the location of travel, if known; or if unknown, indicate "location to be determined." Note: Travel expenses for consultants should be included in the "Contractual/Consultant" category.

Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	
		Lodging						-	
		Meals						-	
		Mileage						-	
		Transportation:							
		Airfare							
		Local Travel						-	
		Other							
		Baggage Fee						-	
		Subtotal							

Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	
		Lodging						-	
		Meals						-	
		Mileage						-	
		Transportation:						-	
								-	
		Local Travel						-	
		Other						-	
			-						
		Subtotal							
Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	
		Lodging						-	
		Meals						-	
		Mileage						-	
		Transportation:						-	
								-	
		Local Travel						-	
		Other						-	
			-						
		Subtotal							

Purpose of Travel	Location	Computation							Cost			
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost				
		Lodging						-				
		Meals						-				
		Mileage						-				
		Transportation:										
		Local Travel						-				
		Other										-
		Subtotal								-		
TOTAL Travel								\$ -				

Travel Narrative

D. Equipment - List non-expendable items that are purchased (Note: Organization's own capitalization policy for classification of equipment should be used). Expendable items should be included in the "Supplies" category. Applicants should analyze the cost benefits of purchasing versus leasing equipment, especially high cost items and those subject to rapid technological advances. Rented or leased equipment costs should be listed in the "Contractual" category. Explain how the equipment is necessary for the success of the project, and describe the procurement method to be used.

Item	Computation		Cost
	Quantity	Cost	
			\$ -
			\$ -
			\$ -
			\$ -
TOTAL Equipment			\$ -

Equipment Narrative

E. Supplies - List items by type (office supplies, postage, training materials, copy paper, and expendable equipment costs costing less than \$5,000, such as books, hand held recorders) and show the basis for computation. Generally, supplies include any materials that are expendable or consumed during the project.

Supply Item	Computation		Cost
	Quantity/ Duration	Cost	
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
TOTAL Supplies			\$ -

Supplies Narrative

F. Consultants/Contracts - Indicate whether applicant's formal, written Procurement Policy or the Federal Acquisition Regulations are followed.

Consultant Fees: For each consultant enter the name, if known, service to be provided, hourly or daily fee (8 hour day), and estimated time on the project. Consultant fees in excess of \$450 per day or \$56.25 per hour require additional justification and prior approval from WASPC.

Name of Consultant	Service Provided	Computation			Cost
		Fee	Basis	Quantity	
					\$ -
					\$ -
					\$ -
					\$ -
Subtotal Consultants					\$ -

Consultant Fee Narrative

Consultant Expenses: List all expenses to be paid from the grant to the individual consultants in addition to their fees (i.e., travel, meals, lodging, etc.). This includes travel expenses for anyone who is not an employee of the applicant such as participants, volunteers, partners, etc.

Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	
		Lodging						-	
		Meals						-	
		Mileage						-	
		Transportation:						-	
								-	
		Local Travel						-	
		Other						-	
								-	
		Subtotal						-	
Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	
		Lodging						-	
		Meals						-	
		Mileage						-	
		Transportation:						-	
								-	
		Local Travel						-	
		Other						-	
								-	
		Subtotal						-	
Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	

--

Contracts: Provide a description of the product or service to be procured by contract and an estimate of the cost. Applicants are encouraged to promote free and open competition in awarding contracts. A separate justification must be provided for sole-source contracts in excess of \$100,000

Item	Cost
	\$ -
	\$ -
	\$ -
	\$ -
TOTAL Contracts	\$ -

Contracts Narrative

G. Other Costs - List items (e.g. rent, reproduction, telephone, janitorial, or security services) by major type and the basis of computation. For example, provide the square footage of the cost per square foot for rent or provide a monthly rental cost and how many months to rent. The basis field is a text field to describe the quantity such as square footage, months, etc.

Description	Computation				Cost
	Quantity	Basis	Cost	Length of Time	
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
TOTAL Other Costs					\$ -

Other Costs Narrative

Budget Summary - When you have completed the budget worksheet, the totals for each category will appear in the spaces below. Verify the category and total dollars requested.

Funding Request Summary	
Budget Category	Amount Requested
A. Personnel	\$ 7,394.96
B. Fringe Benefits	\$ 2,109.73
C. Travel	\$ -
D. Equipment	\$ -
E. Supplies	\$ -
F. Consultants/Contracts	\$ -
G. Other	\$ -
TOTAL GRANT REQUEST	\$ 9,504.69

Local Match - Use the space below to identify and describe the dollar amounts or items that will be provided as local match or cost sharing for your program. Note that everything listed here must be in conformance with 2 CFR § 200.306.

PROJECT COST TO APPLICANT (NOT INCLUDING FIGURES ABOVE)

\$9,504.69

↑ + ↓

LOCAL MATCH (IF APPLICABLE)

\$

-

= ↓

OVERALL PROGRAM VALUE

\$

9,504.69



Budget Worksheet Year 2

January 1, 2025 - June 30, 2025

Budget Worksheet

Purpose: The Budget Detail Worksheet is provided for your use in the preparation of the budget and budget narrative. All required information (including narrative) must be provided. Any category of expense not applicable to your budget may be left blank. A specific area is available at the end of this spreadsheet that allows for the identification and description of funds or items to be provided as program matching funds (cost sharing).

A. Personnel - List each position by title and name of employee, if available. Show the annual salary rate and percentage of time to be devoted to the project. Compensation paid for employees engaged in grant activities must be consistent with that paid for similar work within the applicant organization. Include a description of the responsibilities and duties of each position in relationship to fulfilling the project goals and objectives. (Note: Use whole numbers as the percentages of time, an example is 25.50% should be shown as 25.50)

Name	Position	Computation				Cost
		Salary	Basis	Percentage of Time	Length of Time	
Monica Ortiz Lara	Crisis Response Specialist	7,616.81	Monthly	100	6	\$ 45,700.86
						\$ -
						\$ -
						\$ -
						\$ -
				TOTAL Personnel		\$ 45,700.86

Personnel Narrative

B. Fringe Benefits - Fringe benefits should be based on actual known costs. List the composition of the fringe benefit package. Fringe benefits are for the personnel listed in budget category (A) and only for the percentage of time devoted to the project. Fringe benefits on overtime hours are limited to FICA, Workman's Compensation and Unemployment Compensation. (Note: Use decimal numbers for the fringe benefit rates, an example is 7.65% should be shown as .0765)

Description	Computation		Cost
	Base	Rate	
Benefits for Monica Ortiz Lara - January, 2025	\$ 45,700.86		\$ 2,149.18
Benefits for Monica Ortiz Lara - February, 2025	\$ 45,700.86		\$ 2,149.18
Benefits for Monica Ortiz Lara - March, 2025	\$ 45,700.86		\$ 2,149.18
Benefits for Monica Ortiz Lara - April, 2025	\$ 45,700.86		\$ 2,149.18
Benefits for Monica Ortiz Lara - May, 2025	\$ 45,700.86		\$ 2,149.18
Benefits for Monica Ortiz Lara - June, 2025	\$ 45,700.86		\$ 2,149.18
			\$ -
			\$ -
TOTAL Fringe Benefits			\$ 12,895.08

Fringe Benefits Narrative

C. Travel - Itemize travel expense of staff and personnel by purpose (e.g., staff to training, advisory group meeting, field interviews, etc.). Describe the purpose of each travel expenditure in reference to the project objectives. Show the basis of computation (e.g., six people to 3-day training at \$X airfare, \$X lodging, \$X subsistence). In training projects, travel and meals for trainees should be listed separately. Show the number of trainees and the unit costs involved. Identify the location of travel, if known; or if unknown, indicate "location to be determined." Note: Travel expenses for consultants should be included in the "Contractual/Consultant" category.

Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	
		Lodging						-	
		Meals						-	
		Mileage						-	
		Transportation:							
		Airfare						-	
		Local Travel						-	
		Other							
		Baggage Fee						-	
		Subtotal						-	\$ -

Purpose of Travel	Location	Computation							Cost				
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost					
		Lodging						-					
		Meals						-					
		Mileage						-					
		Transportation:											
		Local Travel						-					
		Other											
		Subtotal								-			
\$ -													
Purpose of Travel	Location	Computation							Cost				
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost					
		Lodging						-					
		Meals						-					
		Mileage						-					
		Transportation:											
		Local Travel						-					
		Other											
		Subtotal								-			
\$ -													

Purpose of Travel	Location	Computation							Cost			
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost				
		Lodging						-				
		Meals						-				
		Mileage						-				
		Transportation:										
										-		
		Local Travel						-				
		Other										-
												-
		Subtotal								-	\$ -	
TOTAL Travel								\$ -				

Travel Narrative

D. Equipment - List non-expendable items that are purchased (Note: Organization's own capitalization policy for classification of equipment should be used). Expendable items should be included in the "Supplies" category. Applicants should analyze the cost benefits of purchasing versus leasing equipment, especially high cost items and those subject to rapid technological advances. Rented or leased equipment costs should be listed in the "Contractual" category. Explain how the equipment is necessary for the success of the project, and describe the procurement method to be used.

Item	Computation		Cost
	Quantity	Cost	
			\$ -
			\$ -
			\$ -
			\$ -
TOTAL Equipment			\$ -

Equipment Narrative

E. Supplies - List items by type (office supplies, postage, training materials, copy paper, and expendable equipment costs costing less than \$5,000, such as books, hand held recorders) and show the basis for computation. Generally, supplies include any materials that are expendable or consumed during the project.

Supply Item	Computation		Cost
	Quantity/ Duration	Cost	
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
TOTAL Supplies			\$ -

Supplies Narrative

F. Consultants/Contracts - Indicate whether applicant's formal, written Procurement Policy or the Federal Acquisition Regulations are followed.

Consultant Fees: For each consultant enter the name, if known, service to be provided, hourly or daily fee (8 hour day), and estimated time on the project. Consultant fees in excess of \$450 per day or \$56.25 per hour require additional justification and prior approval from WASPC.

Name of Consultant	Service Provided	Computation			Cost
		Fee	Basis	Quantity	
					\$ -
					\$ -
					\$ -
					\$ -
Subtotal Consultants					\$ -

Consultant Fee Narrative

Consultant Expenses: List all expenses to be paid from the grant to the individual consultants in addition to their fees (i.e., travel, meals, lodging, etc.). This includes travel expenses for anyone who is not an employee of the applicant such as participants, volunteers, partners, etc.

Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	
		Lodging						-	
		Meals						-	
		Mileage						-	
		Transportation:						-	
								-	
		Local Travel						-	
		Other						-	
								-	
		Subtotal							
Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	
		Lodging						-	
		Meals						-	
		Mileage						-	
		Transportation:						-	
								-	
		Local Travel						-	
		Other						-	
								-	
		Subtotal							
Purpose of Travel	Location	Computation							Cost
		Item	Cost Rate	Basis for Rate	Quantity	Number of People	Number of Trips	Cost	

		Lodging						-	
		Meals						-	
		Mileage						-	
		Transportation:							
								-	
		Local Travel						-	
		Other						-	
		Subtotal						-	\$ -
Subtotal Consultant Expenses								\$	-
TOTAL Consultants								\$	-

Consultant Expenses Narrative

Contracts: Provide a description of the product or service to be procured by contract and an estimate of the cost. Applicants are encouraged to promote free and open competition in awarding contracts. A separate justification must be provided for sole-source contracts in excess of \$100,000

Item	Cost
	\$ -
	\$ -
	\$ -
	\$ -
TOTAL Contracts	\$ -

Contracts Narrative

G. Other Costs - List items (e.g. rent, reproduction, telephone, janitorial, or security services) by major type and the basis of computation. For example, provide the square footage of the cost per square foot for rent or provide a monthly rental cost and how many months to rent. The basis field is a text field to describe the quantity such as square footage, months, etc.

Description	Computation				Cost
	Quantity	Basis	Cost	Length of Time	
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
TOTAL Other Costs					\$ -

Other Costs Narrative

Budget Summary - When you have completed the budget worksheet, the totals for each category will appear in the spaces below. Verify the category and total dollars requested.

Funding Request Summary	
Budget Category	Amount Requested
A. Personnel	\$ 45,700.86
B. Fringe Benefits	\$ 12,895.08
C. Travel	\$ -
D. Equipment	\$ -
E. Supplies	\$ -
F. Consultants/Contracts	\$ -
G. Other	\$ -
TOTAL GRANT REQUEST	\$ 58,595.94

Local Match - Use the space below to identify and describe the dollar amounts or items that will be provided as local match or cost sharing for your program. Note that everything listed here must be in conformance with 2 CFR § 200.306.

PROJECT COST TO APPLICANT (NOT INCLUDING FIGURES ABOVE)

\$ 58,595.94

↑ + ↓

LOCAL MATCH (IF APPLICABLE)

\$

= ↓

OVERALL PROGRAM VALUE

\$58,595.94

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Resolution No. 24-108 in support of Redondo Boat Ramp Grant Application

ATTACHMENTS:

1. Draft Resolution No. 24-108
2. Draft Project Agreement

FOR AGENDA OF: January 09, 2025

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: December 30, 2024

CLEARANCES:

☒ City Clerk JK
☐ Community Development ____
☐ Courts ____
☐ Director of Marina Redevelopment ____
☐ Emergency Management ____
☒ Finance ML
☐ Human Resources ____
☒ Legal /s/ TG
☒ Marina SW
☐ Police ____
☐ Parks, Recreation & Senior Services ____
☒ Public Works MPS

APPROVED BY CITY MANAGER

FOR SUBMITTAL: Katherine Caffrey

Purpose and Recommendation

This purpose of this agenda item is for the City Council to consider Draft Resolution 24-108 authorizing the City Manager to act as a representative/agent for the City for the purpose of applying for Recreation Conservation Office (RCO) funding for improvements to the Redondo boat launch, a prerequisite to applying for or receiving the grant funds. The following motion will appear on the consent calendar:

Suggested Motion

Motion: “I move to enact Draft Resolution 24-108 naming the City Manager as the designated representative/agent for the City in order to apply for grant funding for the Redondo Boat Launch Improvement Project.”

Background

King County originally built the boat launching ramp in Redondo in 1980. In 1996 the City acquired the ramp as part of the Woodmont/Redondo annexation. In 2002, the City, with the help of a \$750,000 grant from the State's Boating Facilities Program rebuilt the parking lot, added another float string to the south side of the launch ramp, and installed steel guide pile for the float strings on both sides of the ramp. In 2019 with the help from RCO we replaced the South side float string and this will be for the North side float string. Recently, the staff completed the first phase of this project that replaced the south float string.

Discussion

After the 2002 project was completed, the Marina staff built and replaced most of the boarding floats on the north side of the launch ramp that were installed by King County in 1980. At this time, both float strings are near the end of their useful life. As of last season, most of the steel hinge connections between the floats on the north string were worn to the point of being unserviceable. The worn hinges allowed too much movement between the individual floats and as a result the float strings would not stay level and are unstable even in mild wind/wave conditions. Because of its condition the north float string was not deployed last season and was dismantled and disposed of.

To accommodate the dimensions of a new float string, the existing wood/concrete approach to the north float string needs to be demolished and a new all-concrete approach poured in-place. The new approach would allow the new float string to lay 3 feet closer to the guide pile which would increase the width of the ramp by that amount.

This project is a priority because the ramp averages about 4,000 launches per year and is the primary launch point for boaters who want to access recreational fishing opportunities from Three Tree Point to Dash Point. The ramp is much more protected and safer to use when both float strings are in place.

RCO will not consider an application complete and will not award a grant without a Resolution of the City Council. While an applying organization may use their preferred formatting, the text of the Resolution is mandatory and cannot be changed from the text provided by RCO. Draft Resolution 24-108 contains the mandatory language.

Alternatives

The City Council may decline to adopt the Draft Resolution, which would eliminate the project from consideration for the RCO grant.

Financial Impact

The current estimate for the total cost of the project is approximately \$465,000. If awarded, the Boating Facilities Program grant would pay of 75% of the total project, or about \$348,750. The City's share would be approximately \$116,250. If the Draft Resolution does not pass, the City will not be eligible for the RCO grant and the City would have to find alternative funding sources or not make the improvements at the Redondo Boat Ramp.

Recommendation

Staff recommends that the Council adopt Draft Resolution 24-108 as written.

Council Committee Review

N/A

Council Committee Review

N/A

CITY ATTORNEY'S FIRST DRAFT 12/30/2024

DRAFT RESOLUTION NO. 24-108

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the City Manager to act as a representative/agent on behalf of the City of Des Moines, and to legally bind the City with respect to the Recreation and Conservation Office Application #24-2501 DEV, **Redondo Boat Ramp: Upgrades, Phase 2** ("Project"), for which the City seeks grant funding assistance managed through the Recreation and Conservation Office ("Office").

WHEREAS, the state grant assistance is requested by the City to aid in financing the cost of the Project referenced above, and

WHEREAS, the City considers it in the best public interest to complete the Project described in the application; now therefore,

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

Sec. 1. The City of Des Moines has applied for or intends to apply for funding assistance managed by the Recreation and Conservation Office ("Office") for the above "Project."

Sec. 2. Des Moines City Manager Katherine Caffrey is authorized to act as a representative/agent for the City with full authority to bind the City regarding all matters related to the Project, including but not limited to, full authority to:

(1) approve submittal of a grant application to the Office,

(2) enter into a project agreement(s) on behalf of the City,

(3) sign any amendments thereto on behalf of the City,

(4) make any decisions and submissions required with respect to the Project(s), and

(5) designate a project contact(s) to implement the day-to-day management of the grant(s).

Resolution No. ____
Page __ of __

Sec. 3. The City Council has reviewed the sample project agreement on the Recreation and Conservation Office's WEBSITE at: <https://rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf>. We understand and acknowledge that if offered a project agreement to sign in the future, it will contain an indemnification and legal venue stipulation (applicable to any sponsor) and a waiver of sovereign immunity (applicable to Tribes) and other terms and conditions substantially in the form contained in the sample project agreement and that such terms and conditions of any signed project agreement shall be legally binding on the sponsor if our representative/agent enters into a project agreement on our behalf. The Office reserves the right to revise the project agreement prior to execution and shall communicate any such revisions with the above authorized representative/agent before execution.

Sec. 4. The City Council acknowledges and warrants, after conferring with its legal counsel, that its authorized representative/agent has full legal authority to enter into a project agreement(s) on its behalf, that includes indemnification, waiver of sovereign immunity (as may apply to Tribes), and stipulated legal venue for lawsuits and other terms substantially in the form contained in the sample project agreement or as may be revised prior to execution.

Sec. 5. Grant assistance is contingent on a signed project agreement. Entering into any project agreement with the Office is purely voluntary on our part.

Sec. 6. The City Council understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the project agreement, the characteristics of the project, and the characteristics of the City of Des Moines.

Sec. 7. The City Council further understands that prior to our authorized representative/agent executing the project agreement(s), the RCO may make revisions to its sample project agreement and that such revisions could include the indemnification, the waiver of sovereign immunity, and the legal venue stipulation. The City accepts the legal obligation that we shall, prior to execution of the project agreement(s), confer with

Resolution No. ____
Page __ of __

our authorized representative/agent as to any revisions to the project agreement from that of the sample project agreement. We also acknowledge and accept that if our authorized representative/agent executes the project agreement(s) with any such revisions, all terms and conditions of the executed project agreement (including but not limited to the indemnification, the waiver of sovereign immunity, and the legal venue stipulation) shall be conclusively deemed to be executed with our authorization.

Sec. 8. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the Project referenced above.

Sec. 9. The City acknowledges and warrants, after conferring with its legal counsel, that no additional legal authorization beyond this authorization is required to make the indemnification, the waiver of sovereign immunity (as may apply to Tribes), and the legal venue stipulation substantially in form shown on the sample project agreement or as may be revised prior to execution legally binding on the City upon execution by our representative/agent.

Sec. 10. [Recreation and Conservation Funding Board Grant Programs Only] If match is required for the grant, we understand the City must certify the availability of match at least one month before funding approval. In addition, the City understands it is responsible for supporting all non-cash matching share commitments to this project should they not materialize.

Sec. 11. The City acknowledges that if it receives grant funds managed by the Office, the Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Office after we incur grant eligible and allowable costs and pay them. The Office may also determine an amount of retainage and hold that amount until the Project is complete.

Sec. 12. [Acquisition Projects Only] The City acknowledges that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to in writing by the City and the Office. We agree to dedicate the property in a signed "Deed of Right" for fee acquisitions, or an "Assignment of Rights" for other than fee acquisitions (which

Resolution No. ____
Page __ of __

documents will be based upon the Office's standard versions of those documents), to be recorded on the title of the property with the county auditor.

Sec. 13. [Acquisition Projects Only] The City acknowledges that any property acquired in fee title must be immediately made available to the public unless otherwise provided for in policy, the project agreement, or authorized in writing by the Office Director.

Sec. 14. [Development, Renovation, Enhancement, and Restoration Projects Only - If your organization owns the property] The City acknowledges that any property owned by the City that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity unless otherwise allowed by grant program policy, or Office in writing and per the project agreement or an amendment thereto.

Sec. 15. [Development, Renovation, Enhancement, and Restoration Projects Only - If your organization DOES NOT own the property] The City acknowledges that any property not owned by the City that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant as required by grant program policies unless otherwise provided for per the project agreement or an amendment thereto.

Sec. 16. [Only for Projects located in Water Resources Inventory Areas 1 - 19 that are applying for funds from the Critical Habitat, Natural Areas, State Lands Restoration and Enhancement, Riparian Protection, or Urban Wildlife Habitat grant categories; or the Puget Sound Acquisition and Restoration program, or a Salmon Recovery Funding Board approved grant] The City certifies the following: the Project does not conflict with the Puget Sound Action Agenda developed by the Puget Sound Partnership under RCW 90.71.310.

Sec. 17. This resolution/authorization is deemed to be part of the formal grant application to the Office.

Sec. 18. The City warrants and certifies, after conferring with its legal counsel, that this resolution/ authorization was properly and lawfully adopted following the requirements of our the City and applicable laws and policies that the City has full

Resolution No. ____
Page __ of __

legal authority to commit the City to the warranties,
certifications, promises and obligations set forth herein.

ADOPTED BY the City Council of the City of Des Moines,
Washington this ____ day of _____, 2024 and signed in
authentication thereof this ____ day of _____, 2024.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

**Recreation and Conservation Office
Applicant Resolution/Authorization**

Organization Name (sponsor) _____

Resolution No. (if applicable) _____

Project(s) Number(s), and Name(s) _____

This resolution/authorization authorizes the person identified below (in section 2) to act as the authorized representative/agent on behalf of our organization and to legally bind our organization with respect to the above Project(s) for which we seek grant funding assistance managed through the Recreation and Conservation Office (Office).

WHEREAS, state grant assistance is requested by our organization to aid in financing the cost of the Project(s) referenced above;

NOW, THEREFORE, BE IT RESOLVED that:

1. Our organization has applied for or intends to apply for funding assistance managed by the Office for the above "Project(s)."
2. _____ [insert
NAME AND TITLE OF AUTHORIZED REPRESENTATIVE/AGENT] is authorized to act as a representative/agent for our organization with full authority to bind the organization regarding all matters related to the Project(s), including but not limited to, full authority to: (1) approve submittal of a grant application to the Office, (2) enter into a project agreement(s) on behalf of our organization, (3) sign any amendments thereto on behalf of our organization, (4) make any decisions and submissions required with respect to the Project(s), and (5) designate a project contact(s) to implement the day-to-day management of the grant(s).
3. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office's WEBSITE at: <https://rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf>. We understand and acknowledge that if offered a project agreement to sign in the future, it will contain an indemnification and legal venue stipulation (applicable to any sponsor) and a waiver of sovereign immunity (applicable to Tribes) and other terms and conditions substantially in the form contained in the sample project agreement and that such terms and conditions of any signed project agreement shall be legally binding on the sponsor if our representative/agent enters into a project agreement on our behalf. The Office reserves the right to revise the project agreement prior to execution and shall communicate any such revisions with the above authorized representative/agent before execution.
4. Our organization acknowledges and warrants, after conferring with its legal counsel, that its authorized representative/agent has full legal authority to enter into a project agreement(s) on its behalf, that includes indemnification, waiver of sovereign immunity (as may apply to Tribes), and stipulated legal venue for lawsuits and other terms substantially in the form contained in the sample project agreement or as may be revised prior to execution.
5. Grant assistance is contingent on a signed project agreement. Entering into any project agreement with the Office is purely voluntary on our part.

6. Our organization understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the project agreement, the characteristics of the project, and the characteristics of our organization.
7. Our organization further understands that *prior to* our authorized representative/agent executing the project agreement(s), the RCO may make revisions to its sample project agreement and that such revisions could include the indemnification, the waiver of sovereign immunity, and the legal venue stipulation. Our organization accepts the legal obligation that we shall, prior to execution of the project agreement(s), confer with our authorized representative/agent as to any revisions to the project agreement from that of the sample project agreement. We also acknowledge and accept that if our authorized representative/agent executes the project agreement(s) with any such revisions, all terms and conditions of the executed project agreement (including but not limited to the indemnification, the waiver of sovereign immunity, and the legal venue stipulation) shall be conclusively deemed to be executed with our authorization.
8. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.
9. Our organization acknowledges and warrants, after conferring with its legal counsel, that no additional legal authorization beyond this authorization is required to make the indemnification, the waiver of sovereign immunity (as may apply to Tribes), and the legal venue stipulation substantially in form shown on the sample project agreement or as may be revised prior to execution legally binding on our organization upon execution by our representative/agent.
10. *[Recreation and Conservation Funding Board Grant Programs Only]* If match is required for the grant, we understand our organization must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non-cash matching share commitments to this project should they not materialize.
11. Our organization acknowledges that if it receives grant funds managed by the Office, the Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Office after we incur grant eligible and allowable costs and pay them. The Office may also determine an amount of retainage and hold that amount until the Project is complete.
12. *[Acquisition Projects Only]* Our organization acknowledges that any property acquired with grant assistance must be dedicated for the purposes of the grant in perpetuity unless otherwise agreed to in writing by our organization and the Office. We agree to dedicate the property in a signed "Deed of Right" for fee acquisitions, or an "Assignment of Rights" for other than fee acquisitions (which documents will be based upon the Office's standard versions of those documents), to be recorded on the title of the property with the county auditor.
13. *[Acquisition Projects Only]* Our organization acknowledges that any property acquired in fee title must be immediately made available to the public unless otherwise provided for in policy, the project agreement, or authorized in writing by the Office Director.
14. *[Development, Renovation, Enhancement, and Restoration Projects Only – If your organization owns the property]* Our organization acknowledges that any property owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity unless otherwise allowed by grant program policy, or Office in writing and per the project agreement or an amendment thereto.
15. *[Development, Renovation, Enhancement, and Restoration Projects Only – If your organization DOES NOT own the property]* Our organization acknowledges that any property not owned by our organization that is developed, renovated, enhanced, or restored with grant assistance must be dedicated for the purpose of the grant as required by grant program policies unless otherwise provided for per the project agreement or an amendment thereto.

16. [Only for Projects located in Water Resources Inventory Areas 1 – 19 that are applying for funds from the Critical Habitat, Natural Areas, State Lands Restoration and Enhancement, Riparian Protection, or Urban Wildlife Habitat grant categories; or the Puget Sound Acquisition and Restoration program, or a Salmon Recovery Funding Board approved grant] Our organization certifies the following: the Project does not conflict with the Puget Sound Action Agenda developed by the Puget Sound Partnership under RCW 90.71.310.

17. This resolution/authorization is deemed to be part of the formal grant application to the Office.

18. Our organization warrants and certifies, after conferring with its legal counsel, that this resolution/authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that our organization has full legal authority to commit our organization to the warranties, certifications, promises and obligations set forth herein.

[Native American Tribes, Local Governments, and Nonprofit Organizations Only] This application authorization was adopted by our organization during the meeting held:

Location_____

Date_____

[All Applicants] Signed and approved on behalf of the resolving body of the organization by the following authorized member(s):

Signed_____

Title_____Date_____

Washington State Attorney General's Office

Approved as to form Brian Toller 1/19/18
Assistant Attorney General Date

You may reproduce the above language in your own format; text however may not change.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Public Records Fee Schedule Update

FOR AGENDA OF: January 9, 2025

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

1. Draft Resolution No. 24-037
2. Proposed Amended Fee Schedule
3. Statement of Factors and Manners Used to Determine Actual Costs

DATE SUBMITTED: January 2, 2025

CLEARANCES:

- [X] City Clerk *JK*
[] Community Development ____
[] Courts ____
[] Director of Marina Redevelopment ____
[] Emergency Management ____
[X] Finance *MM*
[] Human Resources ____
[X] Legal */s/ TG*
[] Marina ____
[] Police ____
[] Parks, Recreation & Senior Services ____
[] Public Works ____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this agenda item is for the Council to consider Draft Resolution No. 24-037 amending the City's Public Records Fee Schedule to allow the City to recoup the actual costs expended when providing public records.

Suggested Motion

Motion 1: "I move to enact Draft Resolution No. 24-037, amending the City's Public Records Fee Schedule."

Background

The Public Records Act (PRA) mandates that every government agency provide public records upon request and allows agencies to charge reasonable fees for providing these records. The City's current Fee Schedule was adopted in 2012. At that time the PRA allowed cities to calculate and charge the actual cost of providing photocopies, or charge a maximum of \$0.15 per page for photocopies.

Given technological changes that have resulted in changes to the ways in which cities provide public records, in 2017 the Legislature amended the PRA to allow cities to recoup the actual cost of providing records in formats other than photocopies. The PRA now explicitly lists scanned documents, electronic files/attachments, digital storage media devices, and mail as additional methods for which cities may recoup actual or statutory costs for when providing public records. If a city opts for the statutory charge for any particular method, they must explain why calculating the actual cost would be unduly burdensome.

The current Public Records Fee Schedule provides that photocopies will be charged at \$0.15 per page for any records over ten pages, envelopes, packaging, and postage are charged at the actual costs, and CDs will be charged at the actual cost of the CD plus a \$0.10 per page scan fee for records over ten pages.

Discussion

The current Fee Schedule does not fully reimburse the City for the costs associated with providing public records. Therefore, it is proposed that the Fee Schedule be amended to:

- \$0.15 per page for photocopies;
- Actual costs of vendor's fees for providing records on plotter paper sizes D and E;
- The average per minute staff wage of \$1.02 for scanning records into electronic format and uploading records to email/cloud-based storage;
- \$0.05 per every 4 attachments and \$0.10 per gigabyte for sending records electronically;
- The average per minute staff wage of \$1.02 for transferring/downloading records to digital storage media devices;
- The average per minute staff wage of \$1.02 for mailing records plus the actual cost of packaging and postage;
- Actual costs of vendor's fees for jobs requiring technical expertise; and
- The average per minute staff wage of \$0.96 for redacting body-worn camera footage.

The average per minute staff wage was calculated by totaling all wages plus benefits for staff that respond to public records requests, dividing that by the number of staff, then dividing that by 124,800 (the number of working minutes in a year). It was not possible to establish the actual costs associated with providing records via photocopy or email attachment so the rates listed above are the statutory costs. The reasons those costs were unduly burdensome to calculate are contained in the Statement of Factors and Manners Used to Determine Actual Costs.

This fee schedule incorporates all the possible ways in which public records might be transmitted and therefore, allows the City to be fully reimbursed for the costs associated with providing public records. These fee increases were discussed with the Council throughout the 2025-26 budget process.

Our neighboring cities largely rely on the default fees as set out in RCWs. Our proposed fee schedule also relies on these defaults where appropriate but will be charging our actual costs where we believe the

statutory fees would not adequately recapture our costs. It is important to remember that the PRA does not allow us to use these fees to generate revenue, but they are designed to be at best revenue neutral.

Alternatives

The Council may:

1. Enact the draft resolution as presented.
2. Enact the draft resolution with changes.
3. Decline to enact the draft resolution.

Financial Impact

It is anticipated that there would be an additional \$20,000 in recouped costs per year.

Recommendation

Staff recommends the Council enact Draft Resolution 24-037.

Council Committee Review

N/A

CITY ATTORNEY'S FIRST DRAFT 12/2/2024

DRAFT RESOLUTION NO. 24-037

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, relating to fees recouped by the City when responding to public records requests and updating the City's Public Records Fee Schedule pursuant to chapter 42.56 RCW.

WHEREAS, the Washington State legislature passes several amendments to the Public Disclosure Act (chapter 42.17 RCW) at each legislative session including recodifying the Act as chapter 42.56 RCW entitled the Public Records Act, and

WHEREAS, the City of Des Moines is a municipal corporation of the State of Washington which provides general municipal services to its residents and others, and

WHEREAS, providing copies of public records is a growing expense for taxpayers, and

WHEREAS, RCW 42.56.070(7), RCW 42.56.240(14), and RCW 42.56.120 prescribes that agencies may be reimbursed for the cost of providing copies of records, and

WHEREAS, the City's current Public Records Fee Schedule does not reimburse the City for costs associated with fulfilling public records requests as allowed by the Public Records Act, and

WHEREAS, the City has calculated and prepared a Statement of Factors and Manner Used to Determine Costs for Producing Copies, attached hereto as Exhibit B, which identifies the justification for the fees recommended for adoption in a public records fee schedule, and

WHEREAS, RCW 42.56.070(7) requires a public hearing be held regarding adopting a fee schedule, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and the public hearing was held on the 9th day of January, 2025, and all persons wishing to be heard were heard, and

WHEREAS, the City wishes to adopt the amended Public Records Fee Schedule, attached as Exhibit A; now therefore,

Resolution No. _____
Page 2 of 2

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

Sec. 1. Adoption of the Public Records Fee Schedule.

The City adopts the amended Public Records Fee Schedule attached in Exhibit A. The City's Statement of Factors and Manner Used to Determine Actual Costs for Producing Copies is attached as Exhibit B.

Sec. 2. If a section, subsection, paragraph, sentence, clause, or phrase of this Policy or Fee Schedule 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 the Policy or Fee Schedule.

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

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2025 and signed in authentication thereof this ____ day of _____, 2025.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

EXHIBIT A

City of Des Moines Public Records Fee Schedule

Service/Size	Unit	Fee
In-Person records inspection at a City facility	Appointments available during regular business hours	Free
Access to or downloading records on the City's website	Direct web links to records already available on the City's website	Free
Photocopies, printed copies of electronic records, or for use of City equipment to make photocopies in standard size paper - 11" x 17" or smaller (black and white)	Per page (1 sided)	\$0.15
Photocopies, printed copies of electronic records, or for use of City equipment to make photocopies in plotter paper size D - 24" x 36" (black and white)		Actual cost of vendor's fees

Photocopies, printed copies of electronic records, or for use of City equipment to make photocopies in plotter paper size E - 36" x 48" (black and white)		Actual cost of vendor's fees
Records scanned into an electronic format or use of City equipment to scan records	Per minute	\$1.02
Records uploaded to email, cloud-based data storage service, or other means of electronic delivery	Per minute	\$1.02
Electronic files/attachments uploaded to email	Per 4 electronic files/attachments	\$0.05
Records transmitted in electronic format or for use of City equipment to send records electronically	Per gigabyte	\$0.10

Digital storage media or devices such as CD, DVD, thumb drive, etc.	Per device	Actual cost
Transferring/downloading records for delivery, including but not limited to: to a digital storage media device (as CD, DVD, thumb drive, etc.), to email, or to cloud-based storage service	Per minute	\$1.02
Mailing records	Per envelope/package	Actual cost of envelope or container, postage and delivery fees, and \$1.02 per minute of staff time
Technical expertise to prepare data compilations or provide customized access to data or records	Per job requiring expertise	Actual cost of staff time or vendor's fees
Body worn camera recording that must be redacted or otherwise obscured to comply with statutory exemptions	Per minute spent applying redactions	Parties directly involved in the incident recorded and/or listed in RCW 42.56.240(14)(e)(i): No charge Parties not directly involved or listed in RCW 42.56.240(14)(e)(i): \$0.96 per minute

***The above fees may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request**

****If the estimated cost of producing requested records is \$50.00 or more, the City reserves the right to collect a non-refundable 10% deposit of the estimated fees before beginning work on the request. After the deposit is received, staff will commence work. Once the records are available, an invoice will be sent for the total actual cost minus the deposit amount. The records will be provided after full payment is received.**

*****Records of the Des Moines Municipal Court are not “public records” for the purposes of the Public Records Act. Access to court records are governed by General Rules 31 and 31.1 of the Washington State Court Rules. Requests for court records should be filed with the court.**

******A credit card surcharge may be added to any transaction paid by credit card at the actual cost.**

EXHIBIT B

STATEMENT OF FACTORS & MANNERS USED TO DETERMINE COSTS

- **RECORDS AVAILABLE AT NO COSTS**

- In Person Review: Appointments for in person review of public records can be made during regular business hours at the Des Moines City Hall. Once the requested records are located, City staff will contact the requestor to schedule an appointment. Appointment time slots range from thirty (30) minutes to two (2) hours. If more than two (2) hours is required, another appointment must be scheduled.
- Records on the City's Website: The City has made many commonly requested records available online on its website (<https://www.desmoineswa.gov>). If records are requested that are available on the City's website, staff will provide direct links to those records at no charge.

- **PAPER COPIES**

- Standard Sized Paper - 8.5" x 11" (Letter), 8.5" x 14" (Legal), and 11" x 17" (Tabloid)
 - The City leases its printers/copiers annually whereby the lessor replaces ink/toner whenever it is needed as included in the annual fee, meaning that it is not possible to determine a flat rate for the cost of ink/toner used per page. Also, due to the differences in size and quality of paper purchased by the City each year it is not possible to determine a flat rate for the cost of each piece of paper. Therefore, the City has determined it would be unduly burdensome to calculate the per page cost to print public records and has elected to not recoup the actual cost of ink/toner or paper. Instead, the City adopts the statutory amount of \$0.15 per page for paper copies.
 - Total cost = \$0.15 x number of one-sided pages printed
- Plotter Paper – 24" x 36" (Size D) and 36" x 48" (Size E)
 - If a requestor would like a printed copy of records to size D or size E paper the city will either provide the requestor an electronic copy of the records that the requestor can then take to a commercial copying center for printing. Or, the City will send the records to a commercial copying center for printing in which case the commercial copying center will bill the requestor directly.
 - The requestor may be charged the cost of scanning the records into electronic format if applicable.

- **COPYING PHYSICAL RECORDS TO ELECTRONIC FORMAT (SCANNING)**

- Due to the inconsistent characteristics of paper records, it is not possible to determine a flat rate for digitizing them. Instead, the City will only charge the average staff wage plus benefits per minute of \$1.02.
- Prior to starting the digitization process, the staff member will start a timer and calculate the time it takes to do the following:

- Remove the physical record from its original location (excluding any time spent locating the record).
- Remove any paper clips, binder clips, staples, binding, etc.
- Count the number of pages of each original record.
- Determine the sizing of papers and whether they are 1-sided or 2-sided, then setting the printer to scan accordingly.
- Repair any torn or damaged pages for scanning.
- Remove any post-it notes or other types of attachments to the pages that would jam the scanner/printer.
- Make the scans using City equipment.
- Compare the digital scanned copy to the original copy and ensure all pages were scanned and of good quality.
- Rename the scanned files as necessary.
- Organize the digital files to mimic the organization of the original paper records.
- Return the original paper records to their proper location (includes re-attaching any post-its or other attachments and re-clipping, re-binding, and/or re-stapling the records).
- Total cost = wage per minute of \$1.02 x minutes taken to complete above tasks

- **ELECTRONIC RECORDS**

- Records transmitted in electronic format or for use of City equipment to send records electronically
 - The City sends electronic copies of records via the email using Microsoft 365 Outlook. The City pays a yearly flat maintenance rate for this service and the number of attachments emailed, and their size, varies from year to year. Thus, it is not possible to determine the actual cost per attachment or per gigabyte for sending electronic records.
 - The City has established that it is unduly burdensome to determine the per attachment and per gigabyte fee for sending electronic copies. Therefore, the City is electing to use the statutory default rates established by RCW 42.56.120(2)(b) of \$0.05 per every 4 attachments and \$0.10 per gigabyte.
- Copying Electronic Records to a Storage Device
 - The actual cost of the storage device will be charged to the customer along with the cost of the average staff wage of \$1.02 per minute for the time it takes to copy the records to the storage device.
 - The following steps will be timed to calculate the per minute fee of copying records to a storage device:
 - Exporting or downloading files from their original locations.
 - Formatting the storage device, if necessary.
 - Uploading the files onto the storage device.
 - Confirming that all files were successfully copied.
 - Renaming and organizing records, if necessary.

- Labeling the storage device with the request number, customer name, installment number, and any other pertinent information.
 - Providing instructions to the customer for when and how to pay for and pick up the storage device with their record copies.
- Total cost = wage per minute of \$1.02 x minutes taken to complete above tasks
- Records will be provided to a storage device upon request by the requestor.
- To prevent viruses or corrupt files from entering the City's networks, requestor-provided storage devices are not permitted to be connected to City computers or networks under any circumstance. Should a storage device be needed, the City will purchase the most cost-effective option available at that time. The requestor will reimburse the City for the actual cost of the device, including tax and shipping if applicable.
- When records are provided in installments, a new storage device will be required for each installment. Records will not be broken into smaller installments to accommodate using multiple, smaller/less expensive storage devices. If the size of the files exceeds the limit of the largest flash drive available, or if it would be more cost-effective to do so, an external hard drive will be used.
- Copying Electronic Records to email, cloud-based storage service, or other means of electronic delivery
 - The actual cost of the average staff wage of \$1.02 per minute for the time it takes to copy the records to email, cloud-based storage service, etc.
 - The following steps will be timed to calculate the per minute fee of copying records to a storage device:
 - Exporting or downloading files from their original locations.
 - Uploading the files to the method of electronic delivery.
 - Confirming that all files were successfully copied.
 - Renaming and organizing records, if necessary.
 - Providing instructions to the customer for how to access the records (if applicable).
 - Total cost = wage per minute of \$1.02 x minutes taken to complete above tasks
- **ADDITIONAL RECORDS FEES**
 - Mailing Records – Due to the inconsistent characteristics of what records might be requested to be mailed to a customer, it is not possible to determine a flat rate for mailing. Instead, the City will charge the average staff wage plus benefits per minute of \$1.02 to perform the below-listed actions, plus the actual cost of the envelope, box, or container the records will be shipped in, the postage cost and any other delivery-related fees, and any applicable taxes.
 - Prior to starting preparation of the mailing, a staff member will start a timer and calculate the time it takes to do the following:
 - Prepare the envelope or package (address the envelope, tape a box, etc.).

- Weigh the envelope or parcel.
- Calculate the postage.
- Deliver the envelope or parcel to a post office if special handling is required beyond what the City's postage machine and/or mail services can accommodate.
- Total cost = wage per minute of \$1.02 x minutes taken to complete above tasks + actual cost of shipping materials and postage
- Technical Expertise - Though rare, if technical expertise is necessary to copy records or data for a request, and these records or data are not used by the City for any City-related purpose, City staff will identify to the best of their ability an internal staff member or vendor who can create a custom report, query, script, program, etc. to export or copy the requested record or data from the system or device it is stored in.
 - The actual per minute wage (including benefits) of an internal staff member's time will be charged, or the actual cost of the vendor's services will be charged to the customer.
- Body Worn Camera Video Redaction
 - The cost to redact body worn camera video records is \$0.96 per minute. This fee only applies to customers that do not meet the criteria outlined in RCW 42.56.240(14)(e)(i).
 - A staff member will record their time spent redacting video and audio and creating an exemption log that details timestamps for redactions along with a description of what was redacted and the legal statute requiring or allowing the redaction.
 - The average per minute wage plus benefits cost of the staff who redact Des Moines Police body worn camera videos is \$0.96.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: City of Des Moines Mission, Vision
& Values

ATTACHMENTS:

1. City of Des Moines' Mission & Vision

FOR AGENDA OF: January 09, 2025

DEPT. OF ORIGIN: City Manager's Office

DATE SUBMITTED: December 3, 2024

CLEARANCES:

- ☐ City Clerk _____
☐ Communications _____
☐ Community Development _____
☐ Courts _____
☐ Emergency Management _____
☐ Finance _____
☐ Human Resources _____
☒ Legal /s/TG _____
☐ Marina _____
☐ Police _____
☐ Parks, Recreation & Senior Services _____
☐ Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to seek City Council's formal approval of the Mission, Vision, and Values Statement created and designed by City Council on November 17, 2024.

Suggested Motion

Motion:

"I move to approve the City of Des Moines' Mission, Vision, and Values Statement."

Background

The City Council met on November 17, 2024 to create the Mission, Vision, and Core Values Statement for the City of Des Moines. This document will provide important guidance to the organization moving forward.

Discussion**Alternatives****Financial Impact****Recommendation**

Administration recommends approval of the motion.



Mission & Vision

Des Moines is a waterfront community committed to building a safe, sustainable environment, by providing a high quality of life for all to live, work and play.

VISION

To be the premiere marine destination in the Pacific Northwest.

VALUES

Core Values of the City of Des Moines are:

- Safety
- Sustainability
- Integrity
- Transparency
- Innovation

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Des Moines Marina Steps Project

FOR AGENDA OF: January 9, 2025

ATTACHMENTS:

1. None

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: January 3rd 2025

CLEARANCES:

[] City Clerk _____
[] Community Development _____
[] Courts _____
[X] Finance *MT 21*
[] Human Resources _____
[X] Legal /s/ TG
[X] Marina *SW*
[] Police _____
[] Parks, Recreation & Senior Services _____
[X] Public Works *WPS*

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this Agenda Item is to brief Council on possible courses of action for the Des Moines Marina Steps project.

Suggested Motion

Motion: None

Background:

The Des Moines Marina Steps Capital project has been ongoing since Spring of 2023 and since that time staff and consultants have been working diligently to receive public input, design, and permit the project. Including a public forum on the project including design components in February of 2024.

The City of Des Moines Council has moved the Des Moines Marina Steps project forward through a series of legislative actions including approving the issuance of bonds to finance the project, and the City of Des Moines Capital Improvement Plan in 2023. Prior to 2023 the project was included under Marina Redevelopment within the CIP.

On October 9th of 2024 the project was advertised for bid and on November 20th of 2024 two bids and two responsive bids were received. The engineers' estimate to construct the project was \$8,167,151 excluding design, permitting, and construction management. Both bids were substantially higher than the engineers' estimate coming in at \$11,741,741 and \$12,512,989 respectively. The low responsive bid was \$3,574,590 over the estimated project construction cost.

Public Works recommended the rejection of all bids due to lack of funds to accomplish the work as bid. The council approved the rejection of all bids on December 12th of 2024 and asked for an update including possible courses of action during the January 9th of 2025 council meeting.

Discussion

Staff will be presenting possible courses of action to the council and requesting direction from the council on the future of the project.

Alternatives

Some of the alternatives include:

- 1) Value engineering and rebid- requires a design amendment of approximately \$100,000 for the effort would include a reduction in scope
- 2) Delay and pursue additional funding then rebid
- 3) Postpone and reevaluate the project including long term strategies for the stairs and other major capital development projects connecting Beach Park facilities, Marina, and Downtown.

Financial Impact

Funding Sources: \$10,739,000

- 1) Bond Proceeds: \$7,869,000

- 2) Department of Commerce Grant: \$1,000,000
- 3) Stormwater Grant \$500,000
- 4) ARPA Money (Removed from Project) ~~\$1,370,000~~

Project Estimated Budget: \$10,739,000

- 1) Design and Permitting: \$1,060,100
- 2) Construction: \$8,167,151
- 3) Construction Management: \$833,400
- 4) Contingency: \$678,349

Recommendation

No recommendation- staff seeks direction.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Des Moines Creek Estuary Project
Update

ATTACHMENTS:

1. Des Moines Creek Estuary Project
Presentation

AGENDA OF: January 9, 2025

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: January 2, 2025

CLEARANCES:

- ☐ City Clerk _____
- ☐ Community Development _____
- ☐ Courts _____
- ☐ Director of Marina Redevelopment _____
- ☐ Emergency Management _____
- ☒ Finance *ML 2/1*
- ☐ Human Resources _____
- ☒ Legal */s/ TG*
- ☐ Marina _____
- ☐ Police _____
- ☐ Parks, Recreation & Senior Services _____
- ☒ Public Works *MPS*

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this Agenda Item is to brief City Council on the preliminary design progress of the Des Moines Creek Estuary Project. General consensus is sought on the staff-recommended design alternative.

Suggested Motion

Motion: None.

Background

The Des Moines Creek drainage basin is home to coho salmon, chum salmon, steelhead, and cutthroat trout which have been historically identified in the lower reaches of Des Moines Creek. The lower reaches of the creek around Des Moines Beach Park provide some of the most heavily utilized fish habitat within the watershed, due primarily to its vicinity and accessibility to Puget Sound.

The Des Moines Creek Estuary Project is highlighted as a salmon-recovery capital project in the Green/Duwamish and Central Puget Sound Watershed's (WRIA 9) Salmon Habitat Plan. Project goals at the mouth of Des Moines Creek include restoring and securing access to the stream, creating safe fish passage, removing rock armoring from the stream bank, and creating a pocket estuary.

The City applied for a King County Flood Reduction Grant in the summer of 2022 and the Des Moines Creek Estuary Project was awarded grant funding in the amount of \$250,000. The Agreement for Award of Flood Reduction Grant Funds was approved by the City Council at its April 13th, 2023 meeting. With the support of WRIA 9, the City applied for the Cooperative Watershed Management (CWM) Grant opportunity in the Spring of 2023. The King County Flood Control District voted unanimously to award the project for the requested amount of \$250,000. The Agreement for Award of Grant Funds was approved by the City Council at its December 14th, 2023 meeting.

These grant funds were awarded to support the project through the first phase of site assessment, conceptual design, and 30% preliminary engineering design. At the May 11th, 2023 Council meeting an On-Call General Engineering Services Task Assignment with Parametrix was approved to begin the preliminary engineering design.

Discussion

City staff, in collaboration with consultant support, have developed a presentation (Attachment 1) to brief the Council on the progress of the project and solicit their input. The presentation will provide a summary of the project's design efforts to date, including site considerations, identified constraints, and the staff-recommended design alternative.

Financial Impact

Current funding of the Des Moines Creek Estuary Project CIP is provided by the two secured grants, totaling \$500,000. No additional funding is expected to be required at this time to complete the grant obligations.

Council Committee Review

Council Environment Committee has been routinely updated on the status and progress of this project.



DES MOINES CREEK ESTUARY RESTORATION

01/09/2025

Parametrix

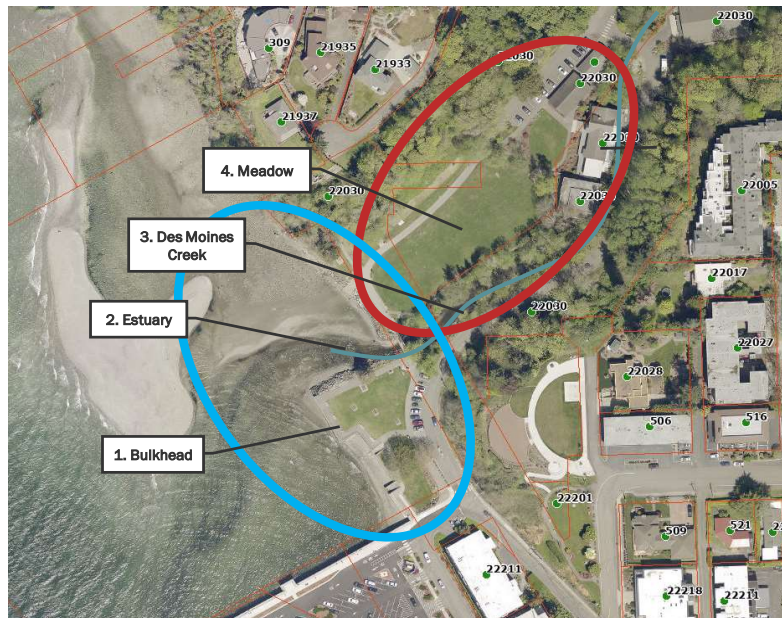
MAOLE
OD-RE
CKORD


moffatt & nichol





PROJECT BACKGROUND



2023 Aerial

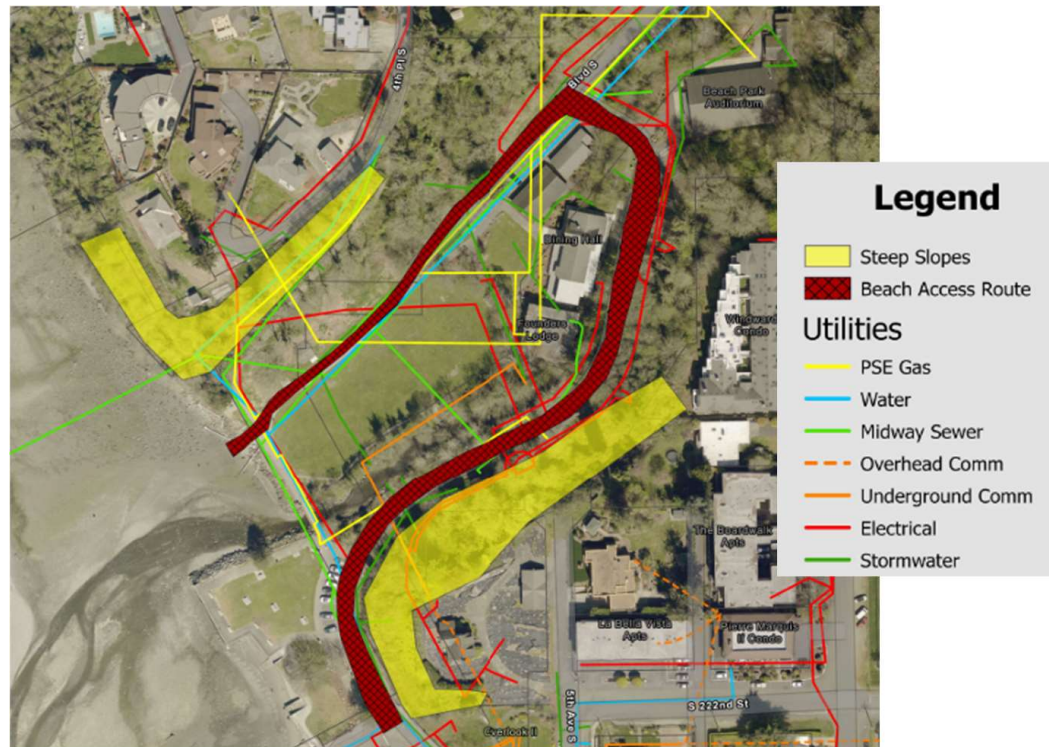




CONSTRAINTS

Constraints

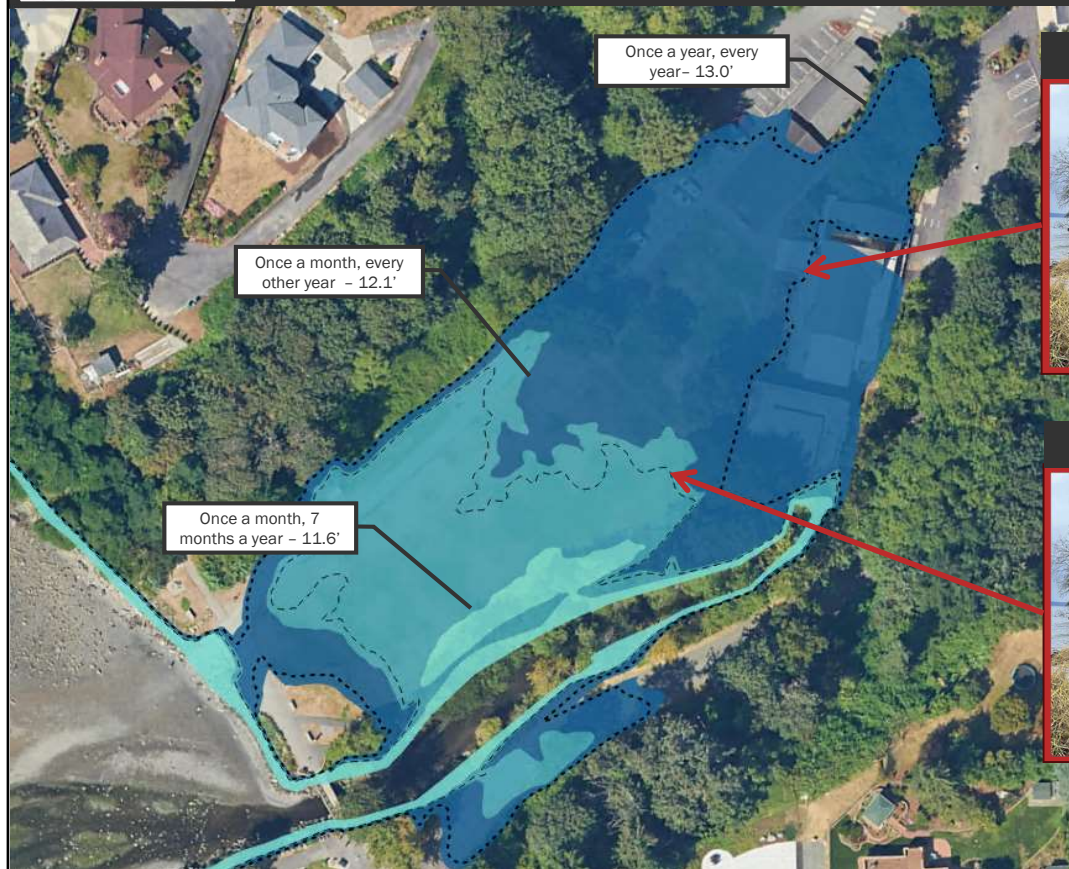
- Steep Slopes
- Beach Access
- Utilities



Parametrix



PREDICTED FLOODING - 2100



December 2022 King Tide

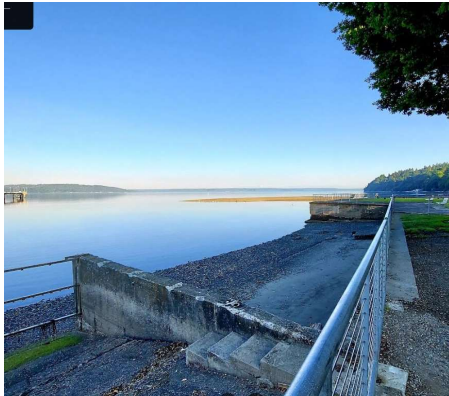
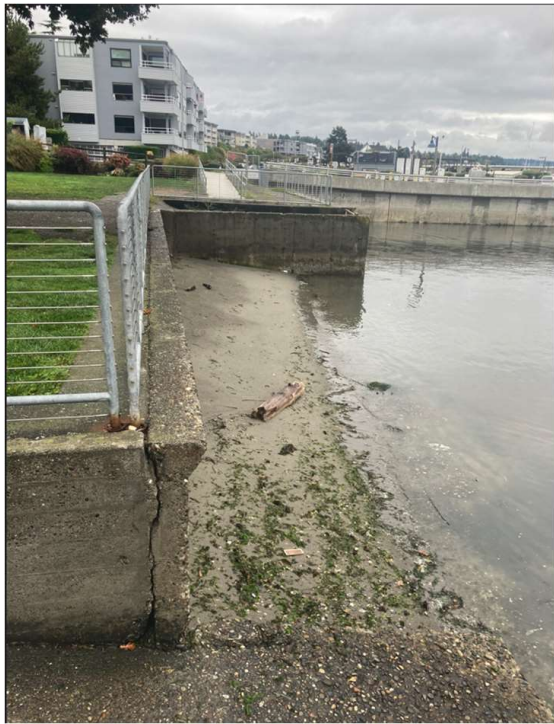


December 2024 Tide



Parametrix

X BULKHEAD CONDITION

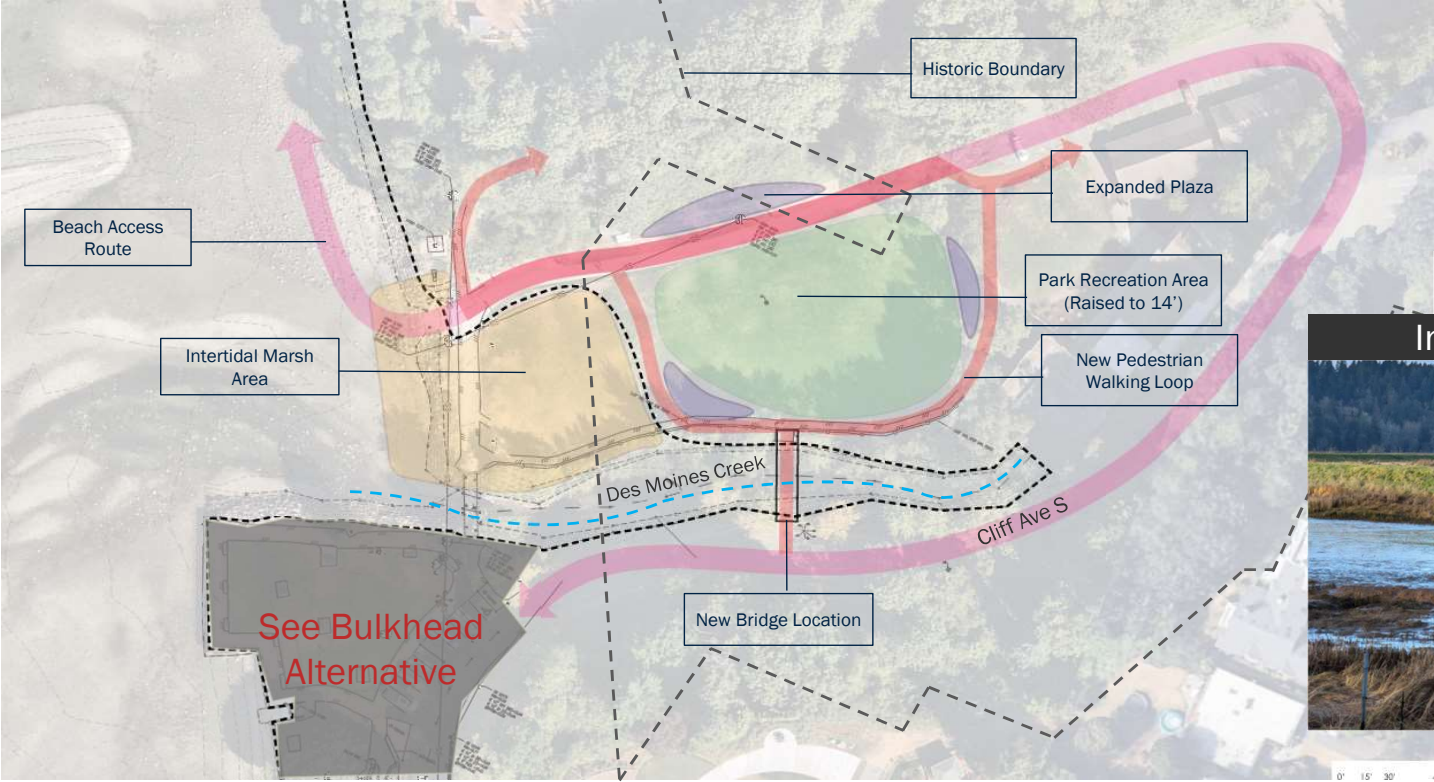


12/18/2024 7:48 AM

Parametrix



STAFF PREFERRED MEADOW ALTERNATIVE

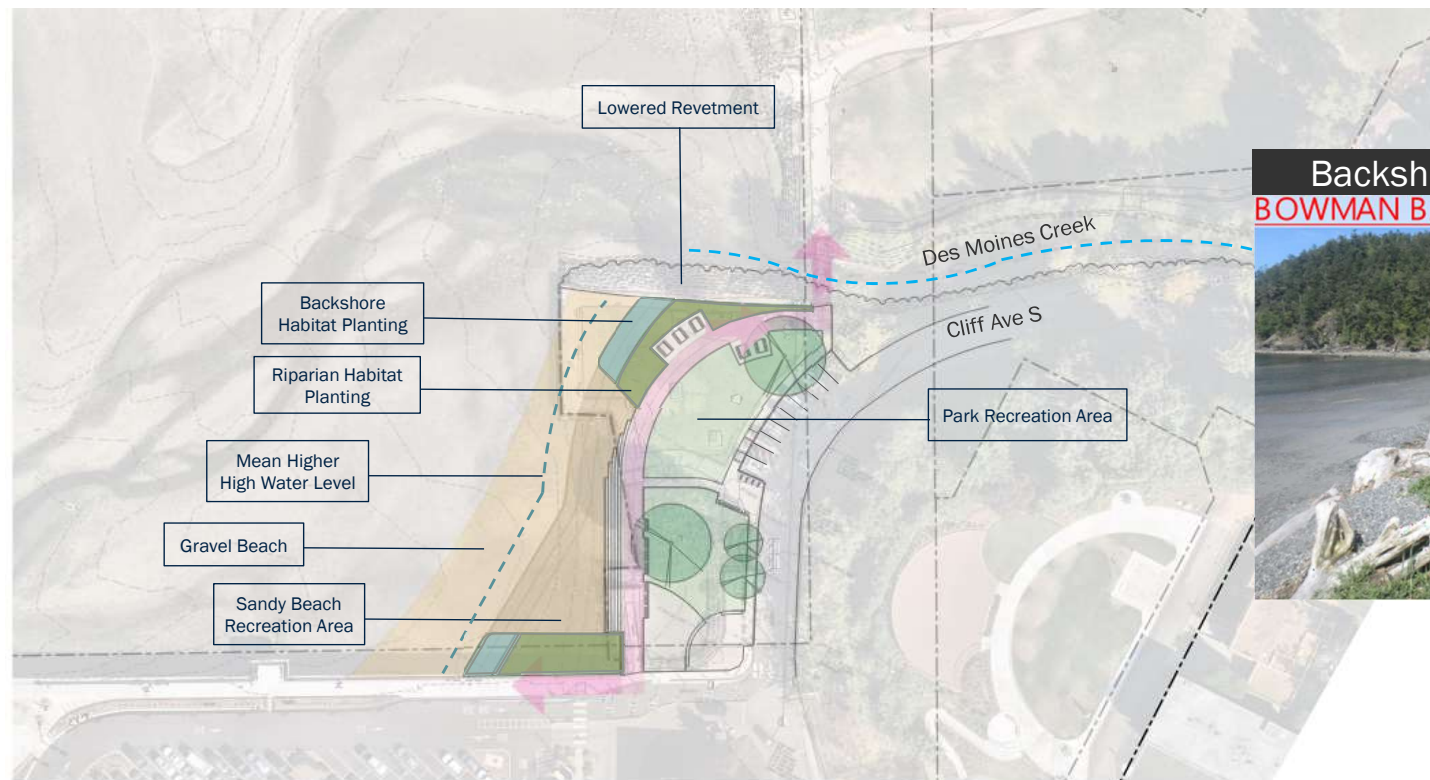


Parametrix





STAFF PREFERRED BULKHEAD ALTERNATIVE



Backshore Habitat Planting BOWMAN BAY STATE PARK



ParametriX



Questions?



A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Telecommunications Franchise
Agreement with Ezee Fiber

FOR AGENDA OF: January 9, 2025

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: December 31, 2024

1. Draft Ordinance No. 24-107
2. Exhibit 1-A showing preliminary alignment
for Fiber Optic installation

CLEARANCES:

- ☐ City Clerk _____
- ☐ Community Development _____
- ☐ Courts _____
- ☒ Finance *MT 2/*
- ☐ Human Resources _____
- ☒ Legal */s/ TG*
- ☐ Marina _____
- ☐ Police _____
- ☐ Parks, Recreation & Senior Services _____
- ☒ Public Works *WPS*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this agenda item is for the City Council to conduct a first reading of a telecommunications Franchise Agreement with Ezee Fiber for the installation of fiber optic facilities in City right-of-way. Under State law, telecommunication Franchise Agreements require two readings by the City Council.

Suggested Motion

Motion 1: "I move to pass Draft Ordinance No. 24-107 to a second reading on the next available City Council agenda."

Background

A franchise agreement authorizes an entity to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public. The grant of a franchise is a special privilege that allows particular individuals to profit from the use of the city streets in a manner not generally available to the public as a common right. The legislature has

granted authority to cities to grant a nonexclusive franchise. RCW 35A.47.040. Once granted, a franchise is a contract which is binding on both the grantor and the grantee.

Ezee Fiber submitted a telecommunications franchise application in October of 2024 seeking to deploy fiber optic cables and equipment in City right-of-way to provide voice and data service to businesses and residential customers. The routes and service areas shown in Attachment 2 are preliminary only and will be finalized once permits are applied for and they are reviewed and approved by City staff.

The City has a standard telecommunications franchise template that was used as the basis for this agreement.

Discussion

The key terms of the franchise agreements are detailed below. The terms of the agreements are largely identical to approved telecommunications franchises previously issued by the City.

1. **Franchise Term:** The term of the Franchise is for 10 years. After 5 years, if either party identifies a specific issue that needs to be addressed, the parties are required to meet to negotiate. This language requires the parties to discuss such issues in good faith at the half-way mark of the 10 year term.
2. **Relocation:** Ezee Fiber is solely responsible for relocation costs unless state law requires otherwise. RCW 35.99.060 applies specifically to telecommunications franchises and requires cities to share in some relocation costs for specific instances where a city requires relocation for a private party's benefit or if a city requires relocation twice within a 5 year period.
3. **Right of Way Management, Planning, and Operations:** The Franchise reflects current City practice. Ezee Fiber is required to follow City permitting processes prior to installation of facilities or any work in the right-of-way.
4. **Indemnification and Insurance:** The Agreement provides that Ezee Fiber will indemnify the City for actions of the company or their agents. Ezee Fiber is required to maintain \$5,000,000 in automobile and general liability insurance coverage. This coverage exceeds any reasonably expected liability that could occur from this Agreement.
5. **Franchise Fee:** Ezee Fiber will pay the City a one-time franchise fee of \$5,000. This flat fee is consistent with RCW 35.21.860 which requires that a franchise fee be limited to the actual administrative expenses incurred by the City in the negotiation of the franchise. This amount will reimburse the City for the staff costs of the negotiations over the last several months.
6. **Taxes:** Under DMMC 3.68.060(3) the City imposes a 6% tax on telephone businesses. To the extent that revenue is received from the installation of these facilities, the City will receive 6%.
7. **Abandonment:** The Franchise requires that Ezee Fiber remove any facilities that have been abandoned in the right of way at their own expense. The City has the option to allow them to be abandoned in place or removed.
8. **Vacation** – The proposed language is an accurate reflection of current practice and does not restrict the City's authority to vacate a right of way. The Agreement requires the City to notify Ezee Fiber of a vacation so that they can obtain an easement if one is needed.

9. Collaboration on City projects – This Agreement expressly calls out RCW 35.99.070 which requires a service provider that is operating in public right-of-way to provide the City with additional duct or conduit for the City’s purposes. The City would receive this benefit at cost under the Franchise Agreement.

10. Additional Terms – The majority of the remainder of the Agreement is boilerplate legal language. All language and terms have been thoroughly reviewed and negotiated and the City’s interests are protected throughout these Agreements.

Alternatives

1. Pass the Draft Ordinance to a second reading as written.
2. Pass the Draft Ordinance to a second reading with proposed amendments to be negotiated with Ezee Fiber.
3. Do not pass the Draft Ordinance to a second reading and direct staff to continue negotiations.

Financial Impact

The City will receive an initial \$5,000 to cover the City’s costs of the negotiation of this Franchise Agreement. Additionally, the City will receive all permitting costs for work to be conducting and any additional staffing time that is spent administering this Agreement can be billed to Ezee Fiber.

Finally, the City will receive 6% utility tax on the telephone business conducted by Ezee Fiber.

Recommendation

The Legal Department, Planning, Building, and Public Works, and Finance Department recommend passing the Draft Ordinance to a second reading.

DRAFT ORDINANCE NO. 24-107

AN ORDINANCE OF THE CITY OF DES MOINES granting a non-exclusive Franchise to construct, install, operate, maintain, repair, or remove telecommunications facilities within the public ways of the City of Des Moines ("City") to Ezee Fiber d/b/a Ezee Fiber Texas, LLC ("Grantee"). Grantee's telecommunications facilities shall not include antennas and support structures specifically for attaching antennas that are used for personal wireless communications services. The City and Grantee are sometimes hereinafter collectively referred to individually as a "party" and collectively as the "parties."

WHEREAS, Ezee Fiber d/b/a Ezee Fiber Texas, LLC, a corporation organized and existing under the laws of the State of Texas is a competitive telecommunications company providing telecommunication services, including voice, internet and data services, which desires to occupy the City of Des Moines rights-of-ways to install, construct, operate, and maintain its telecommunications facilities and network for the purpose of providing services to its customers at locations within the City, and

WHEREAS, the Grantee, Ezee Fiber, has represented to the City that it provides a telephone business as defined by RCW 82.16.010 or acts as a service provider as such term is defined in RCW Section 35.99.010, and

WHEREAS, Grantee has applied to the City for a non-exclusive telecommunications service franchise to enter, occupy, and use public ways to construct, install, operate, maintain, and repair telecommunications facilities to offer and provide telecommunications service for hire, sale, or resale in the City, and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises within the boundaries of the City, and

WHEREAS, the 1934 Communications Act, as amended relating to telecommunications providers recognizes and provides local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis, and

WHEREAS, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the City, including without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the City after review of specific plans, and

WHEREAS, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways, and

WHEREAS, the City and Grantee desire to effectuate good coordination of the use of the rights-of-way, and

WHEREAS, the City Council finds that the franchise terms and conditions contained in this Ordinance are in the public interest; now therefore,

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

Sec. 1. Definitions.

(1) **Use of words and phrases.** For the purposes of this Franchise, the following terms, phrases, words, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in the Des Moines City Code (DMMC), or in the Federal Communications Act of 1934 as amended, unless inconsistent herewith. The headings contained in this Franchise are to facilitate reference only, do not form a part of this Franchise, and shall not in any way affect the construction or interpretation hereof. The words "shall," "will," and "must" are mandatory, and the word "may" is permissive or directory.

(2) "Abandonment" means the disconnection by the Grantee of specific Facilities from the telecommunications system.

(3) "Affiliate" means any Person who owns or controls, is owned by or controlled by, or is under common ownership or control with Grantee.

(4) "Cable Act" means the Cable Communications Policy Act of 1984 as amended and as may be amended from time to time during the term of this Franchise (47 U.S.C. § 521 et seq., as amended).

(5) "Cable service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(6) "City Council" means the governing body of the City.

(7) "Communications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(8) "Communications applications fees and charges" includes fees and charges connected to right-of-way management, construction permit, permit design fee, building permit, encroachment permit, inspections and pavement restoration.

(9) "Communications service" means the offering of communications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(10) "Communications system" or "system" means only those facilities necessary for Grantee to provide Communications services.

(11) "Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines.

(12) "Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

(13) "Dark fiber" means properly functioning optical cable which is not used or available for use by Grantee or the general public, but may be made available for use under lease to third parties.

(14) "Effective date" means five days following the publication of this Franchise or a summary thereof occurs in an official newspaper of the City as provided by law.

(15) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

(16) "Facilities" means, collectively, any and all telecommunications transmission systems and appurtenances owned by Grantee, now and in the future, in the Franchise Area, including, but not limited to, wire, radio, optical cable, electromagnetic or other similar types of equipment and related appurtenances in any way comprising part of the System.

(17) "FCC or Federal Communications Commission" means the agency as presently constituted by the United States Congress or any successor agency with jurisdiction over telecommunications service matters.

(18) "Fiber optic" means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying telecommunication service by means of electric light-wave impulses.

(19) "Franchise area" means the area within the jurisdictional boundaries of the City, including any annexed areas, to be served by Grantee as specified in this Franchise.

(20) "Gross Revenues" means all gross revenues received by Grantee or its affiliates from the provision of intrastate telephone business activities in the City of Des Moines, as described in Utility Tax below.

(21) "Incremental costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred.

(22) "Optical cable" means wires, lines, cables and communication and signal lines used to convey communications by fiber optics.

(23) "Open Video System" means a facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, provided that the Federal Communications Commission has certified that such system complies with 47 CFR 76.1500 et seq.

(24) "Person" means any individual, firm, partnership, association, joint stock company, trust, corporation, company, governmental entity.

(25) "Public ways or rights-of-way" includes the surface, the air space above the surface, and the area below the surface of any public street, highway, parkway, circle, lane, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation, repair, and maintenance of a Telecommunication System. No reference in this Franchise to a public right-of-way shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation, repair, and maintenance of a Telecommunication System, and the Grantee shall be deemed to gain only those rights which the City has the undisputed right and power to give. For this Franchise, public ways and rights-of-way are limited to the areas above the ordinary high water mark of Puget Sound.

(26) "Route map" means a geographic representation of the Grantee's Telecommunication System as it exists within the public right-of-way and within private easements in the Franchise area.

(27) "Subscriber" means any Person who or which purchases, leases, rents, obtains or subscribes to Telecommunications Service provided by Grantee by means of or in connection with the Grantee's Telecommunications System.

(28) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(29) "Telecommunications applications fees and charges" includes fees and charges connected to right-of-way management, construction permit, permit design fee, building permit, encroachment permit, inspections and pavement restoration.

(30) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Telecommunications service shall also include offering Internet access, private line service, front- and back-haul transport and/or leasing dark fiber directly to the public or third parties.

(31) "Telecommunications system" or "system" means only those facilities necessary for Grantee to provide Telecommunications service.

(32) "Underground facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

(33) "Utility poles" means poles, and crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication.

(34) "Wireless Communications Facilities" means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

Sec. 2. Franchise - Grant of authority.

(1) **Use of public rights-of-way.** There is hereby granted to Grantee the right and privilege, to have, acquire, construct, reconstruct, upgrade, repair, maintain, use, and operate in the City a Telecommunications System, and to have, acquire, construct, reconstruct, repair, maintain, use, and operate in, over, under, and along the present and future Public rights-of-way of the City all necessary or Facilities, including without limitation, desirable wires, cables, electronic conductors, underground conduits, vaults, and other structures and appurtenances necessary for the construction, maintenance, and operation of Grantee's Telecommunications system in the Franchise Area. Grantee or Affiliates shall not install or construct facilities within the City's Public Rights-of-Way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

(2) **Additional services/compensation.** By granting this Franchise, the City does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered over the Telecommunication system which are not Telecommunication services. Upon request, Grantee shall inform City of any non-Telecommunication and/or Telecommunication services offered over the Telecommunication system of which Grantee or its Affiliates are aware. By accepting this Franchise, Grantee does not waive any right it has under law to challenge the City's requirement for authorization to provide non-Telecommunication Services.

(3) **Responsibility for costs.** Except as expressly provided otherwise, any act that Grantee is required to perform under this Franchise shall be performed at Grantee's cost. If Grantee fails to perform work that it is required to perform within the time provided for performance or a cure period, the City may perform the work and bill the Grantee for documented costs. The Grantee shall pay the amounts billed within thirty (30) days. The parties agree that any amounts paid pursuant to this Section are not Franchise fees and fall within one or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this section is intended to affect in any way (by expansion or contraction) Grantee's rights under applicable law

governing the ability to impose any costs, including but not limited to the rates charged.

(4) **Publication costs.** Any and all costs of publication related to this Franchise which may be required by law or action of City Council shall be borne by Grantee. Any payments made by the City under this provision are to be reimbursed to the City within thirty (30) days of Grantee's receipt of the invoice.

(5) **Franchise non-exclusive.** The rights, privileges of any franchise granted pursuant to chapter 20.04 of the Des Moines Municipal Code (DMMC) shall be nonexclusive. This Franchise shall not be construed as any limitation upon the right of the City, through its proper officers, to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways by Franchise, permit or otherwise. The City shall not authorize or permit any Person providing Communication services to enter into the Public rights-of-way in any part of the City on terms or conditions that, when viewed collectively, are generally more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise.

(6) Nothing in this Franchise excuses Grantee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.

(7) Nothing in this Franchise excuses Grantee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.

(8) Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Grantee of any obligation to pay lawfully imposed charges or fees. Notwithstanding any other provision of this Franchise, nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be

assessed on Franchisee's business activities under this Franchise under applicable law.

(9) Nothing in this Franchise grants authority to Grantee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.

(10) Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities or to modify public ways to accommodate Grantee's facilities.

(11) Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Grantee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.

(12) Nothing in this Franchise shall be construed to permit Grantee to unlawfully enter or construct improvements upon the property or premises of another.

(13) Nothing in this Franchise grants authority to Grantee to enter, occupy or use City property, nor to install or construct facilities within the City's Public rights-of-way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

(14) Nothing in this Franchise grants authority to Grantee to provide or offer cable service as cable service is defined in 47 U.S.C. § 522(6), Open Video System services. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City separate authorization to provide Cable or Open Video System services, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

(15) Grantee may use its facilities authorized by this Franchise to provide telecommunications service only as expressly provided in this Franchise.

Sec. 3. Term evaluation, and renewal.

(1) This Franchise shall run for a period of ten (10) years unless extended or terminated sooner as hereinafter provided. This Franchise shall commence after the effective date of this Franchise and in accordance with the written acceptance requirements herein.

(2) Should the Parties fail to formally renew this Franchise prior to the expiration of the ten (10) year renewal period, the Franchise shall automatically continue on a month to month period until renewed or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

(3) On the fifth (5th) anniversary of this Franchise, if either party identifies one or more specific issues that the party believes may require a reevaluation of one or more of the material terms of this Franchise, the Parties agree to discuss such issues diligently and in good faith. Notwithstanding the foregoing, either party may at any time during the term of this Franchise, request a clarification of a term, or seek an amendment to, this Franchise.

Sec. 4. Compliance with City, state, and federal laws.

(1) **Compliance with applicable laws.** Grantee shall at all times comply with all laws, rules, and regulations of the City, state and federal governments and any administrative agencies thereof which are applicable to all businesses in the City and/or all users of the Public rights-of-way. The express provisions of this Franchise constitute a valid and enforceable contract between the parties.

(2) **Other ordinances.** This Franchise and all rights and privileges granted hereunder are subject to, and the Grantee must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City's exercise of its police powers and applicable law, and in case of any conflict between the express terms of this Franchise and any ordinance enacted by the City, this Franchise shall govern, except where such ordinance would result in a competitor to Grantee having more favorable franchise

terms than Grantee in which case City will notify Grantee and offer Grantee the opportunity to amend this Franchise consistent with such terms. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. The Grantee reserves the right to challenge provisions of any ordinance that conflicts with its contractual rights, and does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

(3) **Police power of the City.** Construction, maintenance, and operation of Grantee's Telecommunication system and all property of Grantee subject to the provisions of this Franchise shall be subject to all lawful police powers, rules, and regulations of the City. The Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise area. The City reserves the right to use, occupy and enjoy any Public rights-of-way or other public places for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, installation of traffic signal systems, intelligent transportation systems, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The City shall have the power at any time to order and require Grantee to remove or abate any pole, line, tower, wire, cable, guy, conduit, electric conductor, or any other structure or facility that is dangerous to life or property. In the event Grantee, after written notice, and the unencumbered ability to comply, fails or refuses to act within fifteen (15) days of such written notice, City shall have the power to remove or abate the same at the expense of Grantee, all without compensation or liability for damages to Grantee except in instances when the damage is caused by negligence or willful misconduct of the City or its agents. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.

(4) **Notification in the event of preemptive law.** Grantee shall use its best efforts to notify the City of any change in

law that materially affects Grantee's rights or obligations under this Franchise.

(5) **Amending franchise to conform to subsequent law.** The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

Sec. 5. Conditions of public rights-of-way occupancy.

(1) **Use permits and/or development authorization.** Grantee shall obtain use, right-of-way construction, and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in the franchise area. Grantee shall provide the following information for all facilities that it proposes to construct or install:

(a) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:

(i) The location and route of the proposed facilities;

(ii) When requested by the City, the location of all overhead and underground public utility, communication, cable, water, sewer, drainage and other facilities in the public way along the proposed route;

(iii) When requested by the City, the location(s), if any, for interconnection with the communication facilities of others;

(iv) The specific trees, structures, improvements, facilities and obstructions, if any, that Grantee proposes to temporarily or permanently alter, remove or relocate.

(b) If Grantee is proposing to install overhead facilities, the Grantee shall provide evidence that the proposed overhead installation is in compliance with all applicable provisions of the Des Moines Municipal Code. The Grantee shall also provide evidence of Grantee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole, and written acknowledgement by the Grantee that if the overhead facilities are subsequently relocated underground, the Grantee shall relocate underground at no cost to the City, except as otherwise provided in RCW Section 35.99.060.

(c) If Grantee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:

(i) Evidence of ownership or authorization to use such ducts or conduits;

(ii) Conditions of use imposed by the owner(s) of the ducts or conduits;

(iii) If known to Grantee or reasonably ascertainable to Grantee, the total capacity of such ducts or conduits; and

(iv) If known to Grantee or reasonably ascertainable to Grantee, the amount of the total capacity within such ducts or conduits which will be occupied by Grantee's facilities.

(d) If Grantee is proposing to install underground facilities in new ducts or conduits within the public ways:

(i) The location proposed for new ducts or conduits;

(ii) The total capacity of such ducts or conduits; and

(iii) The initial listing of co-located facilities located within Grantee constructed or installed ducts or conduits.

(e) A preliminary construction schedule and completion date together with a traffic control plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) for any construction.

(f) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.

(g) Such other documentation and information regarding the facilities requested by the City.

(h) The requirements of this section do not apply to installation of optical cable necessary to connect a customer of Grantee to a previously approved facility; provided that neither excavation nor trenching in the public right-of-way is required; that the optical cable does not cross a distance of more than eighty (80) feet from its point of connection to the approved facility and the point where it exits the public right-of-way; that the optical cable connection meets or exceeds all applicable technical standards required by law; that the optical cable connection is durable and installed in accordance with good engineering, construction, and installation practices and does not interfere with the public use of the public ways, or adversely affect public health, safety or welfare; that the optical cable connection is constructed and installed to conform to all applicable federal, state, local, and industry codes, rules, regulations, and standards; and that the optical cable connection does not damage or impair the City's public way or property.

(i) The requirements of this section do not apply to repair or maintenance of a previously approved overhead facility; provided that the location and size of the previously

approved facility is not materially changed; that no additional new facilities are constructed or installed; that the repair or maintenance activities are conducted in accordance with good engineering, repair, and maintenance practices and do not interfere with the public use of the public ways, or adversely affect public health, safety, or welfare; that maintenance or repair activities conform to all federal, state, local, and industry codes, rules, regulations, and standards; and that the repair or maintenance activities comply with the City Code.

(2) **Construction and installation requirements.**

(a) Grantee's System shall be constructed and maintained in such manner as not to interfere with in-place sewers, water pipes or any other property of City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been placed in rights-of-way by, or under, City's authority.

(b) All facilities shall be constructed and installed in such manner and at such points so as not to inconvenience City or public use of the public ways or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.

(c) Interference with use of streets. When installing, locating, constructing or maintaining Facilities, the Grantee shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface and subsurface of any such street in as good condition as it was prior to performance by the Grantee of such work, to the satisfaction of the City.

(d) The Grantee shall apply for, obtain, and comply with the terms of all permits required under Des Moines Municipal Code sections regulating construction and maintenance within the right-of-way for any work done upon Grantee Facilities. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner. Grantee shall have the sole responsibility for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or

authorization necessary to construct, operate, maintain or repair or expand the System, and to construct, maintain and repair any part thereof.

(e) The Telecommunications system constructed, maintained and operated by virtue of this Franchise, shall be so constructed, maintained and operated in accordance with all applicable engineering codes adopted or approved by the City, State of Washington, federal government and/or engineering profession and in accordance with any applicable Statutes of the State of Washington, rules and regulations of the applicable Washington regulatory authority, Ordinances of the City or of any other governmental regulatory commission, board or agency having jurisdiction over Grantee.

(f) The construction plans and Grantee's operations shall conform to all federal, state, local, and industry codes, rules, regulations, standards and laws. Grantee must cease work immediately if the City determines that Grantee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the City determines that Grantee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

(g) Neither approval of plans by the City nor any action or inaction by the City shall relieve Grantee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Grantee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.

(h) Except as to emergency repairs, Grantee shall, prior to excavating within any street, alley or other public place, and installing any conduit, overhead cable or equipment therein, file with the City Manager or designee plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, and a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. The Grantee shall conform to all applicable requirements of the City Code, as it currently exists or as it may be amended.

(i) All construction and/or maintenance work as provided herein shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.

(j) Excavation work requiring a permit from the City shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the Facilities, City property or other persons or property, Grantee may proceed without first obtaining the normally required permits. In such event Grantee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities, or any part thereof; City property; or other persons or property, and to protect the public welfare, health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

(k) In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City Manager or designee in writing as promptly as possible, before such repair or emergency work commences, or as soon thereafter as possible, if advance notice is not practical. The City may act, at any time, without prior written notice in the case of emergency, but shall notify the Grantee in writing as promptly as possible under the circumstances.

(l) Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property including, by way of example and not limitation, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and rights-of-way improvements, private facilities and public safety.

(m) New facilities shall be constructed in accordance with the following terms and conditions:

(i) Facilities shall be installed within the Grantee's existing underground duct or conduit whenever excess capacity exists.

(ii) Overhead facilities shall be installed on pole attachments to existing utility poles only, and then only if space is available.

(iii) Whenever all existing telephone and electric utilities are located underground within public ways, the Grantee must also locate its facilities underground.

(iv) Whenever all new or existing telephone and electric utilities are located or relocated underground within public ways, the Grantee that currently occupies the same public ways shall concurrently relocate its Facilities underground at its own expense, except as otherwise provided in RCW Section 35.99.060.

(n) Display of right-of-way permit. The Grantee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or designee at all times when construction work is occurring.

(o) Construction schedule. The Grantee shall submit a written construction schedule to the City Manager or designee prior to commencing any work in or about the public ways in accordance with City regulations.

(p) Locator service compliance. The Grantee, before commencing any construction in the public ways, shall call for location in accordance with RCW 19.122.

(q) Placement. All facilities, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners. All facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as

are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way. Exact placement within the right-of-way shall be coordinated with the City and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The City reserves the reasonable right as to final placement.

(r) Completion of construction. The Grantee shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within public ways, including restoration, must be completed within 90 calendar days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

(s) Non-complying work. Upon order of the City Manager or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

(t) The City reserves the right to install, and permit to be installed, sewer, electric, phone, gas, water and other pipelines, cables, conduits and related appurtenances and to do, or permit to be done, any underground or overhead work in, across, along, over or under a public way or other public place occupied by Grantee. The City also reserves the right to construct new streets and public utilities and to alter the design of existing streets and public utilities. In performing such work, the City shall not be liable to Grantee for any damage, except in the event of the contributory negligence or willful misconduct of the City or its contractors, but nothing herein shall relieve any other person or entity from the responsibility for damages to Grantee's Facilities. The City will use its best efforts to provide Grantee with reasonable advance notice of plans by other persons to open the public ways.

(3) Coordination of construction and installation activities.

(a) Grantee shall coordinate its construction and installation activities and other work with the City and all other

users of the public ways, including utilities located within the franchise area.

(b) All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.

(c) At least forty-eight (48) hours prior to entering a public way to perform construction and installation activities or other work, Grantee shall give notice, at its cost, to owners and occupiers of property adjacent to such public ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger. Grantee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.

(d) The City shall give reasonable advance notice to Grantee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice, except in the event of the contributory negligence or willful misconduct of the City or its contractors. When such notice has been given, Grantee shall provide information requested by the City regarding Grantee's future plans for use of the public way to be opened. When notice has been given, Grantee may only construct or install facilities during such period that the City has opened the public way for construction or installation.

(4) **Relocation.** Grantee shall relocate its facilities as ordered by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060, when there is construction, alteration, repair or improvement of a public way. Grantee shall complete the relocation by the date specified by the City. Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change or relocation. Grantee shall relocate its facilities at its own expense except where the Grantee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Grantee's share of the cost of

relocation will be paid by the City if it requested the subsequent relocation or as otherwise provided in RCW Section 35.99.060.

(5) Temporary removal, adjustment or alteration of facilities.

(a) Grantee shall temporarily remove, adjust or alter the position of its facilities at its cost, except as otherwise provided in RCW Section 35.99.060, at the request of the City for public projects, events, or other public operations or purposes.

(b) Grantee shall locate the precise horizontal and vertical location of its underground facilities by excavating upon request of the City. If the City's request is in support of a City project, the Grantee shall complete this service within 14 days at no cost to the City, except as otherwise provided in RCW Section 35.99.060,. If the City's request is in support of a third party's project, the Grantee shall be entitled to recover its cost from the project sponsor as set forth in RCW Section 35.99.060.

(c) If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Grantee for the temporary removal, adjustment or alteration of Grantee's facilities to accommodate the moving or removal of said building or other object. In such event, Grantee shall, at the cost of the person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:

(i) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Grantee's business, consistent with the maintenance of proper service to Grantee's customers;

(ii) Where more than one route is available for the moving or removal of such building or other object, such

building or other object shall be moved or removed along the route which causes the least interference with the operations of Grantee, in the sole discretion of the City;

(iii) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and save Grantee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence or willful misconduct of the person moving or removing such building or other object or the negligence or willful misconduct of the agents or employees of the person moving or removing such building or other object; and

(iv) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.

(d) The City may require Grantee to temporarily remove, adjust or alter the position of Grantee's facilities as the City may reasonably determine to be necessary at no cost to the City, except as otherwise provided in RCW Section 35.99.060, for work deemed needed by the City in the Rights-of-Way. The City shall not be liable to Grantee or any other party for any direct (except as a result of the negligence or willful misconduct of the City or its contractors), indirect, consequential, punitive, special or other damages suffered as a direct or indirect result of the City's actions.

(e) The temporary removal, adjustment or alteration of the position of Grantee's facilities shall not be considered relocation for any purpose whatsoever, except as otherwise provided in RCW Section 35.99.060.

(6) **Tree trimming.** The Grantee shall have the authority to trim trees or other natural growth on public property or which overhang streets, alleys, sidewalks and public ways of the City so as to prevent the branches of such trees from coming in contact with the Grantee's wires, cables or other equipment that may be damaged due to continued contact. Grantee takes full

responsibility for removing debris when the work is complete. All trimming is to be done at the sole expense and responsibility of Grantee.

Trimming of trees and shrubbery within or overhanging the public ways to prevent contact with Grantee's Facilities shall be done in such a manner to cause the minimum amount of damage to trees and shrubs. If in the City's determination, trees are excessively damaged as a result of the work undertaken by or on behalf of Grantee, Grantee shall pay the City, within 30 days of submission of a statement by the City, the reasonable cost of any treatment required to preserve a tree or shrub or the cost for removal and replacement of the tree or shrub with landscaping of equal value or the value of the tree or shrub prior to the damage or removal, as determined by the City Manager or designee.

Any trimming or removal of trees or shrubs shall be done in full compliance with the City's Ordinances and all other laws or regulations of the City.

(7) Underground installation.

(a) The parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities, provided such requirement is applied on a non-discriminatory basis as required under applicable state or federal law.

(b) Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Grantee shall underground the Grantee Facilities in the manner specified by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060,. Where other utilities are present and involved in the undergrounding project, Grantee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trench excavation, backfill, and restoration, and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

(c) Grantee will maintain membership in good standing with the Utility Coordinating Council One Call Center, or other similar or successor organization designated to coordinate underground equipment locations and installations. Grantee shall abide by chapter 19.122 RCW (Washington State's "Underground Utilities" statutes) and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

(8) **Ducts and conduits.**

(a) If the Grantee is constructing underground conduit for its own use, the City may require the Grantee to construct excess conduit capacity in the public ways, provided that the City enters into a contract with the Grantee consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Grantee, (calculated as the difference between what the Grantee would have paid for the construction of its conduit and the additional cost only of construction of the excess conduit). If the City makes the additional conduit available to any other entity for the purposes of providing telecommunications service or cable service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the Grantee shall recover at least the fully allocated costs of the Grantee. The Grantee shall state both contract rates in the contract. The City shall inform the Grantee of the use, and any change in use, of the requested conduit and related access structures, if any, to determine the applicable rate to be paid by the City.

(b) The City shall not require that the additional conduit space be connected to the access structure and vaults of the Grantee.

(c) Except as expressly provided in this section, Grantee shall not charge the City for any costs, of any kind whatsoever, for facilities provided by Grantee in accordance with this section.

(d) The provisions of this section shall conform to the requirements of RCW 35.99.070.

(9) **Location of Grantee facilities.**

(a) From time to time, the City, or its representatives, may request identification of the specific location of Grantee System facilities. The Grantee agrees to respond to such request within forty-eight (48) hours of the receipt of the request, excluding delays due to weather or other conditions. In the event that Grantee cannot locate such information within forty-eight (48) hours, Grantee shall notify the City. If Grantee fails to notify the City of its facilities locations within forty eight (48) hours, and damage is caused to Grantee's facilities as a direct result, the Grantee shall hold the City harmless from all liability, damage, cost or expense resulting from the City's actions in this regard unless such damage was caused by the negligence or willful misconduct of the City or its agents.

(b) Report of underground facilities. From time to time the City may require to design or construct right-of-way improvements in a specific area, the City or its designee may require the Grantee to submit a report of existing underground system facilities for a specific area of the City that will be impacted as a result of a planned right-of-way improvement. Within thirty (30) days after receipt by the Grantee of a request from the City or its designee, the Grantee shall submit a report of underground system facilities that shall comply with the following provisions:

(i) Certification by an engineer licensed in the State of Washington employed by the Grantee that the report accurately depicts the location of all system facilities, including drop service lines to individual subscribers, if any. The accuracy of this report shall be noted based upon the capability of the locating equipment used.

(ii) The accurate depth of the underground facility, as may be available based upon the capability of the locating device used. The accuracy of this information shall be noted.

(iii) Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

(iv) The City and Grantee recognize the importance of making best efforts to communicate during the planning and construction phases of right-of-way improvement projects. To that end, the City and Grantee agree to work cooperatively and to be reasonable and timely in requesting and providing necessary information. In the event the City reasonably determines that more precise information is needed for a specific aspect of a right-of-way project, the Grantee agrees to take the necessary steps to provide such precise information within thirty (30) days of receipt of request. If it is necessary for the Grantee to pot-hole or excavate and restore portions of the right-of-way to respond to the City's information request, the Grantee agrees to take such steps at its expense, , except as otherwise provided in RCW Section 35.99.060, and the City agrees to waive all permitting and inspection fees therefore.

(c) Within sixty (60) days of the effective date of this Franchise, Grantee shall provide the City with a current route map of the Telecommunication System located within the City. Upon City request, but no more often than once each year during the term of this Franchise, the Grantee shall provide the City with an updated route map showing the changes that have occurred in the Telecommunication System.

(d) Grantee agrees to obtain facilities location information from other users of the Public rights-of-way prior to Grantee's construction, reconstruction, maintenance, operations and repair of the Grantee's System facilities.

(10) **Removal and abandonment of facilities.** In the event that the use of any part of the Grantee's system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system equipment or facilities have been installed in any public ways or rights-of-way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired, upon receiving ten (10) business days prior written demand from the City, the Grantee shall promptly remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the public ways of rights-of-way. Said removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of

such removal, the Grantee shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition satisfactory to the City. Any affected equipment or facilities of the Grantee remaining in place one-hundred eighty-one (181) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days with prior written request from the Grantee, and such request shall not be unreasonably withheld. Any equipment or facilities of the Grantee that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the equipment or facilities of the Grantee in place, the equipment or Facilities shall become that of the City, and the Grantee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such equipment or facilities. None of the foregoing affects or limits the Grantee's rights to compensation for an involuntary abandonment of its equipment or facilities under state or federal law.

(11) **Safety and maintenance requirements.**

(a) All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner.

(b) Grantee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Grantee, establish a reasonable time for Grantee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself at the cost of the Grantee or have them made at the cost of Grantee.

(c) If Grantee fails to commence, pursue or complete any work required by law, this Franchise or any applicable

permit to be done in any public way within the time prescribed and to the satisfaction of the City, the City may at its discretion cause the work to be done. Grantee shall pay to the City the reasonable costs of the work in an itemized report provided by the City to Grantee within 30 days after receipt of such report.

(d) Grantee, and any person acting on its behalf, shall provide a traffic control plan that conforms to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property. Grantee shall implement and comply with its approved traffic control plan during execution of its work. The traffic control plan shall be developed and kept on site in Grantee's possession for all work impacting vehicular and pedestrian traffic. Traffic control plans may be modified as necessary by the Grantee to achieve effective and safe traffic control. All road closures requested by Grantee require a detour plan submitted at least 48 hours in advance and prior City approval unless there is an emergency.

(e) Grantee shall maintain its facilities in proper working order. Grantee shall restore its facilities to proper working order upon receipt of notice from the City that facilities are not in proper working order. The City may, after discussions with Grantee, establish a reasonable time for Grantee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established time frame, the City may restore the facilities to proper working order or have them restored at the cost of Grantee.

(f) The City shall have the right to inspect all construction and installation work performed by Grantee pursuant to this Franchise to the extent necessary to ensure compliance by Grantee. On an ongoing basis, Grantee shall certify to the City that Grantee's work is being performed and completed in a satisfactory manner.

(g) On notice from the City that any work is being performed contrary to the provisions herein, or in an unsafe or dangerous manner or in violation of the terms of any applicable

permit, laws, regulations, ordinances or standards, the City may issue a stop work order and Grantee shall stop the work immediately. The City shall issue a stop work order in writing, unless given verbally in the case of an emergency, and provide the order to the individual doing work or post it on the work site. A copy of the order shall be sent to Grantee, and the order must indicate the nature of the alleged violation or unsafe condition and the conditions under which Grantee may resume work.

(12) **Removal of unauthorized facilities.** Within thirty (30) days following written notice from the City, Grantee shall, at its expense, remove unauthorized facilities and restore public rights-of-way and other property to as good a condition as existed prior to construction or installation of its facilities. Any plan for removal of said facilities must be approved by the City prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

(a) Upon expiration, termination, or cancellation of this Franchise;

(b) Upon abandonment of the facilities. Facilities shall be deemed abandoned if they are unused by Grantee as described in Section 5(10);

(c) If the facilities were constructed or installed prior to the effective date of this Franchise; unless such facilities were constructed or installed upon the condition of subsequent approval of this Franchise with the consent of the City;

(d) If the facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits;

(e) If the facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Franchise; or

(f) If the facilities are unauthorized for any reason whatsoever.

(13) **Restoration of public ways and other property.**

(a) Whenever necessary, after construction or maintaining any of Grantee's Facilities within the Rights-of-Way, the Grantee shall, without delay, and at Grantee's sole expense, except as otherwise provided in RCW Section 35.99.060, remove all debris and restore the surface and subsurface disturbed by Grantee as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during Grantee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable. Grantee agrees to pay all costs and expenditures required on the rights-of-way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Grantee for necessary trench patch maintenance, for a period of ten years from the date such maintenance was performed, normal wear and tear excepted. Favorable weather conditions permitting, Grantee agrees to repair rights-of-way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by the Grantee upon forty-eight (48) hours' notice excluding weekends and holidays. If Grantee fails to undertake such repairs as herein provided, the City may perform the repairs at Grantee's expense.

(b) Landscape restoration. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of the Grantee's facilities, shall be replaced or restored, at the Grantee's expense to the condition existing prior to performance of the work, except as otherwise provided in RCW Section 35.99.06.

(14) **Poles, structures, and property owned by others.** If and when the Grantee is authorized to install communication facilities aerially in accordance with chapter 12.48 of the Des Moines Municipal Code (DMMC), Grantee must obtain written approval from the owners of utility poles, structures and property not owned by Grantee prior to attaching to or otherwise using such poles, structures or property, and provide proof of such approval to the City. The City makes no representation and assumes no responsibility for the availability of utility poles, structures,

and property owned by third parties for the installation of Grantee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by the City or third parties for any reason whatsoever. The installation of facilities by Grantee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, the authority of Grantee to construct, install, operate, maintain, and repair Grantee's facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

Sec. 6. Indemnification and liability and assumption of risk.

(1) Indemnification / Hold Harmless. The Grantee shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with activities or operations performed by the Grantee or on the Grantee's behalf under this Franchise agreement, except for injuries and damages caused by the contributory negligence or willful misconduct of the City.

(2) The City shall give the Grantee written notice of any claim or of the commencement of any action, suit or other proceeding covered by this section. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. However, the failure of the City to provide such notice in writing to Grantee shall not relieve Grantee of its duties and obligations under this Section, provided that Grantee is given sufficient advance notice to perform its duties under this Section. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for

the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

(3) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

(4) **Damages and penalties.** By acceptance of this Franchise, Grantee specifically agrees that it will pay, all damages or penalties which the City, its officers, agents, employees, or contractors may legally be required to pay as a result of damages arising out of copyright infringements and all other damages arising out of Grantee's or Grantee's agents' installation, maintenance, or operation of the telecommunications System, except as specifically referenced elsewhere in this Franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, subject to Section 635A of the Cable Act and applicable law.

(5) **Expenses.** If any action or proceeding is brought against the City or any of its officers, agents, or employees for claims for damages or penalties described in this Section, the Grantee, upon written notice from the City, shall assume the investigation of defense and fully control any resolution or compromise thereof, including the employment of counsel and the payment of all expenses including the reasonable value of any services rendered by any officers, agents, employees or contractors of the City which are not unreasonably duplicative of services provided by Grantee and its representatives. The City shall fully cooperate with the Grantee.

(6) **Separate counsel.** The City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and the Grantee shall pay the reasonable fees and expenses of such separate counsel if representation of both the Grantee and the City by the

same attorney would be inconsistent with accepted canons of professional ethics and if separate counsel is employed with the approval and consent of the Grantee, which shall not be unreasonably withheld.

(7) **Assumption of risk.** Grantee assumes the risk of damage to its facilities located in the City's public ways from activities conducted by third parties or the City, its elected officials, officers, employees, agents, or representatives, except in the event of the negligence or willful misconduct of any one or more of the above persons. Grantee releases and waives any and all claims against the City, its elected officials, officers, employees, agents, and representatives for damage to or destruction of the Grantee's facilities except to the extent any such damage or destruction is caused by or arises from the negligence or willful misconduct of the City. Grantee bears sole responsibility to insure its property. Grantee shall ensure that its insurance contracts waive subrogation claims against the City, its elected officials, officers, employees, agents, and representatives, and Grantee shall indemnify, defend and hold harmless the City, its elected officials, officers, employees, agents, and representatives against any and all subrogation claims if it fails to do so.

Sec. 7. Insurance.

(1) Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to Persons or damage to property which may arise from or in connection with this Franchise by the Grantee, their agents, representatives, employees or subcontractors.

(a) **Amounts of Insurance.** In accordance with applicable law, the Grantee shall maintain throughout the term of this Franchise the following insurance limits:

(i) Automobile Liability. Commercial automobile liability insurance policy in the amount of than Five Million Dollars (\$5,000,000) combined single limit each accident for bodily injury and property damage covering all owned, hired, and non-owned vehicles).

(ii) Commercial General Liability. A commercial general liability insurance policy issued by a company duly authorized to do business in the State of Washington insuring the Grantee with respect to the installation, maintenance, and operation of Grantee's Telecommunication System in the amount of Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage and Five Million Dollars (\$5,000,000) general aggregate. The City shall be included as an additional insured as their interest may appear under this Agreement under Grantee's Commercial General Liability insurance policy.

(iii) Excess General Liability. Excess or Umbrella Liability coverage at limits of One Million Dollars (\$1,000,000) per occurrence and annual aggregate providing coverage above the primary Commercial General, Commercial automobile liability and employer's liability insurance.

(iv) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. This requirement may be satisfied instead through the Grantee's primary Commercial General and Automobile Liability coverage, or any combination thereof.

(b) Other Insurance Provisions. The insurance policies are to contain the following provisions for Automobile Liability and Commercial General Liability insurance:

(i) The Grantee's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Grantee's insurance and shall not contribute with it.

(ii) Upon receipt of notice from it insurer(s) Grantee shall endeavor to provide Grantor with thirty (30) days prior written notice of cancellation

(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. Upon acceptance of the Franchise, Grantee shall furnish the City with original

certificates and blanket additional insured endorsement, evidencing the insurance requirements of the Grantee.

(e) Subcontractors. Grantee shall require any contractor or subcontractor to obtain and maintain substantially the same insurance with substantially the same limits as required of Grantee.

(2) Endorsements. Grantee agrees that with respect to the insurance requirements contained above, all insurance certificates will contain the following required provisions:

(a) Include the City and its officers, employees, and elected representatives as an additional insured as their interest may appear under this Agreement.

(c) Shall be on an occurrence basis and shall be primary coverage of all losses resulting from Grantee's operations covered by the policies.

(3) **Insurance term.** The insurance required above shall be kept in full force and effect by Grantee during this Franchise and thereafter until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of Grantee's Telecommunication System, should such removal be required by City Council or undertaken by Grantee.

(4) **Issuing companies.** Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

(5) **No limit on liability.** Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Sec. 8. Performance bond and security fund.

(1) **Amount.** The Grantee shall provide the City with a financial guarantee in the amount of One Hundred Thousand Dollars (\$100,000) running for, or renewable for, the duration of the construction of Grantee's facilities in the City, in a form and substance acceptable to the City. This Franchise performance bond shall be separate and distinct from any other bond or deposit required.

(2) **Damages.** In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise, then there shall be recovered jointly and severally from the principal and any surety of such financial guarantee any damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described.

(a) Before any draws are made on the Franchise performance bond, the City Manager or designee shall give written notice to the Grantee:

(i) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the Grantee's act or default;

(ii) Providing a reasonable opportunity for the Grantee to first remedy the existing or ongoing default or failure, if applicable;

(iii) Providing a reasonable opportunity for the Grantee to pay any moneys due the City before the City draws on the Franchise performance bond, if applicable;

(iv) That the Grantee will be given an opportunity to review the act, default or failure described in the notice with the City Manager or designee.

(b) The Grantee shall replace the Franchise performance bond within fourteen (14) days after written notice

from the City Manager or designee that there is a deficiency in the amount of the Franchise performance bond.

(3) **Security fund.** In addition to the performance bond, Grantee shall establish and maintain a security fund in the amount of twenty-five thousand dollars (\$25,000), at its cost, with the City by depositing such monies, letters of credit, or other instruments in such form and amount acceptable to the City within 30 calendar days of the effective date of this Franchise. No sums may be withdrawn from the fund by Grantee without consent of the City. The security fund shall be maintained at the sole expense of Grantee so long as any of the Grantee's facilities occupy a public way.

(a) The fund shall serve as security for the performance of this Franchise, including any claims, costs, damages, judgments, awards, attorneys' fees or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.

(b) Before any sums are withdrawn from the security fund, the City shall give written notice to Grantee:

(i) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, attorneys' fees or liability which the City has incurred or may pay by reason of Grantee's act or default;

(ii) Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure, if applicable;

(iii) Providing a reasonable opportunity for Grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and

(iv) Grantee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

(c) Grantee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.

(d) Insufficiency of the security fund shall not release or relieve Grantee of any obligation or financial responsibility.

Sec. 9. Taxes, charges, and fees.

(1) **Franchise fee.** RCW 35.21.860 currently prohibits a municipal franchise fee for permission to use the right of way for telephone business purposes. Based on the representations of Grantee, it is the City's understanding that Grantee will use the right of way for telephone business purposes as defined by RCW 82.16.010 or as a service provider as such term is defined in RCW Section 35.99.010 for the provision of telecommunications services. If this prohibition is removed or does not apply to future services, Grantee understands the City may assess a reasonable franchise fee in accordance with the City Code, so long as local, State or federal law does not otherwise prohibit such fee.

(2) **Utility tax.** The parties further understand that RCW 35.21.870 currently limits the rate of City tax upon telephone business activities to six percent (6%) of Gross Receipts, unless a higher rate is approved by vote of the people. The parties agree, however, that nothing in this Franchise shall limit or expand the City's power of taxation, as now or may hereafter exist. Grantee understands that some of its business activities in the City of Des Moines as identified herein may be taxable activities subject to the six percent (6%) gross receipts tax rate, as imposed under the City's telephone business tax, adopted in Des Moines Municipal Code Chapter 3.68, subject to such activities being deemed taxable under applicable state and federal laws. This provision does not limit the City's power to amend Des Moines Municipal Code Chapter 3.68 as may be permitted by law, including increases to the tax rate. Notwithstanding any other provision of this Franchise, nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this Franchise under applicable law.

(3) **Permit and administrative fees.** Grantee shall also pay and be responsible for all charges and fees (authorized under applicable law) imposed to recover actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise, any use and/or development authorizations which may be required, or any permit which may be required, to inspecting plans and construction, or to the preparation of a detailed statement. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City but shall not excuse Grantee from paying and being responsible for other actual administrative expenses incurred by the City.

(a) Grantee shall pay a franchise processing fee of \$5,000 within 30 calendar days of the effective date of this Franchise.

(b) Grantee shall pay fees according to applicable sections of the City Code.

(4) Grantee shall pay and be responsible for taxes permitted by law.

(5) In addition to penalties and other remedies for which Grantee may be subjected, the City reserves the right to impose site-specific charges (authorized under applicable law) for placement of structures used to provide telecommunications services. Unless otherwise agreed by the parties, such charges shall be an amount equal to at least fifty percent (50%) of the costs of construction or installation of such structures.

Sec. 10. Access to facilities and universal service.

(1) Grantee shall provide access to its facilities by hire, sale, or resale on a nondiscriminatory basis. Grantee shall make its telecommunications services available to any customer within its franchise area who shall request such service whenever feasible, without discrimination as to the terms, conditions, rates or charges for the Grantee's services; provided, however, that nothing in this section shall prohibit Grantee from making any reasonable classifications among differently situated customers.

(2) Grantee shall provide Internet access to users of City property, at locations requested by the City, if it is practicable, upon Grantee's then-current market rates for such service and pursuant to a separate services agreement. Grantee and the City may enter into a separate agreement or agreements regarding the allocation of costs to construct, install, operate, maintain, repair, and remove facilities needed to provide such access; provided, however, that nothing herein shall require the City to accept construction or installation of facilities on City property.

Sec. 11. Acquisition of facilities. Upon Grantee's acquisition of any facilities in the public way, or upon any addition or annexation to the City of any area in which Grantee has facilities, such facilities shall immediately be subject to the terms of this Franchise without further action of the City or Grantee.

Sec. 12. Vacation of public ways. The City reserves the right to vacate any public way which is subject to rights, privileges, and authority granted by this Franchise. If Grantee has facilities in such public way, the City shall reserve an easement for Grantee, if requested by Grantee.

Sec. 13. Duty to provide information. Grantee's obligations under this section are in addition to those provided elsewhere in this Franchise. Within fifteen (15) days of a written request from the City, Grantee shall furnish the City with all requested information sufficient to demonstrate:

(1) That Grantee has complied with all requirements of this Franchise;

(2) That taxes, fees, charges, or other costs owed or payable by Grantee have been properly collected and paid; and

(3) The names of the users of Grantee's facilities and the services and products those users are providing to the public.

Sec. 14. Records.

(1) Grantee will manage all of its operations in accordance with a policy of keeping its documents and records open

and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Grantee and its affiliates that are reasonably necessary for the enforcement of this Franchise or to verify Grantee's compliance with terms or conditions of this Franchise. Grantee will not deny the City access to any of Grantee's records on the basis that Grantee's documents or records are under the control of any affiliate or a third party.

(2) All documents and records maintained by Grantee shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Grantee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

(3) One copy of documents and records requested by the City will be furnished to the City at the cost of Grantee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days of the City's request, that the City inspect them at Grantee's local office. If any documents or records of Grantee are not kept in a local office and/or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Franchise, or to verify Grantee's compliance with terms or conditions of this Franchise, then all reasonable travel and related costs incurred in making such examination shall be paid by Grantee.

(4) At the request of the city, Grantee shall provide the City with an annual report on the number of feet of right-of-way Grantee occupies in the City and the services Grantee is providing in the City. Grantee may request all or a portion of such information be protected from disclosure under the Washington Public Records Act (RCW 42.56).

Sec. 15. Assignment or transfer. Grantee's rights, privileges, and authority under this Franchise, and ownership or working control of facilities constructed or installed pursuant to this Franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or

other act of Grantee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any transfer, assignment or disposal of Grantee's rights, privileges, and authority under this Franchise, or ownership or working control of facilities constructed or installed pursuant to this Franchise, may be subject to reasonable conditions as may be prescribed by the City.

(1) No rights, privileges, or authority under this Franchise shall be assigned, transferred, or disposed of in any manner within twelve (12) months after the effective date of this Franchise.

(2) Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.

(3) Grantee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of assignment, transfer, or disposal:

(a) Complete information setting forth the nature, terms and conditions of the proposed assignment, transfer, or disposal;

(b) Any other information reasonably required by the City; and

(c) A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal.

(3) No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.

(4) Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise or ownership or working control of facilities constructed or installed pursuant to this Franchise, without prior written approval of the City pursuant to this section, shall be void and is cause for termination of this Franchise.

(5) Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control (regardless of the percentage) of the Grantee or affiliated entities having fifty percent (50%) or more of the ownership or actual working control (regardless of the percentage) of Grantee, or of control of the telecommunications capacity or bandwidth of Grantee, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are exempt from City approval; provided that, Grantee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Grantee. Every change, transfer, or acquisition of control of Grantee shall cause a review of the proposed transfer. City approval shall not be required for mortgaging purposes or if said transfer is from Grantee to another person controlled by Grantee.

(6) All terms and conditions of this Franchise shall be binding upon all permitted successors and assigns of Grantee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

Sec. 16. Violations, noncompliance, and other grounds for termination or cancellation.

(1) This Franchise, and any right, privilege or authority of Grantee to enter, occupy or use public ways may be terminated or cancelled by the City for the following reasons:

(a) Violation of or noncompliance with any term or condition of this Franchise by Grantee;

(b) Violation of or noncompliance with the material terms of any use and/or development authorization or required permit by Grantee;

(c) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Grantee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;

(d) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;

(e) Misrepresentation or lack of candor by or on behalf of Grantee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Grantee;

(f) Abandonment of facilities;

(g) Failure of Grantee to pay taxes, fees, charges or costs when and as due, unless subject to a proper and timely legal protest; or

(h) Insolvency or bankruptcy of Grantee.

(2) In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Grantee to enter, occupy or use public ways, Grantee shall be given written notice and a reasonable period of time not exceeding thirty (30) days to furnish evidence:

(a) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;

(b) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or

(c) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.

(3) In the event that Grantee fails to provide evidence reasonably satisfactory to the City as provided in subsection (2) of this section, the City shall refer the apparent violation,

noncompliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

(4) If the City Council determines that the violation, noncompliance, or other grounds above for termination or cancellation exist, then, Grantee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the foregoing and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Grantee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Grantee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Grantee:

- (a) Whether the misconduct was egregious;
- (b) Whether substantial harm resulted;
- (c) Whether the violation was intentional;
- (d) Whether there is a history of prior violations of the same or other requirements;
- (e) Whether there is a history of overall compliance; and
- (f) Whether the violation was voluntarily disclosed, admitted or cured.

(5) The City Council's choice of remedy shall not excuse Grantee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit. Grantee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for termination or cancellation. Further, nothing herein shall be

construed as limiting any remedies that the City may have, at law or in equity, or the Grantee may have at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Grantee.

Sec. 17. Notices.

(1) Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY:

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

GRANTEE:

Ezee Fiber Texas, LLC
14850 Woodham Dr., Ste B-105
Houston, TX 77073

with a copy (except for invoices) to:

legal@ezeefiber.com

(2) Grantee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Grantee shall cooperate with the City and make its best efforts to immediately respond to minimize damage, protect the welfare, health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Grantee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

Sec. 18. Non-waiver. The failure of either party to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or

conditions of this Franchise by the party and shall not prevent the party from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Sec. 19. Eminent domain. This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Sec. 20. Limitation of liability. Except as otherwise set forth in this Franchise, administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, agents, and representatives for any injury or damage; or by reason of any schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the City; or for the accuracy of plans submitted to the City.

Sec. 21. Damage to facilities. Except as otherwise set forth herein, unless directly and proximately caused by the active sole negligence of the City, the City shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.

Sec. 22. Resolution of disputes and governing law.

(1) **Alternative dispute resolution.** If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Franchise 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 Franchise 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 Franchise 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 Franchise, each party shall pay its own legal costs and attorneys' fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XVII of this Contract.

Sec. 23. Severability. If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise or its application to any other person or entity.

Sec. 24. Miscellaneous.

(1) **Equal employment and nondiscrimination.** Throughout the term of this Franchise, Grantee will fully comply with all applicable equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.

(2) **Local employment efforts.** Grantee will use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business

enterprises, whenever the Grantee employs contractors to perform work under this Franchise.

(3) **Descriptive headings.** The headings and titles of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.

(4) **Force majeure.** Grantee shall not be required to perform any covenant or obligation in this Franchise, or be liable in damages to the City, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God or force majeure. An "act of God" or "force majeure" is defined for purposes of this Franchise as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Grantee.

(5) **No joint venture.** Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

(6) **Actions of the City or Grantee.** In performing their respective obligations under this Franchise, the City and Grantee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

(7) **Counterparts.** This Franchise may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Franchise shall be deemed to possess the full force and effect of the original.

DRAFT Ordinance No.
Page 50 of 52

(8) **Entire agreement.** This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.

(9) **Modification.** The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

(10) **Rights granted.** This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and terms stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title.

(10) **Contractors and subcontractors.** Grantee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee.

Sec. 26. Publication. The City Clerk is authorized and directed to publish a summary hereof.

Sec. 27. Effective date. This Ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law, but if, and only if, the Grantee has endorsed this Ordinance and accepted the terms and conditions thereof.

PASSED BY the City Council of the City of Des Moines this 23rd day of January, 2025 and signed in authentication thereof this 23rd day of January, 2025.

M A Y O R

APPROVED AS TO FORM:

DRAFT Ordinance No.
Page 51 of 52

City Attorney

ATTEST:

City Clerk

Published:

DRAFT Ordinance No.
Page 52 of 52

ACCEPTANCE:

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening, to the extent that the City is legally entitled to do so, in any legal or regulatory proceeding affecting the Telecommunication System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

By: _____

Printed Name: _____

Date: _____

Title: _____

Our Des Moines Build Plan

- Proposed build is broken out to 5-6 phases
- 2 areas will be under construction at a time
- Areas are separated geographically to reduce overwhelming locate crews and local resources
- Approx 38,000 Total Passings

Primary / Initial Markets

City	HH's in Market	SFU	MDU	SFU No Fiber	% Fiber
Kent, WA	48K	28K	20K	26K	8%
Federal Way, WA	38K	21K	17K	20K	4%
Auburn, WA	32K	19K	13K	18K	10%
Des Moines, WA	13K	8K	5K	6K	19%
Rubicon Central	131K	76K	55K	70K	47%

Additional Markets

City	HH's in Market	SFU	MDU	SFU No Fiber	% Fiber
Lakeland North, WA	5K	4K	554	5K	7%
Additional Markets	5K	4K	554	5K	7%



Confidential

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Telecommunications Franchise
Agreement with Ziply Fiber

FOR AGENDA OF: January 9, 2025

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

1. Draft Ordinance No. 24-087
2. Exhibit 1-A showing preliminary alignment
for Fiber Optic installation

DATE SUBMITTED: December 31, 2024

CLEARANCES:

- [] City Clerk _____
[] Community Development _____
[] Courts _____
[X] Finance *MS* _____
[] Human Resources _____
[X] Legal */s/ TG* _____
[] Marina _____
[] Police _____
[] Parks, Recreation & Senior Services _____
[X] Public Works *WPS* _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this agenda item is for the City Council to conduct a first reading of a telecommunications Franchise Agreement with Ziply Fiber for the installation of fiber optic facilities in City right-of-way. Under state law, telecommunication Franchise Agreements require two readings by the City Council.

Suggested Motion

Motion 1: "I move to pass Draft Ordinance No. 24-087 to a second reading on the next available City Council agenda."

Background

A franchise agreement authorizes an entity to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public. The grant of a franchise is a special privilege that allows particular individuals to profit from the use of the city streets in a manner not generally available to the public as a common right. The legislature has

granted authority to cities to grant a nonexclusive franchise. RCW 35A.47.040. Once granted, a franchise is a contract which is binding on both the grantor and the grantee.

Ziply Fiber submitted a telecommunications franchise application in August of 2024 seeking to deploy fiber optic cables and equipment in City right-of-way to provide voice and data service to businesses and residential customers. The routes and service areas shown in Attachment 2 are preliminary only and will be finalized once permits are applied for and they are reviewed and approved by City staff.

The City has a standard telecommunications franchise template that was used as the basis for this agreement.

Discussion

The key terms of the franchise agreements are detailed below. The terms of the agreements are largely identical to approved telecommunications franchises previously issued by the City.

1. **Franchise Term:** The term of the Franchise is for 10 years. After 5 years, if either party identifies a specific issue that needs to be addressed, the parties are required to meet to negotiate. This language requires the parties to discuss such issues in good faith at the half-way mark of the 10 year term.
2. **Relocation:** Ziply Fiber is solely responsible for relocation costs unless state law requires otherwise. RCW 35.99.060 applies specifically to telecommunications franchises and requires cities to share in some relocation costs for specific instances where a city requires relocation for a private party's benefit or if a city requires relocation twice within a 5 year period.
3. **Right of Way Management, Planning, and Operations:** The Franchise reflects current City practice. Ziply Fiber is required to follow City permitting processes prior to installation of facilities or any work in the right-of-way.
4. **Indemnification and Insurance:** The Agreement provides that Ziply Fiber will indemnify the City for actions of the company or their agents. Ziply Fiber is required to maintain \$5,000,000 in automobile and general liability insurance coverage. This coverage exceeds any reasonably expected liability that could occur from this Agreement.
5. **Franchise Fee:** Ziply Fiber will pay the City a one-time franchise fee of \$5,000. This flat fee is consistent with RCW 35.21.860 which requires that a franchise fee be limited to the actual administrative expenses incurred by the City in the negotiation of the franchise. This amount will reimburse the City for the staff costs of the negotiations over the last several months.

6. **Taxes:** Under DMMC 3.68.060(3) the City imposes a 6% tax on telephone businesses. To the extent that revenue is received from the installation of these facilities, the City will receive 6%.
7. **Abandonment:** The Franchise requires that Ziply Fiber remove any facilities that have been abandoned in the right of way at their own expense. The City has the option to allow them to be abandoned in place or removed.
8. **Vacation** – The proposed language is an accurate reflection of current practice and does not restrict the City’s authority to vacate a right of way. The Agreement requires the City to notify Ziply Fiber of a vacation so that they can obtain an easement if one is needed.
9. **Collaboration on City projects** – This Agreement expressly calls out RCW 35.99.070 which requires a service provider that is operating in public right-of-way to provide the City with additional duct or conduit for the City’s purposes. The City would receive this benefit at cost under the Franchise Agreement.
10. **Additional Terms** – The majority of the remainder of the Agreement is boilerplate legal language. All language and terms have been thoroughly reviewed and negotiated and the City’s interests are protected throughout these Agreements.

Alternatives

1. Pass the Draft Ordinance to a second reading as written.
2. Pass the Draft Ordinance to a second reading with proposed amendments to be negotiated with Ziply Fiber.
3. Do not pass the Draft Ordinance to a second reading and direct staff to continue negotiations.

Financial Impact

The City will receive an initial \$5,000 to cover the City’s costs of the negotiation of this Franchise Agreement. Additionally, the City will receive all permitting costs for work to be conducting and any additional staffing time that is spent administering this Agreement can be billed to Ziply Fiber.

Finally, the City will receive 6% utility tax on the telephone business conducted by Ziply Fiber.

Recommendation

The Legal Department, Planning, Building, and Public Works, and Finance Department recommend passing the Draft Ordinance to a second reading.

DRAFT ORDINANCE NO. 24-087

AN ORDINANCE OF THE CITY OF DES MOINES granting a non-exclusive Franchise to construct, install, operate, maintain, repair, or remove telecommunications facilities within the public ways of the City of Des Moines ("City") to Ziply Fiber Pacific, LLC d/b/a Ziply Fiber ("Grantee"). Grantee's telecommunications facilities shall not include antennas and support structures specifically for attaching antennas that are used for personal wireless communications services. The City and Grantee are sometimes hereinafter collectively referred to individually as a "party" and collectively as the "parties."

WHEREAS, Ziply Fiber Pacific, LLC d/b/a Ziply Fiber, a company organized and existing under the laws of the State of Delaware is a competitive telecommunications company providing telecommunication services, including voice, internet and data services, which desires to occupy the City of Des Moines rights-of-ways to install, construct, operate, and maintain its telecommunications facilities and network for the purpose of providing services to its customers at locations within the City, and

WHEREAS, the Grantee, Ziply Fiber Pacific, LLC, has represented to the City that it provides a telephone business as defined by RCW 82.16.010 or acts as a service provider as such term is defined in RCW Section 35.99.010, and

WHEREAS, Grantee has applied to the City for a non-exclusive telecommunications service franchise to enter, occupy, and use public ways to construct, install, operate, maintain, and repair telecommunications facilities to offer and provide telecommunications service for hire, sale, or resale in the City, and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises within the boundaries of the City, and

WHEREAS, the 1934 Communications Act, as amended relating to telecommunications providers recognizes and provides local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis, and

WHEREAS, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the City, including without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the City after review of specific plans, and

WHEREAS, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways, and

WHEREAS, the City and Grantee desire to effectuate good coordination of the use of the rights-of-way, and

WHEREAS, the City Council finds that the franchise terms and conditions contained in this Ordinance are in the public interest; now therefore,

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

Sec. 1. Definitions.

(1) **Use of words and phrases.** For the purposes of this Franchise, the following terms, phrases, words, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in the Des Moines City Code (DMMC), or in the Federal Communications Act of 1934 as amended, unless inconsistent herewith. The headings contained in this Franchise are to facilitate reference only, do not form a part of this Franchise, and shall not in any way affect the construction or interpretation hereof. The words "shall," "will," and "must" are mandatory, and the word "may" is permissive or directory.

(2) "Abandonment" means the disconnection by the Grantee of specific Facilities from the telecommunications system.

(3) "Affiliate" means any Person who owns or controls, is owned by or controlled by, or is under common ownership or control with Grantee.

(4) "Cable Act" means the Cable Communications Policy Act of 1984 as amended and as may be amended from time to time during the term of this Franchise (47 U.S.C. § 521 et seq., as amended).

(5) "Cable service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(6) "City Council" means the governing body of the City.

(7) "Communications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(8) "Communications applications fees and charges" includes fees and charges connected to right-of-way management, construction permit, permit design fee, building permit, encroachment permit, inspections and pavement restoration.

(9) "Communications service" means the offering of communications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(10) "Communications system" or "system" means only those facilities necessary for Grantee to provide Communications services.

(11) "Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines.

(12) "Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

(13) "Dark fiber" means properly functioning optical cable which is not used or available for use by Grantee or the general public, but may be made available for use under lease to third parties.

(14) "Effective date" means five days following the publication of this Franchise or a summary thereof occurs in an official newspaper of the City as provided by law.

(15) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

(16) "Facilities" means, collectively, any and all telecommunications transmission systems and appurtenances owned by Grantee, now and in the future, in the Franchise Area, including, but not limited to, wire, radio, optical cable, electromagnetic or other similar types of equipment and related appurtenances in any way comprising part of the System.

(17) "FCC or Federal Communications Commission" means the agency as presently constituted by the United States Congress or any successor agency with jurisdiction over telecommunications service matters.

(18) "Fiber optic" means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying telecommunication service by means of electric light-wave impulses.

(19) "Franchise area" means the area within the jurisdictional boundaries of the City, including any annexed areas, to be served by Grantee as specified in this Franchise.

(20) "Gross Revenues" means all gross revenues received by Grantee or its affiliates from the provision of intrastate telephone business activities in the City of Des Moines, as described in Utility Tax below.

(21) "Incremental costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred.

(22) "Optical cable" means wires, lines, cables and communication and signal lines used to convey communications by fiber optics.

(23) "Open Video System" means a facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, provided that the Federal Communications Commission has certified that such system complies with 47 CFR 76.1500 et seq.

(24) "Person" means any individual, firm, partnership, association, joint stock company, trust, corporation, company, governmental entity.

(25) "Public ways or rights-of-way" includes the surface, the air space above the surface, and the area below the surface of any public street, highway, parkway, circle, lane, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation, repair, and maintenance of a Telecommunication System. No reference in this Franchise to a public right-of-way shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation, repair, and maintenance of a Telecommunication System, and the Grantee shall be deemed to gain only those rights which the City has the undisputed right and power to give. For this Franchise, public ways and rights-of-way are limited to the areas above the ordinary high water mark of Puget Sound.

(26) "Route map" means a geographic representation of the Grantee's Telecommunication System as it exists within the public right-of-way and within private easements in the Franchise area.

(27) "Subscriber" means any Person who or which purchases, leases, rents, obtains or subscribes to Telecommunications Service provided by Grantee by means of or in connection with the Grantee's Telecommunications System.

(28) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(29) "Telecommunications applications fees and charges" includes fees and charges connected to right-of-way management, construction permit, permit design fee, building permit, encroachment permit, inspections and pavement restoration.

(30) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Telecommunications service shall also include offering Internet access, private line service, front- and back-haul transport and/or leasing dark fiber directly to the public or third parties.

(31) "Telecommunications system" or "system" means only those facilities necessary for Grantee to provide Telecommunications service.

(32) "Underground facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

(33) "Utility poles" means poles, and crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication.

(34) "Wireless Communications Facilities" means the site, wireless communications support structures, antennas, accessory equipment structures, and appurtenances used to transmit, receive, distribute, provide or offer personal wireless communications services. Wireless communications facilities include, but are not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, and electronic switching equipment.

Sec. 2. Franchise - Grant of authority.

(1) **Use of public rights-of-way.** There is hereby granted to Grantee the right and privilege, to have, acquire, construct, reconstruct, upgrade, repair, maintain, use, and operate in the City a Telecommunications System, and to have, acquire, construct, reconstruct, repair, maintain, use, and operate in, over, under, and along the present and future Public rights-of-way of the City all necessary or Facilities, including without limitation, desirable wires, cables, electronic conductors, underground conduits, vaults, and other structures and appurtenances necessary for the construction, maintenance, and operation of Grantee's Telecommunications system in the Franchise Area. Grantee or Affiliates shall not install or construct facilities within the City's Public Rights-of-Way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

(2) **Additional services/compensation.** By granting this Franchise, the City does not waive and specifically retains any right to regulate and receive compensation as allowed by law for services offered over the Telecommunication system which are not Telecommunication services. Upon request, Grantee shall inform City of any non-Telecommunication and/or Telecommunication services offered over the Telecommunication system of which Grantee or its Affiliates are aware. By accepting this Franchise, Grantee does not waive any right it has under law to challenge the City's requirement for authorization to provide non-Telecommunication Services.

(3) **Responsibility for costs.** Except as expressly provided otherwise, any act that Grantee is required to perform under this Franchise shall be performed at Grantee's cost. If Grantee fails to perform work that it is required to perform within the time provided for performance or a cure period, the City may perform the work and bill the Grantee for documented costs. The Grantee shall pay the amounts billed within thirty (30) days of Grantee's receipt of a detailed invoice. The parties agree that any amounts paid pursuant to this Section are not Franchise fees and fall within one or more of the exceptions to the definition of Franchise fee under federal law. Nothing in this section is intended to affect in any way (by expansion or contraction)

Grantee's rights under applicable law governing the ability to impose any costs, including but not limited to the rates charged.

(4) **Publication costs.** Any and all costs of publication related to this Franchise which may be required by law or action of City Council shall be borne by Grantee. Any payments made by the City under this provision are to be reimbursed to the City within thirty (30) days of Grantee's receipt of the invoice.

(5) **Franchise non-exclusive.** The rights, privileges of any franchise granted pursuant to chapter 20.04 of the Des Moines Municipal Code (DMMC) shall be nonexclusive. This Franchise shall not be construed as any limitation upon the right of the City, through its proper officers, to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other streets and public ways by Franchise, permit or otherwise. The City shall not authorize or permit any Person providing Communication services to enter into the Public rights-of-way in any part of the City on terms or conditions that, when viewed collectively, are generally more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Franchise.

(6) Nothing in this Franchise excuses Grantee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.

(7) Nothing in this Franchise excuses Grantee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.

(8) Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Grantee of any obligation to pay lawfully imposed charges or fees. Notwithstanding any other provision of this Franchise, nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be

assessed on Franchisee's business activities under this Franchise under applicable law.

(9) Nothing in this Franchise grants authority to Grantee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.

(10) Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities or to modify public ways to accommodate Grantee's facilities.

(11) Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Grantee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.

(12) Nothing in this Franchise shall be construed to permit Grantee to unlawfully enter or construct improvements upon the property or premises of another.

(13) Nothing in this Franchise grants authority to Grantee to enter, occupy or use City property, nor to install or construct facilities within the City's Public rights-of-way which are not authorized by this Franchise or lawfully allowed by applicable local, state, or federal law.

(14) Nothing in this Franchise grants authority to Grantee to provide or offer cable service as cable service is defined in 47 U.S.C. § 522(6), Open Video System services. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City separate authorization to provide Cable or Open Video System services, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

(15) Grantee may use its facilities authorized by this Franchise to provide telecommunications service only as expressly provided in this Franchise.

Sec. 3. Term evaluation, and renewal.

(1) This Franchise shall run for a period of ten (10) years unless extended or terminated sooner as hereinafter provided. This Franchise shall commence after the effective date of this Franchise and in accordance with the written acceptance requirements herein.

(2) Should the Parties fail to formally renew this Franchise prior to the expiration of the ten (10) year renewal period, the Franchise shall automatically continue on a month to month period until renewed or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

(3) On the fifth (5th) anniversary of this Franchise, if either party identifies one or more specific issues that the party believes may require a reevaluation of one or more of the material terms of this Franchise, the Parties agree to discuss such issues diligently and in good faith. Notwithstanding the foregoing, either party may at any time during the term of this Franchise, request a clarification of a term, or seek an amendment to, this Franchise.

Sec. 4. Compliance with City, state, and federal laws.

(1) **Compliance with applicable laws.** Grantee shall at all times comply with all laws, rules, and regulations of the City, state and federal governments and any administrative agencies thereof which are applicable to all businesses in the City and/or all users of the Public rights-of-way. The express provisions of this Franchise constitute a valid and enforceable contract between the parties.

(2) **Other ordinances.** This Franchise and all rights and privileges granted hereunder are subject to, and the Grantee must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City's exercise of its police powers and applicable law, and in case of any conflict between the express terms of this Franchise and any ordinance enacted by the City, this Franchise shall govern, except where such ordinance would result in a competitor to Grantee having more favorable franchise

terms than Grantee in which case City will notify Grantee and offer Grantee the opportunity to amend this Franchise consistent with such terms. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. The Grantee reserves the right to challenge provisions of any ordinance that conflicts with its contractual rights, and does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

(3) **Police power of the City.** Construction, maintenance, and operation of Grantee's Telecommunication system and all property of Grantee subject to the provisions of this Franchise shall be subject to all lawful police powers, rules, and regulations of the City. The Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise area. The City reserves the right to use, occupy and enjoy any Public rights-of-way or other public places for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, installation of traffic signal systems, intelligent transportation systems, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The City shall have the power at any time to order and require Grantee to remove or abate any pole, line, tower, wire, cable, guy, conduit, electric conductor, or any other structure or facility that is dangerous to life or property. In the event Grantee, after written notice, and the unencumbered ability to comply, fails or refuses to act within fifteen (15) days of such written notice, City shall have the power to remove or abate the same at the expense of Grantee, all without compensation or liability for damages to Grantee except in instances when the damage is caused by negligence or willful misconduct of the City or its agents. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.

(4) **Notification in the event of preemptive law.** Grantee shall use its best efforts to notify the City of any change in

law that materially affects Grantee's rights or obligations under this Franchise.

(5) **Amending franchise to conform to subsequent law.** The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

Sec. 5. Conditions of public rights-of-way occupancy.

(1) **Use permits and/or development authorization.** Grantee shall obtain use, right-of-way construction, and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in the franchise area. Grantee shall provide the following information for all facilities that it proposes to construct or install:

(a) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:

(i) The location and route of the proposed facilities;

(ii) When requested by the City, the location of all overhead and underground public utility, communication, cable, water, sewer, drainage and other facilities in the public way along the proposed route;

(iii) The specific trees, structures, improvements, facilities and obstructions, if any, that Grantee proposes to temporarily or permanently alter, remove or relocate.

(b) If Grantee is proposing to install overhead facilities, the Grantee shall provide evidence that the proposed overhead installation is in compliance with all applicable provisions of the Des Moines Municipal Code. The Grantee shall also provide evidence of Grantee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole, and written acknowledgement by the Grantee that if the overhead facilities are subsequently relocated underground, the Grantee shall relocate underground at no cost to the City, except as otherwise provided in RCW Section 35.99.060.

(c) If Grantee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:

(i) If known to Grantee or reasonably ascertainable to Grantee, the total capacity of such ducts or conduits; and

(ii) If known to Grantee or reasonably ascertainable to Grantee, the amount of the total capacity within such ducts or conduits which will be occupied by Grantee's facilities.

(d) If Grantee is proposing to install underground facilities in new ducts or conduits within the public ways:

(i) The location proposed for new ducts or conduits;

(ii) The total capacity of such ducts or conduits; and

(e) A preliminary construction schedule and completion date together with a traffic control plan in compliance

with the Manual on Uniform Traffic Control Devices (MUTCD) for any construction.

(f) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.

(g) Such other documentation and information regarding the facilities requested by the City.

(h) The requirements of this section do not apply to installation of optical cable necessary to connect a customer of Grantee to a previously approved facility; provided that neither excavation nor trenching in the public right-of-way is required; that the optical cable does not cross a distance of more than three hundred (300) feet from its point of connection to the approved facility and the point where it exits the public right-of-way; that the optical cable connection meets or exceeds all applicable technical standards required by law; that the optical cable connection is durable and installed in accordance with good engineering, construction, and installation practices and does not interfere with the public use of the public ways, or adversely affect public health, safety or welfare; that the optical cable connection is constructed and installed to conform to all applicable federal, state, local, and industry codes, rules, regulations, and standards; and that the optical cable connection does not damage or impair the City's public way or property.

(i) The requirements of this section do not apply to repair or maintenance of a previously approved overhead facility; provided that the location and size of the previously approved facility is not materially changed; that no additional new facilities are constructed or installed; that the repair or maintenance activities are conducted in accordance with good engineering, repair, and maintenance practices and do not interfere with the public use of the public ways, or adversely affect public health, safety, or welfare; that maintenance or repair activities conform to all federal, state, local, and industry codes, rules, regulations, and standards; and that the repair or maintenance activities comply with the City Code.

(2) **Construction and installation requirements.**

(a) Grantee's System shall be constructed and maintained in such manner as not to interfere with in-place sewers, water pipes or any other property of City, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been placed in rights-of-way by, or under, City's authority.

(b) All facilities shall be constructed and installed in such manner and at such points so as not to inconvenience City or public use of the public ways or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.

(c) Interference with use of streets. When installing, locating, constructing or maintaining Facilities, the Grantee shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface and subsurface of any such street in as good condition as it was prior to performance by the Grantee of such work, to the satisfaction of the City.

(d) The Grantee shall apply for, obtain, and comply with the terms of all permits required under Des Moines Municipal Code sections regulating construction and maintenance within the right-of-way for any work done upon Grantee Facilities. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner. Grantee shall have the sole responsibility for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair or expand the System, and to construct, maintain and repair any part thereof.

(e) The Telecommunications system constructed, maintained and operated by virtue of this Franchise, shall be so constructed, maintained and operated in accordance with all applicable engineering codes adopted or approved by the City, State of Washington, federal government and/or engineering profession and in accordance with any applicable Statutes of the State of Washington, rules and regulations of the applicable Washington

regulatory authority, Ordinances of the City or of any other governmental regulatory commission, board or agency having jurisdiction over Grantee.

(f) The construction plans and Grantee's operations shall conform to all federal, state, local, and industry codes, rules, regulations, standards and laws. Grantee must cease work immediately if the City determines that Grantee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the City determines that Grantee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.

(g) Neither approval of plans by the City nor any action or inaction by the City shall relieve Grantee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Grantee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.

(h) Except as to emergency repairs, Grantee shall, prior to excavating within any street, alley or other public place, and installing any conduit, overhead cable or equipment therein, file with the City Manager or designee plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, and a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. The Grantee shall conform to all applicable requirements of the City Code, as it currently exists or as it may be amended.

(i) All construction and/or maintenance work as provided herein shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.

(j) Excavation work requiring a permit from the City shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate

action by Grantee for the protection of the Facilities, City property or other persons or property, Grantee may proceed without first obtaining the normally required permits. In such event Grantee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities, or any part thereof; City property; or other persons or property, and to protect the public welfare, health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

(k) In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City Manager or designee in writing as promptly as possible, before such repair or emergency work commences, or as soon thereafter as possible, if advance notice is not practical. The City may act, at any time, without prior written notice in the case of emergency, but shall notify the Grantee in writing as promptly as possible under the circumstances.

(l) Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property including, by way of example and not limitation, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and rights-of-way improvements, private facilities and public safety.

(m) New facilities shall be constructed in accordance with the following terms and conditions:

(i) Facilities shall be installed within the Grantee's existing underground duct or conduit whenever excess capacity exists.

(ii) Overhead facilities shall be installed on pole attachments to existing utility poles only, and then only if space is available.

(iii) Whenever all existing telephone and electric utilities are located underground within public ways, the Grantee must also locate its facilities underground.

(iv) Whenever all new or existing telephone and electric utilities are located or relocated underground within public ways, the Grantee that currently occupies the same public ways shall concurrently relocate its Facilities underground at its own expense, except as otherwise provided in RCW Section 35.99.060.

(n) Display of right-of-way permit. The Grantee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or designee at all times when construction work is occurring.

(o) Construction schedule. The Grantee shall submit a written construction schedule to the City Manager or designee prior to commencing any work in or about the public ways in accordance with City regulations.

(p) Locator service compliance. The Grantee, before commencing any construction in the public ways, shall call for location in accordance with RCW 19.122.

(q) Placement. All facilities, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners. All facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way. Exact placement within the right-of-way shall be coordinated with the City and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The City reserves the reasonable right as to final placement.

(r) Completion of construction. The Grantee shall promptly complete all construction activities so as to minimize

disruption of the public ways and other public and private property. All construction work authorized by a permit within public ways, including restoration, must be completed within 90 calendar days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

(s) Non-complying work. Upon order of the City Manager or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

(t) The City reserves the right to install, and permit to be installed, sewer, electric, phone, gas, water and other pipelines, cables, conduits and related appurtenances and to do, or permit to be done, any underground or overhead work in, across, along, over or under a public way or other public place occupied by Grantee. The City also reserves the right to construct new streets and public utilities and to alter the design of existing streets and public utilities. In performing such work, the City shall not be liable to Grantee for any damage, except in the event of the contributory negligence or willful misconduct of the City or its contractors, but nothing herein shall relieve any other person or entity from the responsibility for damages to Grantee's Facilities. The City will use its best efforts to provide Grantee with reasonable advance notice of plans by other persons to open the public ways.

(3) Coordination of construction and installation activities.

(a) Grantee shall coordinate its construction and installation activities and other work with the City and all other users of the public ways, including utilities located within the franchise area.

(b) All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.

(c) At least forty-eight (48) hours prior to entering a public way to perform construction and installation activities or other work, Grantee shall give notice, at its cost, to owners and occupiers of property adjacent to such public ways indicating the nature and location of the work to be performed.

Such notice shall be physically posted by door hanger. Grantee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.

(d) The City shall give reasonable advance notice to Grantee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice, except in the event of the contributory negligence or willful misconduct of the City or its contractors. When such notice has been given, Grantee shall provide information requested by the City regarding Grantee's future plans for use of the public way to be opened. When notice has been given, Grantee may only construct or install facilities during such period that the City has opened the public way for construction or installation.

(4) **Relocation.** Grantee shall relocate its facilities as ordered by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060, when there is construction, alteration, repair or improvement of a public way. Grantee shall complete the relocation by the date specified by the City. Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change or relocation. Grantee shall relocate its facilities at its own expense except where the Grantee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Grantee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation or as otherwise provided in RCW Section 35.99.060.

(5) **Temporary removal, adjustment or alteration of facilities.**

(a) Grantee shall temporarily remove, adjust or alter the position of its facilities at its cost, except as otherwise provided in RCW Section 35.99.060, at the request of the City for public projects, events, or other public operations or purposes.

(b) Grantee shall locate the precise horizontal and vertical location of its underground facilities by excavating upon request of the City. If the City's request is in support of a City project, the Grantee shall complete this service within 14 days at no cost to the City, except as otherwise provided in RCW Section 35.99.060. If the City's request is in support of a third party's project, the Grantee shall be entitled to recover its cost from the project sponsor as set forth in RCW Section 35.99.060.

(c) If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Grantee for the temporary removal, adjustment or alteration of Grantee's facilities to accommodate the moving or removal of said building or other object. In such event, Grantee shall, at the cost of the person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:

(i) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Grantee's business, consistent with the maintenance of proper service to Grantee's customers;

(ii) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the operations of Grantee, in the sole discretion of the City;

(iii) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and save Grantee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence or willful misconduct of the person moving or removing such building or other object or the negligence or willful

misconduct of the agents or employees of the person moving or removing such building or other object; and

(iv) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.

(d) The City may require Grantee to temporarily remove, adjust or alter the position of Grantee's facilities as the City may reasonably determine to be necessary at no cost to the City, except as otherwise provided in RCW Section 35.99.060, for work deemed needed by the City in the Rights-of-Way. The City shall not be liable to Grantee or any other party for any direct (except as a result of the negligence or willful misconduct of the City or its contractors), indirect, consequential, punitive, special or other damages suffered as a direct or indirect result of the City's actions.

(e) The temporary removal, adjustment or alteration of the position of Grantee's facilities shall not be considered relocation for any purpose whatsoever, except as otherwise provided in RCW Section 35.99.060.

(6) **Tree trimming.** The Grantee shall have the authority to trim trees or other natural growth on public property or which overhang streets, alleys, sidewalks and public ways of the City so as to prevent the branches of such trees from coming in contact with the Grantee's wires, cables or other equipment that may be damaged due to continued contact. Grantee takes full responsibility for removing debris when the work is complete. All trimming is to be done at the sole expense and responsibility of Grantee.

Trimming of trees and shrubbery within or overhanging the public ways to prevent contact with Grantee's Facilities shall be done in such a manner to cause the minimum amount of damage to trees and shrubs. If in the City's determination, trees are excessively damaged as a result of the work undertaken by or on behalf of Grantee, Grantee shall pay the City, within 30 days of submission of a statement by the City, the reasonable cost of any treatment required to preserve a tree or shrub or the cost for removal and replacement of the tree or shrub with landscaping of equal value

or the value of the tree or shrub prior to the damage or removal, as determined by the City Manager or designee.

Any trimming or removal of trees or shrubs shall be done in full compliance with the City's Ordinances and all other laws or regulations of the City.

(7) Underground installation.

(a) The parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities, provided such requirement is applied on a non-discriminatory basis as required under applicable state or federal law.

(b) Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Grantee shall underground the Grantee Facilities in the manner specified by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060. Where other utilities are present and involved in the undergrounding project, Grantee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trench excavation, backfill, and restoration, and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

(c) Grantee will maintain membership in good standing with the Utility Coordinating Council One Call Center, or other similar or successor organization designated to coordinate underground equipment locations and installations. Grantee shall abide by chapter 19.122 RCW (Washington State's "Underground Utilities" statutes) and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

(8) Ducts and conduits.

(a) If the Grantee is constructing underground conduit for its own use, the City may require the Grantee to construct excess conduit capacity in the public ways, provided

that the City enters into a contract with the Grantee consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Grantee, (calculated as the difference between what the Grantee would have paid for the construction of its conduit and the additional cost only of construction of the excess conduit). If the City makes the additional conduit available to any other entity for the purposes of providing telecommunications service or cable service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the Grantee shall recover at least the fully allocated costs of the Grantee. The Grantee shall state both contract rates in the contract. The City shall inform the Grantee of the use, and any change in use, of the requested conduit and related access structures, if any, to determine the applicable rate to be paid by the City.

(b) The City shall not require that the additional conduit space be connected to the access structure and vaults of the Grantee.

(c) Except as expressly provided in this section, Grantee shall not charge the City for any costs, of any kind whatsoever, for facilities provided by Grantee in accordance with this section.

(d) The provisions of this section shall conform to the requirements of RCW 35.99.070.

(9) **Location of Grantee facilities.**

(a) From time to time, the City, or its representatives, may request identification of the specific location of Grantee System facilities. The Grantee agrees to respond to such request within forty-eight (48) hours of the receipt of the request, excluding delays due to weather or other conditions. In the event that Grantee cannot locate such information within two (2) business days Grantee shall notify the City. If Grantee fails to notify the City of its facilities locations within two (2) business days, and damage is caused to Grantee's facilities as a direct result, the Grantee shall hold the City harmless from all liability, damage, cost or expense resulting from the City's actions in this regard unless such damage was caused by the negligence or willful misconduct of the City or its agents.

(b) Report of underground facilities. From time to time the City may be required to design or construct right-of-way improvements in a specific area, the City or its designee may require the Grantee to submit a report of existing underground system facilities for a specific area of the City that will be impacted as a result of a planned right-of-way improvement. Within thirty (30) days after receipt by the Grantee of a request from the City or its designee, the Grantee shall submit a report of underground system facilities that shall comply with the following provisions:

(i) Certification by the Grantee that the report accurately depicts the location of all system facilities, including drop service lines to individual subscribers, if any. The accuracy of this report shall be noted based upon the capability of the locating equipment used.

(ii) The accurate depth of the underground facility, as may be available based upon the capability of the locating device used. The accuracy of this information shall be noted.

(iii) Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

(iv) The City and Grantee recognize the importance of making best efforts to communicate during the planning and construction phases of right-of-way improvement projects. To that end, the City and Grantee agree to work cooperatively and to be reasonable and timely in requesting and providing necessary information. In the event the City reasonably determines that more precise information is needed for a specific aspect of a right-of-way project, the Grantee agrees to take the necessary steps to provide such precise information within thirty (30) days of receipt of request. If it is necessary for the Grantee to pot-hole or excavate and restore portions of the right-of-way to respond to the City's information request, the Grantee agrees to take such steps at its expense, except as otherwise provided in RCW Section 35.99.060, and the City agrees to waive all permitting and inspection fees therefore.

(c) Within sixty (60) days of the effective date of this Franchise, Grantee shall provide the City with a current route map of the Telecommunication System located within the City. Upon City request, but no more often than once each year during the term of this Franchise, the Grantee shall provide the City with an updated route map showing the changes that have occurred in the Telecommunication System.

(d) Grantee agrees to obtain facilities location information from other users of the Public rights-of-way prior to Grantee's construction, reconstruction, maintenance, operations and repair of the Grantee's System facilities.

(10) **Removal and abandonment of facilities.** In the event that the use of any part of the Grantee's system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system equipment or facilities have been installed in any public ways or rights-of-way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired, upon receiving ten (10) business days prior written demand from the City, the Grantee shall promptly remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the public ways of rights-of-way. Said removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Grantee shall promptly restore the public ways

or rights-of-way from which such property has been removed to a condition satisfactory to the City. Any affected equipment or facilities of the Grantee remaining in place one-hundred eighty-one (181) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days with prior written request from the Grantee, and such request shall not be unreasonably withheld. Any equipment or facilities of the Grantee that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the equipment or facilities of the Grantee in place, the equipment or Facilities shall become that of the City, and the Grantee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such equipment or facilities. None of the foregoing affects or limits the Grantee's rights to compensation for an involuntary abandonment of its equipment or facilities under state or federal law.

(11) Safety and maintenance requirements.

(a) All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner.

(b) Grantee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Grantee, establish a reasonable time for Grantee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself at the cost of the Grantee or have them made at the cost of Grantee.

(c) If Grantee fails to commence, pursue or complete any work required by law, this Franchise or any applicable permit to be done in any public way within the time prescribed and

to the satisfaction of the City, the City may at its discretion cause the work to be done. Grantee shall pay to the City the reasonable costs of the work in an itemized report provided by the City to Grantee within 30 days after receipt of such report.

(d) Grantee, and any person acting on its behalf, shall provide a traffic control plan that conforms to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property. Grantee shall implement and comply with its approved traffic control plan during execution of its work. The traffic control plan shall be developed and kept on site in Grantee's possession for all work impacting vehicular and pedestrian traffic. Traffic control plans may be modified as necessary by the Grantee to achieve effective and safe traffic control. All road closures requested by Grantee require a detour plan submitted at least 48 hours in advance and prior City approval unless there is an emergency.

(e) Grantee shall maintain its facilities in proper working order. Grantee shall restore its facilities to proper working order upon receipt of notice from the City that facilities are not in proper working order. The City may, after discussions with Grantee, establish a reasonable time for Grantee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established time frame, the City may restore the facilities to proper working order or have them restored at the cost of Grantee.

(f) The City shall have the right to inspect all construction and installation work performed by Grantee pursuant to this Franchise to the extent necessary to ensure compliance by Grantee. On an ongoing basis, Grantee shall certify to the City that Grantee's work is being performed and completed in a satisfactory manner.

(g) On notice from the City that any work is being performed contrary to the provisions herein, or in an unsafe or dangerous manner or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the City may

issue a stop work order and Grantee shall stop the work immediately. The City shall issue a stop work order in writing, unless given verbally in the case of an emergency, and provide the order to the individual doing work or post it on the work site. A copy of the order shall be sent to Grantee, and the order must indicate the nature of the alleged violation or unsafe condition and the conditions under which Grantee may resume work.

(12) **Removal of unauthorized facilities.** Within thirty (30) days following written notice from the City, Grantee shall, at its expense, remove unauthorized facilities and restore public rights-of-way and other property to as good a condition as existed prior to construction or installation of its facilities. Any plan for removal of said facilities must be approved by the City prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

(a) Upon expiration, termination, or cancellation of this Franchise;

(b) Upon abandonment of the facilities. Facilities shall be deemed abandoned if they are unused by Grantee as described in Section 5(10);

(c) If the facilities were constructed or installed prior to the effective date of this Franchise; unless such facilities were constructed or installed upon the condition of subsequent approval of this Franchise with the consent of the City;

(d) If the facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits;

(e) If the facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Franchise; or

(f) If the facilities are unauthorized for any reason whatsoever.

(13) **Restoration of public ways and other property.**

(a) Whenever necessary, after construction or maintaining any of Grantee's Facilities within the Rights-of-Way, the Grantee shall, without delay, and at Grantee's sole expense, except as otherwise provided in RCW Section 35.99.060, remove all debris and restore the surface and subsurface disturbed by Grantee as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during Grantee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable. Grantee agrees to pay all costs and expenditures required on the rights-of-way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Grantee for necessary trench patch maintenance, for a period of ten years from the date such maintenance was performed, normal wear and tear excepted. Favorable weather conditions permitting, Grantee agrees to repair rights-of-way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by the Grantee upon forty-eight (48) hours' notice excluding weekends and holidays. If Grantee fails to undertake such repairs as herein provided, the City may perform the repairs at Grantee's expense.

(b) Landscape restoration. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of the Grantee's facilities, shall be replaced or restored, at the Grantee's expense to the condition existing prior to performance of the work, except as otherwise provided in RCW Section 35.99.06.

(14) **Poles, structures, and property owned by others.** If and when the Grantee is authorized to install communication facilities aerially in accordance with chapter 12.48 of the Des Moines Municipal Code (DMMC), Grantee must obtain written approval from the owners of utility poles, structures and property not owned by Grantee prior to attaching to or otherwise using such poles, structures or property, and provide proof of such approval to the City. The City makes no representation and assumes no responsibility for the availability of utility poles, structures,

and property owned by third parties for the installation of Grantee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by the City or third parties for any reason whatsoever. The installation of facilities by Grantee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, the authority of Grantee to construct, install, operate, maintain, and repair Grantee's facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

Sec. 6. Indemnification and liability and assumption of risk.

(1) Indemnification / Hold Harmless. The Grantee shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with activities or operations performed by the Grantee or on the Grantee's behalf under this Franchise agreement, except for injuries and damages caused by the contributory negligence or willful misconduct of the City.

(2) The City shall give the Grantee written notice of any claim or of the commencement of any action, suit or other proceeding covered by this section. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. However, the failure of the City to provide such notice in writing to Grantee shall not relieve Grantee of its duties and obligations under this Section, provided that Grantee is given sufficient advance notice to perform its duties under this Section. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for

the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

(3) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

(4) **Damages and penalties.** By acceptance of this Franchise, Grantee specifically agrees that it will pay, all damages or penalties which the City, its officers, agents, employees, or contractors may legally be required to pay as a result of damages arising out of copyright infringements and all other damages arising out of Grantee's or Grantee's agents' installation, maintenance, or operation of the telecommunications System, except as specifically referenced elsewhere in this Franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise, subject to Section 635A of the Cable Act and applicable law.

(5) **Expenses.** If any action or proceeding is brought against the City or any of its officers, agents, or employees for claims for damages or penalties described in this Section, the Grantee, upon written notice from the City, shall assume the investigation of defense and fully control any resolution or compromise thereof, including the employment of counsel and the payment of all expenses including the reasonable value of any services rendered by any officers, agents, employees or contractors of the City which are not unreasonably duplicative of services provided by Grantee and its representatives. The City shall fully cooperate with the Grantee.

(6) **Separate counsel.** The City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and the Grantee shall pay the reasonable fees and expenses of such separate counsel if representation of both the Grantee and the City by the

same attorney would be inconsistent with accepted canons of professional ethics and if separate counsel is employed with the approval and consent of the Grantee, which shall not be unreasonably withheld.

(7) **Assumption of risk.** Grantee assumes the risk of damage to its facilities located in the City's public ways from activities conducted by third parties or the City, its elected officials, officers, employees, agents, or representatives, except in the event of the negligence or willful misconduct of any one or more of the above persons. Grantee releases and waives any and all claims against the City, its elected officials, officers, employees, agents, and representatives for damage to or destruction of the Grantee's facilities except to the extent any such damage or destruction is caused by or arises from the negligence or willful misconduct of the City. Grantee bears sole responsibility to insure its property. Grantee shall ensure that its insurance contracts waive subrogation claims against the City, its elected officials, officers, employees, agents, and representatives, and Grantee shall indemnify, defend and hold harmless the City, its elected officials, officers, employees, agents, and representatives against any and all subrogation claims if it fails to do so.

Sec. 7. Insurance.

(1) Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to Persons or damage to property which may arise from or in connection with this Franchise by the Grantee, their agents, representatives, employees or subcontractors.

(a) **Amounts of Insurance.** In accordance with applicable law, the Grantee shall maintain throughout the term of this Franchise the following insurance limits:

(i) Automobile Liability. Commercial automobile liability insurance policy in the amount of than Five Million Dollars (\$5,000,000) combined single limit each accident for bodily injury and property damage covering all owned, hired, and non-owned vehicles).

(ii) Commercial General Liability. A commercial general liability insurance policy issued by a company duly authorized to do business in the State of Washington insuring the Grantee with respect to the installation, maintenance, and operation of Grantee's Telecommunication System in the amount of Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage and Five Million Dollars (\$5,000,000) general aggregate. The City shall be included as an additional insured as their interest may appear under this Agreement under Grantee's Commercial General Liability insurance policy.

(iii) Excess General Liability. Excess or Umbrella Liability coverage at limits of One Million Dollars (\$1,000,000) per occurrence and annual aggregate providing coverage above the primary Commercial General, Commercial automobile liability and employer's liability insurance.

(iv) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. This requirement may be satisfied instead through the Grantee's primary Commercial General and Automobile Liability coverage, or any combination thereof.

(b) Other Insurance Provisions. The insurance policies are to contain the following provisions for Automobile Liability and Commercial General Liability insurance:

(i) The Grantee's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Grantee's insurance and shall not contribute with it.

(ii) Upon receipt of notice from it insurer(s) Grantee shall endeavor to provide Grantor with thirty (30) days prior written notice of cancellation

(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. Upon acceptance of the Franchise, Grantee shall furnish the City with original

certificates and blanket additional insured endorsement, evidencing the insurance requirements of the Grantee.

(e) Subcontractors. Grantee shall require any contractor or subcontractor to obtain and maintain substantially the same insurance with substantially the same limits as required of Grantee.

(2) Endorsements. Grantee agrees that with respect to the insurance requirements contained above, all insurance certificates will contain the following required provisions:

(a) Include the City and its officers, employees, and elected representatives as an additional insured as their interest may appear under this Agreement.

(c) Shall be on an occurrence basis and shall be primary coverage of all losses resulting from Grantee's operations covered by the policies.

(3) **Insurance term.** The insurance required above shall be kept in full force and effect by Grantee during this Franchise and thereafter until after the removal of all poles, wires, cables, underground conduits, manholes, and other conductors and fixtures incident to the maintenance and operation of Grantee's Telecommunication System, should such removal be required by City Council or undertaken by Grantee.

(4) **Issuing companies.** Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

(5) **No limit on liability.** Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Sec. 8. Performance bond and security fund.

(1) **Amount.** The Grantee shall provide the City with a financial guarantee in the amount of One Hundred Thousand Dollars (\$100,000) running for, or renewable for, the duration of the construction of Grantee's facilities in the City, in a form and substance acceptable to the City. This Franchise performance bond shall be separate and distinct from any other bond or deposit required.

(2) **Damages.** In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise, then there shall be recovered jointly and severally from the principal and any surety of such financial guarantee any damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described.

(a) Before any draws are made on the Franchise performance bond, the City Manager or designee shall give written notice to the Grantee:

(i) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the Grantee's act or default;

(ii) Providing a reasonable opportunity for the Grantee to first remedy the existing or ongoing default or failure, if applicable;

(iii) Providing a reasonable opportunity for the Grantee to pay any moneys due the City before the City draws on the Franchise performance bond, if applicable;

(iv) That the Grantee will be given an opportunity to review the act, default or failure described in the notice with the City Manager or designee.

(b) The Grantee shall replace the Franchise performance bond within fourteen (14) days after written notice

from the City Manager or designee that there is a deficiency in the amount of the Franchise performance bond.

(3) **Security fund.** In addition to the performance bond, Grantee shall establish and maintain a security fund in the amount of twenty-five thousand dollars (\$25,000), at its cost, with the City by depositing such monies, letters of credit, or other instruments in such form and amount acceptable to the City within 30 calendar days of the effective date of this Franchise. No sums may be withdrawn from the fund by Grantee without consent of the City. The security fund shall be maintained at the sole expense of Grantee so long as any of the Grantee's facilities occupy a public way.

(a) The fund shall serve as security for the performance of this Franchise, including any claims, costs, damages, judgments, awards, attorneys' fees or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.

(b) Before any sums are withdrawn from the security fund, the City shall give written notice to Grantee:

(i) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, attorneys' fees or liability which the City has incurred or may pay by reason of Grantee's act or default;

(ii) Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure, if applicable;

(iii) Providing a reasonable opportunity for Grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and

(iv) Grantee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

(c) Grantee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.

(d) Insufficiency of the security fund shall not release or relieve Grantee of any obligation or financial responsibility.

Sec. 9. Taxes, charges, and fees.

(1) **Franchise fee.** RCW 35.21.860 currently prohibits a municipal franchise fee for permission to use the right of way for telephone business purposes. Based on the representations of Grantee, it is the City's understanding that Grantee will use the right of way for telephone business purposes as defined by RCW 82.16.010 or as a service provider as such term is defined in RCW Section 35.99.010 for the provision of telecommunications services. If this prohibition is removed or does not apply to future services, Grantee understands the City may assess a reasonable franchise fee in accordance with the City Code, so long as local, State or federal law does not otherwise prohibit such fee.

(2) **Utility tax.** The parties further understand that RCW 35.21.870 currently limits the rate of City tax upon telephone business activities to six percent (6%) of Gross Receipts, unless a higher rate is approved by vote of the people. The parties agree, however, that nothing in this Franchise shall limit or expand the City's power of taxation, as now or may hereafter exist. Grantee understands that some of its business activities in the City of Des Moines as identified herein may be taxable activities subject to the six percent (6%) gross receipts tax rate, as imposed under the City's telephone business tax, adopted in Des Moines Municipal Code Chapter 3.68, subject to such activities being deemed taxable under applicable state and federal laws. This provision does not limit the City's power to amend Des Moines Municipal Code Chapter 3.68 as may be permitted by law, including increases to the tax rate. Notwithstanding any other provision of this Franchise, nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this Franchise under applicable law.

(3) **Permit and administrative fees.** Grantee shall also pay and be responsible for all charges and fees (authorized under applicable law) imposed to recover actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise, any use and/or development authorizations which may be required, or any permit which may be required, to inspecting plans and construction, or to the preparation of a detailed statement. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City but shall not excuse Grantee from paying and being responsible for other actual administrative expenses incurred by the City.

(a) Grantee shall pay a franchise processing fee of \$5,000 within 30 calendar days of the effective date of this Franchise.

(b) Grantee shall pay fees according to applicable sections of the City Code.

(4) Grantee shall pay and be responsible for taxes permitted by law.

(5) In addition to penalties and other remedies for which Grantee may be subjected, the City reserves the right to impose site-specific charges (authorized under applicable law) for placement of structures used to provide telecommunications services. Unless otherwise agreed by the parties, such charges shall be an amount equal to at least fifty percent (50%) of the costs of construction or installation of such structures.

Sec. 10. Access to facilities and universal service.

(1) Grantee shall provide access to its facilities by hire, sale, or resale on a nondiscriminatory basis. Grantee shall make its telecommunications services available to any customer within its franchise area who shall request such service whenever feasible, without discrimination as to the terms, conditions, rates or charges for the Grantee's services; provided, however, that nothing in this section shall prohibit Grantee from making any reasonable classifications among differently situated customers.

(2) Grantee shall provide Internet access to users of City property, at locations requested by the City, if it is practicable, upon Grantee's then-current market rates for such service and pursuant to a separate services agreement. Grantee and the City may enter into a separate agreement or agreements regarding the allocation of costs to construct, install, operate, maintain, repair, and remove facilities needed to provide such access; provided, however, that nothing herein shall require the City to accept construction or installation of facilities on City property.

Sec. 11. Acquisition of facilities. Upon Grantee's acquisition of any facilities in the public way, or upon any addition or annexation to the City of any area in which Grantee has facilities, such facilities shall immediately be subject to the terms of this Franchise without further action of the City or Grantee.

Sec. 12. Vacation of public ways. The City reserves the right to vacate any public way which is subject to rights, privileges, and authority granted by this Franchise. If Grantee has facilities in such public way, the City shall reserve an easement for Grantee, if requested by Grantee.

Sec. 13. Duty to provide information. Grantee's obligations under this section are in addition to those provided elsewhere in this Franchise. Within fifteen (15) days of a written request from the City, Grantee shall furnish the City with all requested information sufficient to demonstrate:

(1) That Grantee has complied with all requirements of this Franchise;

(2) That taxes, fees, charges, or other costs owed or payable by Grantee have been properly collected and paid;

(3) The names of the users of Grantee's facilities and the services and products those users are providing to the public.

Sec. 14. Records.

(1) Grantee will manage all of its operations in accordance with a policy of keeping its documents and records open

and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Grantee and its affiliates that are reasonably necessary for the enforcement of this Franchise or to verify Grantee's compliance with terms or conditions of this Franchise. Grantee will not deny the City access to any of Grantee's records on the basis that Grantee's documents or records are under the control of any affiliate or a third party.

(2) All documents and records maintained by Grantee shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Grantee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

(3) One copy of documents and records requested by the City will be furnished to the City at the cost of Grantee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days of the City's request, that the City inspect them at Grantee's local office. If any documents or records of Grantee are not kept in a local office and/or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Franchise, or to verify Grantee's compliance with terms or conditions of this Franchise, then all reasonable travel and related costs incurred in making such examination shall be paid by Grantee.

Sec. 15. Assignment or transfer. Grantee's rights, privileges, and authority under this Franchise, and ownership or working control of facilities constructed or installed pursuant to this Franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Grantee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any transfer, assignment or disposal of Grantee's rights, privileges, and authority under this Franchise, or ownership or working control

of facilities constructed or installed pursuant to this Franchise, may be subject to reasonable conditions as may be prescribed by the City. In the event such a transfer, assignment, or disposal of franchisee's ownership is approved by the Washington Utilities and Transportation Commission ("WUTC"), the City will be deemed to have consented to such transfer. Grantee will provide City with a copy of any such approval.

(1) No rights, privileges, or authority under this Franchise shall be assigned, transferred, or disposed of in any manner within twelve (12) months after the effective date of this Franchise.

(2) Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.

(3) Grantee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of assignment, transfer, or disposal:

(a) Complete information setting forth the nature, terms and conditions of the proposed assignment, transfer, or disposal;

(b) Any other information reasonably required by the City; and

(c) A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal.

(3) No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.

(4) Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise or ownership or working control of facilities constructed or installed pursuant to this Franchise, without prior written approval of the City pursuant to this section, shall be void and is cause for termination of this Franchise.

(5) Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control (regardless of the percentage) of the Grantee or affiliated entities having fifty percent (50%) or more of the ownership or actual working control (regardless of the percentage) of Grantee, or of control of the telecommunications capacity or bandwidth of Grantee, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are exempt from City approval; provided that, Grantee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Grantee. Every change, transfer, or acquisition of control of Grantee shall cause a review of the proposed transfer. City approval shall not be required for mortgaging purposes or if said transfer is from Grantee to another person controlled by Grantee.

(6) All terms and conditions of this Franchise shall be binding upon all permitted successors and assigns of Grantee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

Sec. 16. Violations, noncompliance, and other grounds for termination or cancellation.

(1) This Franchise, and any right, privilege or authority of Grantee to enter, occupy or use public ways may be terminated or cancelled by the City for the following reasons:

(a) Violation of or noncompliance with any term or condition of this Franchise by Grantee;

(b) Violation of or noncompliance with the material terms of any use and/or development authorization or required permit by Grantee;

(c) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Grantee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;

(d) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;

(e) Misrepresentation or lack of candor by or on behalf of Grantee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Grantee;

(f) Abandonment of facilities;

(g) Failure of Grantee to pay taxes, fees, charges or costs when and as due, unless subject to a proper and timely legal protest; or

(h) Insolvency or bankruptcy of Grantee.

(2) In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Grantee to enter, occupy or use public ways, Grantee shall be given written notice and a reasonable period of time not exceeding thirty (30) days to furnish evidence:

(a) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;

(b) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or

(c) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.

(3) In the event that Grantee fails to provide evidence reasonably satisfactory to the City as provided in subsection (2) of this section, the City shall refer the apparent violation,

noncompliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

(4) If the City Council determines that the violation, noncompliance, or other grounds above for termination or cancellation exist, then, Grantee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the foregoing and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Grantee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Grantee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Grantee:

- (a) Whether the misconduct was egregious;
- (b) Whether substantial harm resulted;
- (c) Whether the violation was intentional;
- (d) Whether there is a history of prior violations of the same or other requirements;
- (e) Whether there is a history of overall compliance; and
- (f) Whether the violation was voluntarily disclosed, admitted or cured.

(5) The City Council's choice of remedy shall not excuse Grantee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit. Grantee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for termination or cancellation. Further, nothing herein shall be

construed as limiting any remedies that the City may have, at law or in equity, or the Grantee may have at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Grantee.

Sec. 17. Notices.

(1) Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY:

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

GRANTEE:

Ziplay Fiber Pacific, LLC
Attn: Legal Department
135 Lake Street South, Suite 155
Kirkland, WA 98033
legal@ziplay.com

(2) Grantee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Grantee shall cooperate with the City and make its best efforts to immediately respond to minimize damage, protect the welfare, health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Grantee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

Sec. 18. Non-waiver. The failure of either party to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the party and shall not prevent

the party from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Sec. 19. Eminent domain. This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Sec. 20. Limitation of liability. Except as otherwise set forth in this Franchise, administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, agents, and representatives for any injury or damage; or by reason of any schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the City; or for the accuracy of plans submitted to the City.

Sec. 21. Damage to facilities. Except as otherwise set forth herein, unless directly and proximately caused by the active sole negligence of the City, the City shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.

Sec. 22. Resolution of disputes and governing law.

(1) **Alternative dispute resolution.** If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Franchise 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 Franchise 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 Franchise 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 Franchise, each party shall pay its own legal costs and attorneys' fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XVII of this Contract.

Sec. 23. Severability. If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise or its application to any other person or entity.

Sec. 24. Miscellaneous.

(1) **Equal employment and nondiscrimination.** Throughout the term of this Franchise, Grantee will fully comply with all applicable equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.

(2) **Local employment efforts.** Grantee will use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever the Grantee employs contractors to perform work under this Franchise.

(3) **Descriptive headings.** The headings and titles of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.

(4) **Force majeure.** Grantee shall not be required to perform any covenant or obligation in this Franchise, or be liable in damages to the City, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God or force majeure. An "act of God" or "force majeure" is defined for purposes of this Franchise as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), epidemic or pandemic, acts of the public enemy, wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Grantee.

(5) **No joint venture.** Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

(6) **Actions of the City or Grantee.** In performing their respective obligations under this Franchise, the City and Grantee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

(7) **Counterparts.** This Franchise may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Franchise shall be deemed to possess the full force and effect of the original.

(8) **Entire agreement.** This Franchise represents the entire understanding and agreement between the parties with

respect to the subject matter and supersedes all prior oral and written negotiations between the parties.

(9) **Modification.** The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

(10) **Rights granted.** This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and terms stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title.

(10) **Contractors and subcontractors.** Grantee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee.

Sec. 26. Publication. The City Clerk is authorized and directed to publish a summary hereof.

Sec. 27. Effective date. This Ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law, but if, and only if, the Grantee has endorsed this Ordinance and accepted the terms and conditions thereof.

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

M A Y O R

APPROVED AS TO FORM:

DRAFT Ordinance No.
Page 51 of 52

City Attorney

ATTEST:

City Clerk

Published:

DRAFT Ordinance No.
Page 52 of 52

ACCEPTANCE:

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening, to the extent that the City is legally entitled to do so, in any legal or regulatory proceeding affecting the Telecommunication System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

By: _____

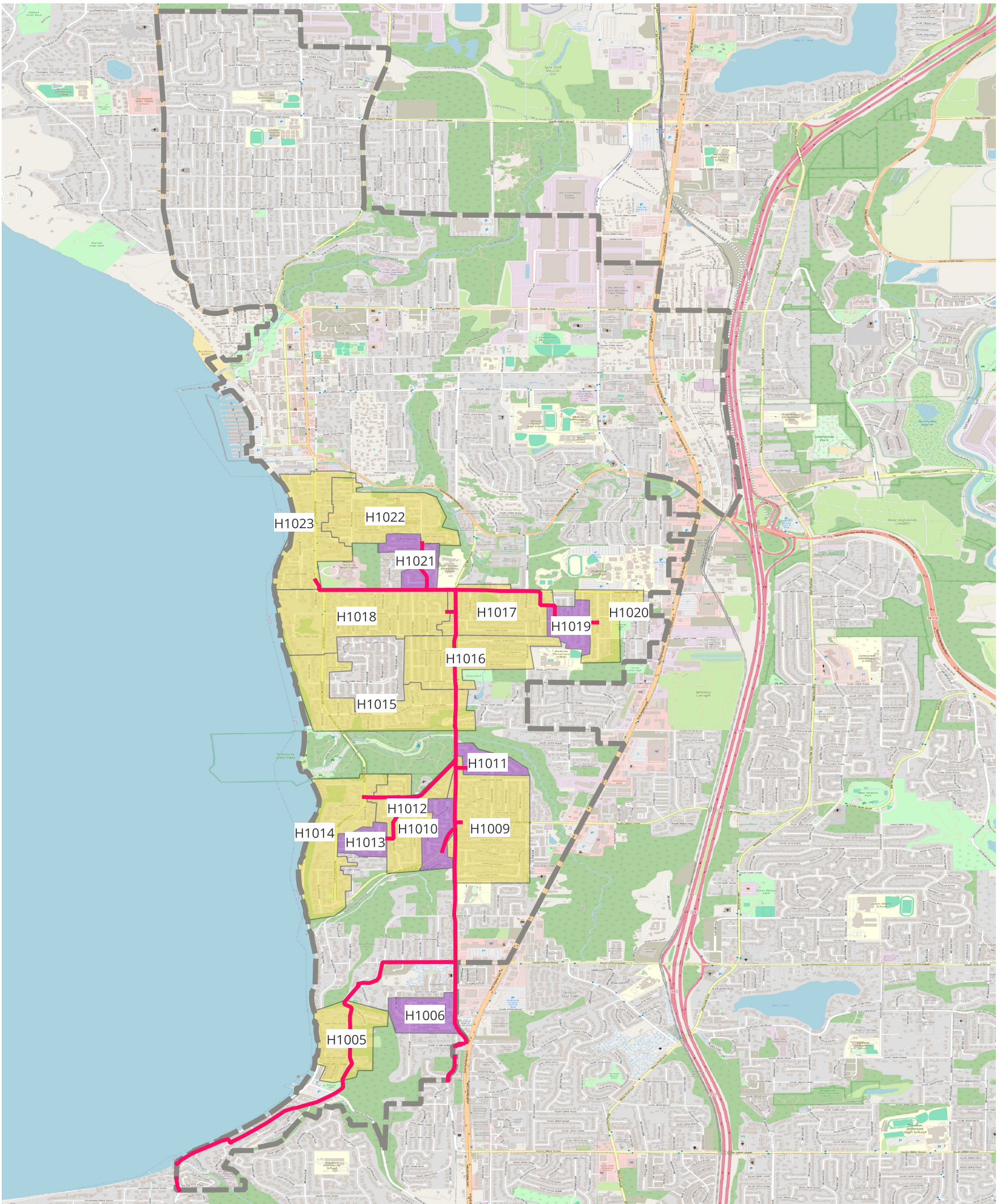
Printed Name: George Baker Thomson, Jr.

Date: _____

Title: VP, Associate General Counsel

City of Des Moines Fiber Build

Attachment #2



Legend

- New Feeder Fiber
- Des Moines City Limits
- Blocks_Des_Moines
 - Aerial distribution
 - Underground distribution
- OSM streets

0 0.25 0.5 mi



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: City Logo Discussion

FOR AGENDA OF: January 9, 2025

ATTACHMENTS:

1. Resolution No. 164
2. Ordinance No. 777
3. Compilation of Logos

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 2, 2025

CLEARANCES:

- ☐ City Clerk _____
- ☐ Community Development _____
- ☐ Courts _____
- ☐ Finance _____
- ☐ Human Resources _____
- ☒ Legal /s/ TG
- ☐ Marina _____
- ☐ Police _____
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is for Council to start the discussion on a potential new logo design, focusing on branding identity, visual appeal and alignment with organizations values.

Suggested Motion

Motion: No suggested motion.

Background

The City Council adopted Resolution 164, establishing the Municipal Seal, in April 1972. On November 10, 1988, the City Council introduced a new section under Chapter 9.06 of the Des Moines Municipal Code, which regulates the use of the official city flag, municipal seal, and centennial logo.

Since then, several variations of the adopted logos have been created for various departments and purposes.

Discussion

Council to discuss.

Alternatives

Council may keep the current logo, or use one of the other logos that have been created.

Financial Impact

Not known at this time.

Recommendation

Staff does not have any recommendations.

RESOLUTION NO. 164

A RESOLUTION of the City of Des Moines adopting a Municipal Seal.

WHEREAS, RCW 35.24.010 authorizes third class cities in the State of Washington to adopt a municipal seal, and

WHEREAS, the City Council of the City of Des Moines desires to adopt a municipal seal which may be alterable at the pleasure of the City Council,

Now therefore;

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

I

The following decorative ornamental design is hereby adopted as the "Municipal Seal" for the City of Des Moines, to-wit:



Dated at Des Moines, Washington, this 16 day of April 1972.

APPROVED AS TO FORM:

Robert W. Farnsworth
City Attorney

ATTEST: Marie Howell
City Clerk

Robert W. Farnsworth
MAYOR

FROM

DES MOINES CITY COUNCIL MEETING

TO

BLUMENTHAL
UNIFORM CO. INC.
1313 SECOND AVENUE
SEATTLE, WASHINGTON 98101

SUBJECT:

DATE:

FOLD

MESSAGE

DESIGN.....

SHOULDER EMB. PRICES \$1. 25

FLAG PRICES APPLICATED \$165.00 ea.

SILK SCREEDED \$165.00 1st FLAG

3' x 5' \$ 65.00 2nd and after

Banner \$ 98.00 2 x 4

\$108.00 3 x 5

Decals 14"-16" long 16 or more \$8.75 ea or \$140.00

JUMPSUITS

RETURN TO

SIGNED:

REPLY

DATE:

SIGNED:



BUSINESS ENVELOPE MFRS. INC.
BRONX, N. Y. KNOXVILLE, TENN.
MELROSE PARK, ILL.
ANAHEIM, CALIF.
PK100-U

PERSON ADDRESSED RETURN THIS COPY TO SENDER

180.00
EUMMENTAL
1000 CO. 212
1000 SECOND AVENUE
SEATTLE, WASHINGTON 98101

TO

DES MOINES CITY COUNCIL MEETING

FROM

DATE

SUBJECT

MESSAGE

↑

16 City Clerk @ 8.75
(4) Admin 36.75
Stk 110
34 CE
2 way Stn.
July

DESIGN.....
SHOULDER EMB. PRICES \$1.25
FLAG PRICES APPLICATED \$165.00 ea.
\$185.00 1st P.M.
\$185.00 2nd and after
Banner
\$98.00 2 x 4
\$108.00 3 x 6
Desals 14"-16" long
16 or more \$8.75 ea or \$14.00
JIMPSY

RETURN TO

REPLY

April - 4672
June - 9881
July 3

SIGNED

DATE

PERSON ADDRESS RETURN THIS COPY TO SENDER

UNITED STATES POSTAL SERVICE
FIRST CLASS PERMIT NO. 1000
SEATTLE, WASHINGTON 98101



City
Seal
of the Corporation

Set up charge included

- 12 \$37 each
 - 25 21.75 each
 - 50 13.95 each
 - 100 10.00 each
- Shelf life 4 years

FUND
DEPARTMENT

Page 282 of 290

Cost prices on City Seal

160 emblems (minimum) 1.25 each ✕

Flag \$165.00 for each flag

Silk screen flag - \$165.00 first -
every additional flag \$65 each

Banners - 2 x 4 98.00 (felt)
3 x 5 108.00

Silk banner - \$10 additional (not recommended)

Decals for cars

14"

In groups of 16 or more 8.75 per decal

Need 16 for 8 vehicles - 17.50 per vehicle

Does not include installation.

Repealed by D. 1036

Sect. 1- Amended by
Ord. 876

ORDINANCE NO. 777

Attachment #2

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON establishing a new section of Chapter 9.06, of the Des Moines Municipal Code, regulating the use of the Official City Flag and Centennial Logo, creating a civil infraction and penalty for violation thereof, and creating a separate offense of failure to respond, appear, or pay penalty.

WHEREAS, by Ordinance No. 771, the City Council adopted regulations prescribing the use of the Official City Municipal Seal, and

WHEREAS, the City council is concerned about the potential unauthorized use of the Official City Flag and/or Centennial Logo, such unauthorized use creating the potential for individuals to either misrepresent themselves as being affiliated with or employees of the City inasmuch as the Official City Flag and Centennial Logo incorporate design elements of the Official City Municipal Seal, and

WHEREAS, the City Council desires to grant the City Manager authority to permit the use of the City Flag or Centennial Logo when such use would be in the best interest of the City; now, therefore:

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Section 1. There is hereby added to Chapter 9.06 of the Des Moines Municipal Code the following section:

"Definitions. For the purposes of this chapter, the following definitions shall apply.

- A. Official Municipal Seal. "Official Municipal Seal" means the decorative ornamental design, attached as Exhibit "A" to this Chapter and incorporated by reference herein, which was adopted by the City Council as the Official Municipal Seal of the City of Des Moines by Council Resolution No. 164.
- B. Official City Flag. "Official City Flag", means the design, attached as Exhibit "B" to this chapter and incorporated by reference herein, which was presented to the City by the Centennial Commission.
- C. Official Centennial Logo. "Official Centennial Logo" means the design, attached as Exhibit "C" to this chapter and incorporated by reference herein, which was presented to the City by the Centennial Commission.

Section 2. There is hereby added to Chapter 9.06 of the Des Moines Municipal Code the following section:

"Unauthorized Use of Official City Flag/Centennial Logo - Civil Infraction. No person, group, public or private corporate entity, or state, county or local political subdivision or agency, shall copy, reproduce, distribute, sell or use in any manner the Official Municipal Flag or Centennial Logo of the City of Des Moines without the express written consent of the City Manager or his authorized designee.

Section 3. Civil Infraction, Penalty. Notwithstanding any other provision of this chapter to the contrary, any person or entity making unauthorized use of the Official City Flag or Centennial Logo shall be found to have committed a civil infraction and shall be assessed a penalty in the amount of one hundred dollars (\$100.00), which shall include all costs and assessments. Such civil infraction shall be processed generally in the manner provided by the Justice Court Traffic Infraction Rules (JTIR) in their current form or as may be subsequently amended; provided, however:

(a) no report of conviction shall be forwarded to the Department of Licensing, and

(b) a failure to respond, appear, or pay penalty shall constitute a separate criminal offense as provided in this chapter.

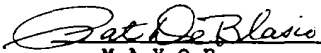
Section 4. There is hereby added to Chapter 9.06 of the Des Moines Municipal Code the following section:

"Failure to Respond, Appear, or Pay Penalty. Any person willfully violating his or her written and signed promise to respond to a notice of infraction or failure to appear at a Mitigating Circumstance or Contested Hearing, or failure to pay a penalty after having agreed to do so in writing, shall be guilty of a separate criminal offense regardless of the disposition of the notice of infraction."

Section 5. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 6. Effective Date. This ordinance shall take effect and be in full force five (5) days after its passage, approval and publication according to law.

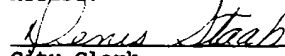
PASSED BY the City Council of the City of Des Moines, Washington, this 10th day of November, 1988 and signed in authentication thereof this 10th day of November, 1988.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Published: November 27, 1988

EXHIBIT "A"

RESOLUTION NO. 164

A RESOLUTION of the City of Des Moines adopting a Municipal Seal.

WHEREAS, RCW 35.24.010 authorizes third class cities in the State of Washington to adopt a municipal seal, and

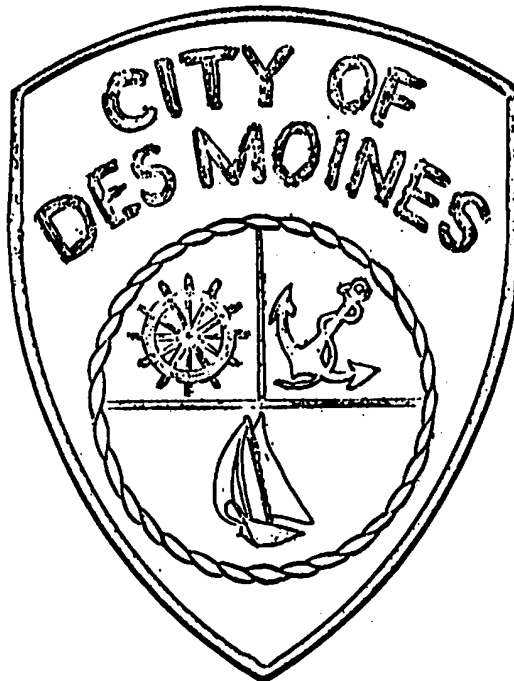
WHEREAS, the City Council of the City of Des Moines desires to adopt a municipal seal which may be alterable at the pleasure of the City Council,

Now therefore,

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

I

The following decorative ornamental design is hereby adopted as the "Municipal Seal" for the City of Des Moines, to-wit:



Dated at Des Moines, Washington, this 26 day of April 1972.

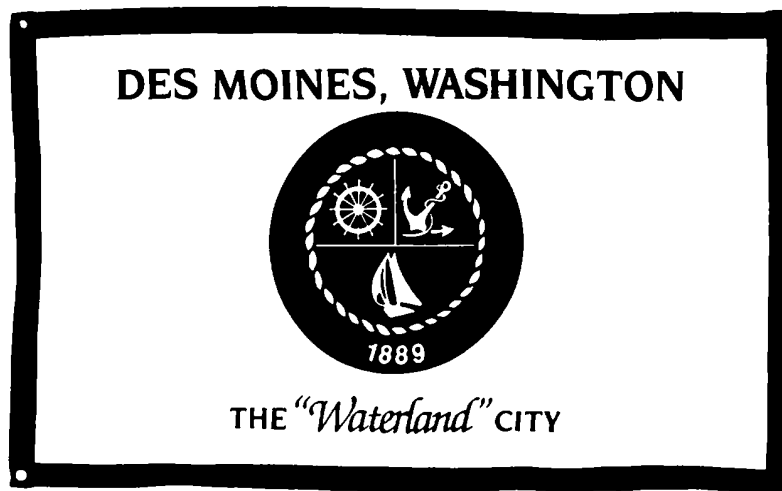
APPROVED AS TO FORM:

Richard W. [Signature]
City Attorney

Albert W. [Signature]
MAYOR

ATTEST: Marie Louell
City Clerk

EXHIBIT "B"





LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

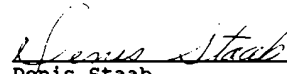
CITY OF DES MOINES

ORDINANCE NO.777, Adopted November 10, 1988.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance regulates the use of the Official City flag and Centennial Logo, prohibiting unauthorized use, and creating a civil infraction and penalty for violation thereof.

The full text of the ordinance will be mailed without cost upon request.


Denis Staab
City Clerk

Published: November 27, 1988

CITY LOGOS

