

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Suite C.
Des Moines, Washington
Thursday, January 23, 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

- MUNICIPAL FACILITIES COMMITTEE: Committee Chair Jeremy Nutting
- ECONOMIC DEVELOPMENT COMMITTEE: Committee Chair Jeremy Nutting

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- Item 1. MIDDLE HOUSING OPEN HOUSE UPDATE
- Item 2. LEGISLATIVE ISSUE UPDATE
- Item 3. ANIMAL CONTROL UPDATE

CONSENT AGENDA

- Item 1. APPROVAL OF VOUCHERS
Motion is to approve the payment vouchers through January 09, 2025 and payroll transfers through January 03, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#11211-11305	\$ 857,351.02
Wires	#2824-2845	\$1,990,919.97
Accounts Payable Checks	#166335-166384	\$ 741,984.86

Payroll Checks	#19916-19919	\$ 1,689.85
Payroll Advice	#12113-12286	\$ 583,095.10

Total Checks and Wires for A/P & Payroll: \$4,175,040.80

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES

Motion is to approve the December 12, 2024 City Council Regular Meeting Minutes.

[Approval of Minutes](#)

Item 3. TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH EZEE FIBER

Motion is to approve Draft Ordinance No. 24-107 granting a telecommunications Franchise Agreement to Ezee Fiber.

[Telecommunications Franchise Agreement with Ezee Fiber](#)

Item 4. TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH ZIPLY FIBER

Motion is to approve Draft Ordinance No. 24-087 granting a telecommunications Franchise Agreement to Ziplly Fiber.

[Telecommunications Franchise Agreement with Ziplly Fiber](#)

Item 5. SURPLUS PROPERTY - VEHICLES

Motion is to accept the 2025 surplus Vehicle List declaring certain vehicles and equipment identified in Attachment 1 as surplus and authorize disposal of said surplus vehicles and equipment by auction or trade-in.

[Surplus Property - Vehicles](#)

Item 6. 2025-2026 RECYCLING PROGRAM GRANT FUNDING

Motion to accept the King County Solid Waste Division WR/R Grant and the Seattle & King County Department of Pubic Health LHWMP Grant and authorize the City Manager to sign the grant document substantially in the form as attached.

[2025-2026 Recycling Program Grant Funding](#)

Item 7. 2025 VACTOR TRUCK PURCHASE

Motion is to approve the purchase of a new Vactor Truck from Owen Equipment for a total amount of \$643,422.36 and to authorize the City Manager or the City Manager's designee to sign the purchase order at the time they are created.

[2025 Vactor Truck Purchase](#)

Item 8. AWARD OF CONTRACT FOR THE DES MOINES MARINA DOCK REPLACEMENT PHASE 1 - L, M, N DOCKS PROJECT TO QUIGG BROS. INC

Motion is to approve the agreement between the City of Des Moines and Quigg Bros. Inc. in the amount of \$10,466,355.20 and a

contingency of \$1,569,953.00, for the purpose of replacing L, M, N Docks, and authorize the City Manager to sign the agreement substantially in the form as attached.

[Award of Contract for the Des Moines Marina Dock Replacement Phase 1-L, M, N Docks Project to Quigg Bros. Inc](#)

NEW BUSINESS

- Item 1. TRANSPORTATION IMPACT FEE REDUCTION FOR EARLY LEARNING FACILITIES
Staff Presentation by Assistant City Attorney Matthew Hutchins
[Transportation Impact Fee Reduction For Early Learning Facilities](#)
- Item 2. CITY LOGO DISCUSSION
Staff Presentation by Director of Community/Administrative Services Bonnie Wilkins
[City Logo Discussion](#)
- Item 3. REDONDO FISHING PIER REPLACEMENT PROJECT - AMENDED TASK ASSIGNMENT FOR CONSULTANT DESIGN
Staff Presentation by Public Works Director Michael P Slevin III, P.E.
[Redondo Fishing Pier Replacement Project – Amended Task Assignment for Consultant Design](#)
- Item 4. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

LABOR NEGOTIATIONS RCW 42.30.140(4)(a) - 20 MINUTES

NEXT MEETING DATE

January 30, 2025 City Council Study Session

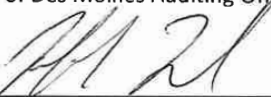
ADJOURNMENT

CITY OF DES MOINES
Voucher Certification Approval
January 23, 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 23, 2025** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through January 9, 2025 and payroll transfers through January 3, 2025 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		11211	11305	857,351.02
Wires		2824	2845	1,990,919.97
AP Checks		166335	166384	741,984.86
Total Vouchers paid				3,590,255.85
Payroll Vouchers				
Payroll Checks	1/3/2025	19916	19919	1,689.85
Payroll Advice		12113	12286	583,095.10
Total Paychecks & Direct Deposits				584,784.95
Total checks and wires for A/P & Payroll				4,175,040.80

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, December 12, 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 JC Harris.

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 Manager Tim George; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Director of Community/Administrative Services Bonnie Wilkins; Chris Pauk; Harbormaster Scott Wilkins; Police Chief Ted Boe; Public Works Director Michael Slevin; City Engineer Tommy Owen; Civil Engineer II Tyler Beekley; Finance Director Jeff Friend; Community Development Director Rebecca Deming; Director of Court Administration Melissa Patrick; 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

- No one signed up to speak.

COMMITTEE CHAIR REPORT

- FINANCE COMMITTEE: Chair Matt Mahoney

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

~~ANNUAL UPDATE FROM THE DES MOINES YACHT CLUB~~

~~UPDATE ON THE CITY'S RESPONSE TO THE SUSTAINABLE
AIRPORT MASTER PLAN~~

CONSENT AGENDA

- Item 1: APPROVAL OF VOUCHERS
Motion is to approve the payment vouchers through November 28, 2024 and payroll transfers through December 05, 2024 in the attached list and further described as follows:
- | | | |
|-------------------------|----------------|----------------|
| EFT Vendor Payments | #11006-11084 | \$ 591,726.10 |
| Wires | #2784-2788 | \$2,101,387.27 |
| Accounts Payable Checks | #166212-166262 | \$ 523,255.89 |
| Payroll Checks | #19909-19910 | \$ 5,960.00 |
| Payroll Voided Advice | #11607-11773 | \$ 488,167.26 |
| Payroll Checks | #19911-19914 | \$ 11,933.95 |
| Payroll Advice | #11774-11945 | \$ 592,262.66 |
- Total Checks and Wires for A/P & Payroll: \$4,314,693.13
- Item 2: SENIOR ACTIVITY CENTER SOLAR POWER GRANT ACCEPTANCE
Motion is to approve the Department of Commerce Clean Energy Grant for Energy Retrofits and Solar Power for Public Building in the amount of \$189,200, and authorize the City Manager to sign said Contract substantially in the form as submitted.
- Item 3: SOUND TRANSIT CONTRACT AMENDMENT
Motion is to approve Amendment #14 to the Contract with Fredricks Management Consulting, continuing professional consulting services through March 31, 2026, with an increase of \$10,000 for 2024 (bringing the total not-to-exceed amount for 2024 services to \$60,000.00) and up to \$40,000 in 2025 and \$10,000 in 2026 services, and authorize the City Manager to sign the contract amendment substantially in the form submitted.
- Item 4: WATER DISTRICT 54 FRANCHISE AMENDMENT
Motion is to enact Draft Ordinance No. 24-099, amending the franchise agreement with King County Water District 54.
- Item 5: HEMSTAD CONSULTING CONTRACT RENEWAL (AMENDMENT 3)

Regular Meeting Minutes
December 12, 2024

Motion is to approve Amendment 3 to the contract between the City and Hemstad Consulting for the purpose of extending and updating the legislative advocacy contract through September 30, 2025, and authorize the City Manager to sign the Amendment substantially in the form as attached.

Item 6: ~~INTERLOCAL AGREEMENT FOR COORDINATED SAMP REVIEW
Motion is to approve the Interlocal Agreement between the Cities of Burien, Des Moines, Normandy Park and SeaTac for environmental review of the Sea-Tac Airport Sustainable Airport Master Plan, and to direct the City Manager to execute the ILA, substantially in the form as attached.~~

Item 7: 6TH PLACE/287TH STREET PIPE REPLACEMENT PROJECT
CONSULTANT CONTRACT AND GRANT AWARD
Motion 1 is to accept the King County Flood Control District Flood Reduction Grant Award for the 6th Place/287th Street Pipe Replacement Project and authorize the City Manager to sign the Grant Agreement substantially in the form as submitted.
Motion 2 is to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-25 with Parametrix to provide design and permitting services for the 6th Place/287th Street Pipe Replacement Project in the amount of \$314,149.42, and authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

Item 8: 2025 VEHICLE PURCHASE
Motion is to approve the purchase of vehicles and equipment identified in Attachment 1 for a total estimated amount of \$880,000 and to authorize the City Manager or the City Manager's designee to sign the purchase orders a the time they are created.

Item 9: CONSULTANT SERVICES CONTRACT FOR TRANSPORTATION ELEMENT
Motion is to approve the consultant Services Contract with Fehr & Peers for the Des Moines Comprehensive Plan Transportation Element in the amount not to exceed \$100,000, and further authorize the City Manager to sign said Contract substantially in the form as submitted.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda; seconded by Deputy Mayor Harry Steinmetz.

Councilmember Matt Mahoney pulled Consent Agenda Item #4.

The remainder of the Consent Agenda passed 7-0.

Regular Meeting Minutes
December 12, 2024

Council discussed Consent Agenda Item #4.

Councilmember Yoshiko Grace Matsui recused herself from voting on Consent Agenda Item #4.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve Consent Agenda Item #4 as read; seconded by Councilmember Matt Mahoney. Motion passed 6-0.

UNFINISHED BUSINESS

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

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

Direction/Action

Motion 1 made by Councilmember Matt Mahoney to introduce substitute Draft Ordinance No. 24-082-B for Council consideration; seconded by Councilmember Jeremy Nutting. Motion passed 7-0.

Motion 2 made by Councilmember Matt Mahoney to enact Draft Ordinance No. 24-082-B, imposing a square footage tax; seconded by Councilmember Jeremy Nutting. Motion passed 7-0.

CITY OF DES MOINES' MISSION, VISION & VALUES
Postponed until January 09, 2025

Item 2: **UPDATE ON THE CITY'S RESPONSE TO THE SUSTAINABLE AIRPORT MASTER PLAN**
Staff Presentation by Community Development Director Rebecca Deming

Community Development Director Rebecca Deming gave Council a PowerPoint Presentation on the Sustainable Airport Master Plan.

Item 3: **INTERLOCAL AGREEMENT FOR COORDINATED SAMP REVIEW**
Staff Presentation by Community Development Director Rebecca Deming

Regular Meeting Minutes
December 12, 2024

Community Development Director Rebecca Deming gave Council a PowerPoint Presentation on the Sustainable Airport Master Plan.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Interlocal Agreement between the Cities of Burien, Des Moines, Normandy Park and SeaTac for environmental review of the Sea-Tac Airport Sustainable Airport Master Plan, and to direct the City manager to execute the ILA, substantially in the form as attached; seconded by Deputy Mayor Harry Steinmetz.

Motion passed 6-1.

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

Item 1: 2024 ANNUAL BUDGET AMENDMENTS
Staff Presentation by Finance Director Jeff Friend

At 6:45 p.m. Mayor Traci Buxton opened the Public Hearing.

Finance Director Jeff Friend gave Council a PowerPoint Presentation 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 6:52 p.m. Mayor Traci Buxton closed the Public Hearing.

Direction/Action

Motion made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 24-104, amending the 2024 Annual Budget adopted in Ordinance No. 1779; seconded by Deputy Mayor Harry Steinmetz. Motion passed 7-0.

Regular Meeting Minutes
December 12, 2024

NEW BUSINESS

Item 1: DRAFT ORDINANCE 24-088 - SUSPENDING RESTRICTION ON USE
OF ONE-TIME REVENUE FOR 2025 AND 2026
Staff Presentation by Finance Director Jeff Friend

Finance Director Jeff Friend gave a PowerPoint Presentation on One-Time Revenue.

Direction/Action

Motion made by Councilmember Jeremey Nutting to enact Draft Ordinance No. 24-088, amending DMMC 3.10.020, and lifting the restriction on the use of one-time revenue in the general fund budget for the years 2025 and 2026; seconded by Councilmember Matt Mahoney. Motion passed 4-3.

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

Against: Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui, and Councilmember JC Harris.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

Item 1: 2025 2026 BIENNIAL BUDGET
Staff Presentation by Finance Director Jeff Friend

At 7:24 p.m. Mayor Traci Buxton opened the Public Hearing.

Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2025/2026 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 7:43 p.m. Mayor Traci Buxton closed the Public Hearing.

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to pass Draft Ordinance No. 24-089, establishing the 2025/2026 Biennial Budget for the fiscal years ending December 31, 2025 and December 31, 2026; seconded by Councilmember Jeremy Nutting.

Regular Meeting Minutes
December 12, 2024

Motion passed 7-0.

NEW BUSINESS

Item 2: DES MOINES MARINA STEPS PROJECT – BID REJECTION
Staff Presentation by Public Works Director Mike Slevin

Public Works Director Mike Slevin gave Council an update on the Des Moines Marina Steps Project Bid Rejection.

Direction/Action

Motion made by Councilmember Jeremy Nutting to reject bids received for the Des Moines Marina Steps Project; seconded by Deputy Mayor Harry Steinmetz.

Motion passed 7-0.

Item 3: 2025 AND 2026 HUMAN SERVICES ADVISORY COMMITTEE –
FUNDING RECOMMENDATIONS
Staff Presentation by Executive Administrative Analyst Rochelle Caton

Executive Administrative Analyst Rochelle Caton gave Council a Presentation on the 2025 and 2026 Human Services Advisory Committee Funding Recommendations.

Direction/Action

Motion made by Councilmember Gene Achziger to approve 2025-26 Human Service Funding recommendations and authorize the City Manager to sign contracts with the non-profit agencies identified in the attachment; seconded by Councilmember Jeremy Nutting.

Motion passed 7-0.

Item 4: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

Mayor Traci Buxton proposed to bring FIFA preparation and Frontage Treatments to the Economic Development Committee.

Council Supported.

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

COUNCILMEMBER JC HARRIS

- King County Regional Emergency Management Committee Meeting

Regular Meeting Minutes
December 12, 2024

COUNCILMEMBER MATT MAHONEY

- Happy Holidays Season

COUNCILMEMBER YOSHIKO GRACE MATSUI

- Happy New Year

COUNCILMEMBER JEREMY NUTTING

- Happy Holidays

COUNCILMEMBER GENE ACHZIGER

- Happy Holidays

DEPUTY MAYOR HARRY STEINMETZ

- Happy Holiday and Happy New Year

PRESIDING OFFICER'S REPORT

- Merry Christmas

EXECUTIVE SESSION

NEXT MEETING DATE

January 09, 2025 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember JC Harris to adjourn; seconded by Councilmember Jeremey Nutting.
Motion passed 7-0.

The meeting adjourned at 8:30 p.m.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Telecommunications Franchise Agreement with Ezee Fiber

FOR AGENDA OF: January 23, 2025

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

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

DATE SUBMITTED: January 15, 2025

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

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. This Agreement was previously introduced to the City Council on January 9, 2025.

Suggested Motion

Motion 1: "I move to approve Draft Ordinance No. 24-107 granting a telecommunications Franchise Agreement to Ezee Fiber."

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 as written.
2. Proposed amendment to be negotiated with Ezee Fiber.
3. Do not pass the Draft Ordinance and provide rationale for not passing.

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-ray 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

DRAFT Ordinance No.
Page 46 of 52

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

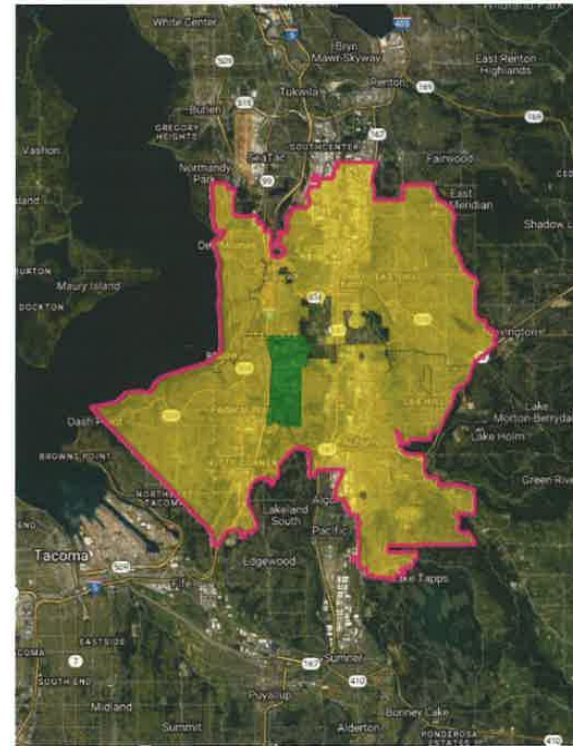
- Proposed build is broken out to 5-6 phases
- 2 areas will be under construction at a time
- Areas are separated geographically to reduce overwhelming locate crews and local resources
- Approx 38,000 Total Passings

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 Ziplly Fiber

FOR AGENDA OF: January 23, 2025

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: January 15, 2025

1. Draft Ordinance No. 24-087
2. Exhibit 1-A showing preliminary alignment for Fiber Optic installation

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Finance *MS*
- Human Resources _____
- Legal _____
- 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 for the City Council to consider a telecommunications Franchise Agreement with Ziplly Fiber for the installation of fiber optic facilities in City right-of-way. This Agreement was previously introduced to the City Council on January 9, 2025.

Suggested Motion

Motion 1: "I move to approve Draft Ordinance No. 24-087 granting a telecommunications Franchise Agreement to Ziplly Fiber."

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 Ziplly 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 Ziplly 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 as written.
2. Proposed amendment to be negotiated with Ziplly Fiber.
3. Do not pass the Draft Ordinance and provide rationale for not passing.

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 Ziplly Fiber.

Finally, the City will receive 6% utility tax on the telephone business conducted by Ziplly 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 Ziplly Fiber Pacific, LLC d/b/a Ziplly 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, Ziplly Fiber Pacific, LLC d/b/a Ziplly 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, Ziplly 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

DRAFT Ordinance No.
Page 46 of 52

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: _____

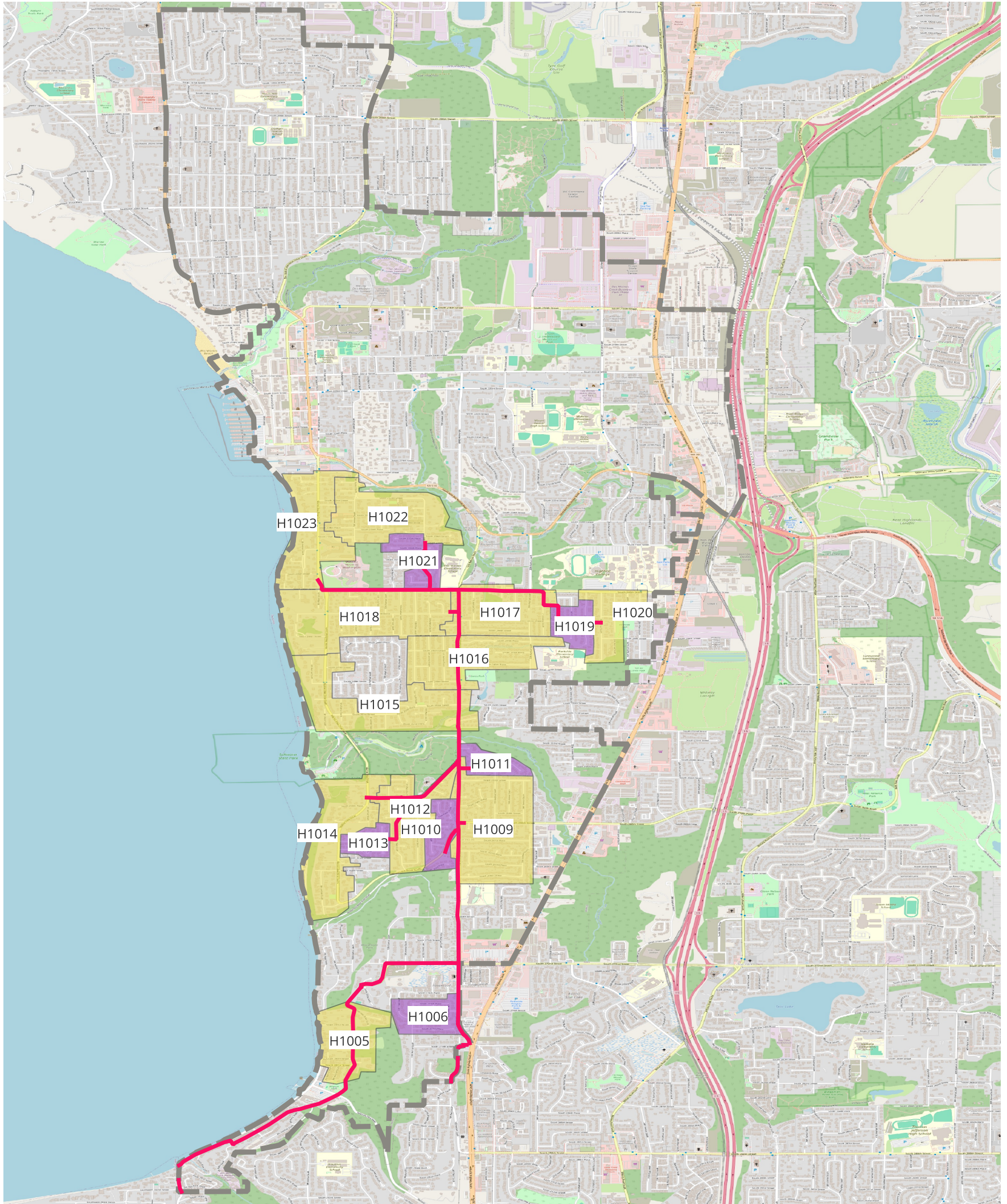
Printed Name: George Baker Thomson, Jr.

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



ziply
fiber

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Surplus Property - Vehicles

FOR AGENDA OF: January 23, 2025

ATTACHMENTS:

1. Draft Resolution No. 25-003
2. 2025 Surplus Vehicle List

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: January 15, 2025

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Emergency Management _____
- Finance _____
- Human Resources _____
- Legal /s/ TG _____
- Marina _____
- Police *[Signature]*
- Parks, Recreation & Senior Services _____
- Public Works *[Signature]*

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

Purpose and Recommendation

The purpose of this agenda item is to seek Council authorization to surplus certain City vehicles and equipment. Consistent with the adopted 2025 Budget, the Public Works Department recommends that the vehicles and equipment identified in Attachment 1 be declared surplus and disposed of. The following motion will appear on the consent calendar:

Suggested Motion

Motion: "I move to accept the 2025 Surplus Vehicle List declaring certain vehicles and equipment identified in Attachment 1 as surplus and authorize disposal of said surplus vehicles and equipment by auction or trade-in."

Background

The adopted 2025 Budget includes the replacement and purchase of several vehicles and equipment including five (5) Police Department fleet vehicles, one (1) Flush Truck, one (1) Ditch Mower, and various other Public Works Maintenance Department related equipment.

Discussion

As the new 2025 Ford Interceptors arrive, Police vehicles (551 and 549 plus 545) will become available for surplus. Staff anticipates the surplus of these vehicles will be around June of 2025.

Alternatives

Council could decide to revisit the fleet replacements identified in the 2025 Budget.

Financial Impact

The adopted 2025 Budget includes sufficient funds to purchase the new vehicles and set them up for fleet service.

Recommendation

Staff recommends surplusing the identified vehicles and asks Council to approve the suggested motion

CITY ATTORNEY'S FIRST DRAFT 1/14/2025

DRAFT RESOLUTION NO. 25-003

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

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

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

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

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

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

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

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

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

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

Resolution No. ____
Page 2 of 2

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

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 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"
Draft Resolution No. 25-003

Number	Description	Approximate Value
549	2016 Ford Explorer Lic# 59620D VIN# 1FM5K8AT2GGA04748	\$4,000.00
551	2018 Ford Explorer Lic# 65786D VIN# 1FM5K8ATXJGB00165	\$4,000.00
P-233	1997 Ford F-350 Lic# 23887D VIN# 3FEKF37F9VMA34081	\$5,000.00
E-11	2004 Chevrolet Truck Lic# 38262D VIN# 1GCEC19V84Z262142	\$2,000.00
E-20	2008 Ford F-150 Lic# 47419D VIN# 1FTRX12W38FB59856	\$4,000.00
P-232	2005 John Deere Backhoe Lic# 38329 VIN# TO310GX945133	\$20,000.00
P-545	2016 Ford Explorer Lic# 59617D VIN# 1FM5K8AT7GGA04745	\$4,000.00

Surplus list for 2025

2016 Ford Explorer

Capital Asset ID: #1471

Garage ID: 549

VIN# 1FM5K8AT2GGA04748

License # 59620D

Police Patrol Car

Approximate Value: \$4,000

2018 Ford Explorer

Capital Asset ID: 1919

Garage ID: 551

VIN# 1FM5K8ATXJGB00165

License #65786D

Police Patrol Car

Approximate Value: \$4,000

1997 Ford F-350

Capital Asset ID: 1540

Garage ID: P-233

VIN# 3FEKF37F9VMA34081

License # 23887D

Public Works Streets

Approximate Value: \$5,000

2004 Chevy Truck

Capital Asset ID: 1457

Garage ID: E-11

VIN# 1GCEC19V84Z262142

License #38262D

Building

Approximate Value: \$2,000

2008 Ford F-150

Capital Asset ID: 1526

Garage ID: E-20

VIN 1FTRX12W38FB59856

License #47419D

Engineering

Approximate Value: \$4,000

2005 John Deere Backhoe

Capital Asset ID: 1570

Garage ID: P-232

VIN TO310GX945133

License #38329

Stormwater

Approximate Value: \$20,000

2016 Ford Explorer

Capital Asset ID: 1467

Garage ID: P-545

VIN # 1FM5K8AT7GGA04745

License #59617D

Police Patrol Car

Approximate Value: \$4,000

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2025-2026 Recycling Program Grant Funding

FOR AGENDA OF: January 23, 2025


DEPT. OF ORIGIN: Community Development

ATTACHMENTS:


DATE SUBMITTED: January 16, 2025

1. King County Solid Waste Division Waste Reduction and Recycling (WR/R) 2025 Grant
2. Seattle & King County Department of Public Health Local Hazardous Waste Management Program (LHWMP) 2025 - 2026 Grant

CLEARANCES:

- City Clerk _____
- Community Development 
- Courts _____
- Director of Marina Redevelopment _____
- 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 provide information to enable the City Council to take action on the acceptance of two grants for the City’s Recycling Program for the service period of 2025-2026. The first grant is the 2025 King County Solid Waste Division Waste Reduction and Recycling (WR/R) Grant (Attachment 1). The second is the 2025-2026 Seattle & King County Department of Public Health Local Hazardous Waste Management Program (LHWMP) Grant Attachment 2). These are two of three grants for the City’s Recycling Program.

Suggested Motion

Motion 1: “I move to accept the King County Solid Waste Division WR/R Grant and the Seattle & King County Department of Public Health LHWMP Grant and authorize the City Manager to sign the grant document substantially in the form as attached.”

Background

Grants

The subject grants will fund, in part, the City's semi-annual Household Waste Collection and Recycling Events for 2025 and 2026. The Washington State Department of Ecology's Local Solid Waste Financial Assistance Agreement (LSWFA) funds the remainder of the program. The current LSWFA grant is effective through June 2025.

Professional Services Contract

Related to these grants is the City's Professional Services Contract with Olympic Environmental Resources (OER) for the 2024-2025 recycling program. No additional action is needed to keep this Professional Services Contract current. OER provides staffing and management for the Spring and Fall Household Collection and Recycling Events at the Des Moines Marina. These are popular events among Des Moines residents as they provide a local site to recycle materials, including some that are not accepted by the curbside recycling program. The Spring and Fall 2024 events attracted 548 and 487 carloads of recyclable materials respectively. In addition, a Summer mini-event for paint, electronics and paper shredding was held in July 2024 and had 236 household participants.

Discussion

The City uses grant funds to sponsor recycling and collection events for Des Moines residents. For the 2025-2026 Recycling Program, the City will sponsor two residential recycling collection events per year (i.e. the Fall and Spring events). A portion of the WR/R grant funds will be allocated for the purchase of products made from recycled materials.

This agenda item seeks City Council approval of the 2025-2026 LHWMP contract and the 2025 WR/R contract. The LHWMP grant will allocate \$14,636.55 for household recycling collection events in 2025-2026. The WR/R grant will allocate \$18,038.00 for household recycling collection events for 2025.

If the City Council accepts the LHWMP and WR/R grants for 2025 and 2026, the City will continue to reduce the amount of hazardous and non-hazardous materials going into the local waste stream at no additional cost to the City. Action/acceptance of these grants must be submitted to the grantor agencies by February 2025 in order to secure grant funds and to schedule the Spring 2025 residential recycling event.

Household Collection and Recycling Events – For over 20 years, the City has used grant monies to sponsor semi-annual Household Waste Collection and Recycling Events. The Spring and Fall Events have proven to be exceptionally popular among Des Moines residents because they provide a local site to recycle materials that are not accepted by the curbside recycling program. Residents are able to recycle tires, lead acid and alkaline batteries, cardboard, reusable household goods and clothing, porcelain toilets and sinks, appliances and scrap metal, bulky wood, electronic equipment and mattresses and box springs. Additional/substitute items continue to be explored as the number and type of materials collected curbside have increased under the solid waste contract with Recology King County.

Alternatives

1. The City Council may accept the 2025-2026 LHWMP Grant between the City of Des Moines and the Seattle-King County Department of Public Health; and the 2025 WR/R Grant between the City of Des Moines and the King County Solid Waste Division.
2. The City Council may not accept the 2025-2026 LHWMP Grant between the City of Des Moines and the Seattle-King County Department of Public Health; and the 2025 WR/R Grant between the City of Des Moines and the King County Solid Waste Division and forego LHWMP and/or WR/R grant funds.
3. The City Council may continue this Agenda Item and request that staff provides additional information on the LHWMP and WR/R grant programs. Continuance of this item may result in loss of grant funds for the 2025-2026 grant cycle.

Financial Impact

If the City Council accepts the LHWMP and WR/R grants, there will be no fiscal impact to the City. However, if the City Council does not accept the LHWMP and WR/R grants, the City will need to use General Fund monies to maintain the City's recycling program.

Recommendation

Staff recommends that the City Council choose Alternative 1, thereby accepting the 2025-2026 Seattle-King County Department of Public Health LHWMP Grant, and the 2025 King County Solid Waste Division Grant substantially in the form as submitted.

CPA #

INTERAGENCY AGREEMENT FOR THE 2025 WASTE REDUCTION & RECYCLING GRANT PROGRAM

Between

KING COUNTY and the City of Des Moines

This one-year Interagency Agreement “Agreement” is executed between King County, a Charter County and political subdivision of the State of Washington, and the City of Des Moines, a municipal corporation of the State of Washington, hereinafter referred to as "County" and "City" respectively. Collectively, the County and City will be referred to as “Party” or “Parties.”

PREAMBLE

King County and the City of **Des Moines** adopted the 2019 King County Comprehensive Solid Waste Management Plan (Comp Plan), which includes waste reduction and recycling goals. In order to help meet these goals, the King County Solid Waste Division has established a waste reduction and recycling grant program for the cities that operate under the Comp Plan. This program provides funding to further the development and/or enhancement of local waste reduction and recycling projects and for broader resource conservation projects that integrate with waste reduction and recycling programs and services. This grant program does not fund household hazardous waste collection activities. Program eligibility and grant administration terms are discussed in the Grant Guidelines, attached to this Agreement as Exhibit B and incorporated herein by reference. Grant funding for this program is subject to the budget approval process of the King County Council.

Grant funding approved by the King County Council is available to all King County cities that operate under the Comp Plan. The City will spend its grant funds to fulfill the terms and conditions set forth in the scope of work, which is attached hereto as Exhibit A and incorporated herein by reference. The County expects that any information and/or experience gained through the grant program by the City will be shared with the County and other King County cities.

I. PURPOSE

The purpose of this Agreement is to define the terms and conditions for funding to be provided to the City by the County for waste reduction and recycling programs and/or services as outlined in the scope of work and budget attached as Exhibit A.

II. RESPONSIBILITIES OF THE PARTIES

The responsibilities of the Parties to this Agreement shall be as follows:

A. The City

1. Funds provided to the City by the County pursuant to this Agreement shall be used to provide waste reduction and recycling programs and/or services as outlined in Exhibit A. The total amount of funds available from this grant in 2025 shall not exceed **\$18,038.00**.
2. This Agreement provides for distribution of 2025 grant funds to the City. However, grant funds are not available until January 1, 2025.
3. During this one-year grant program, the City will submit a minimum of one (1), but no more than four (4), progress reports to the County in a form determined by the County. Reports must be signed by a City official. These reports will include:
 - a. a description of each activity accomplished pertaining to the scope of work; and
 - b. reimbursement requests with both a Budget Summary Report Form, which is attached hereto as Exhibit D and incorporated herein by reference, and an Expense Summary Form, which is attached hereto as Exhibit E and incorporated herein by reference, unless the City has a spreadsheet similar to the Expense Summary Form already in use, in which case the City is free to use that spreadsheet instead of the Expense Summary Form. The City will submit the form or similar spreadsheet and not submit backup documentation for grant expenses. If backup documentation is submitted, SWD will not retain it. The City shall maintain this documentation in its records.

If the City chooses to submit up to the maximum of four (4) progress reports and requests for reimbursement during the one-year grant program, they shall be due to the County on the last day of the month following the end of each quarter (April 30, July 31, October 31, January 31), except for the final progress report and request for reimbursement, which shall be due by March 21, 2026.

If the City chooses to submit the minimum of one progress reports and requests for reimbursement during the one-year grant program, they shall be due to the County by March 21, 2026.

Regardless of the number of progress reports the City chooses to submit, in order to secure reimbursement, the City must provide in writing to the County by the 5th working day of January 2026, the dollar amount of outstanding expenditures for which the City has not yet submitted a reimbursement request.

4. If the City accepts funding through this grant program for the provision of waste reduction and recycling programs and projects for other incorporated areas of King County, the City shall explain the relationship with the affected adjacent city or cities that allows for acceptance of this funding and the specifics of the proposed programs and projects within the scope of work document related thereto.
5. The City shall be responsible for following all applicable Federal, state, and local laws, ordinances, rules, and regulations in the performance of work described herein. The City assures that its procedures are consistent with laws relating to public contract bidding procedures, and the County neither incurs nor assumes any responsibility for the City's bid, award, or contracting process.
6. During the performance of this Agreement, neither the City nor any Party subcontracting under the authority of this Agreement shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the employment or application for employment or in the administration or delivery of or access to services or any other benefits under this Agreement as defined by King County Code, Chapter 12.16.
7. During the performance of this Agreement, neither the City nor any Party subcontracting under the authority of this Agreement shall engage in unfair employment practices as defined by King County Code, Chapter 12.18. The City shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, RCW Chapter 49.60 and Titles VI and VII of the Civil Rights Act of 1964.
8. The City shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Agreement. The City shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical.
9. The City shall maintain accounts and records, including personnel, financial, and programmatic records, and other such records as may be deemed necessary by the County, to ensure proper accounting for all project funds and compliance with this Agreement. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and service provided in the performance of this Agreement.

These records shall be maintained for a period of six (6) years after termination hereof unless permission to destroy them is granted by the Office of the State Archivist in accordance with RCW Chapter 40.14. These accounts shall be subject to inspection, review, or audit by the County and/or by federal or state officials as so authorized by law.

10. The City shall maintain a record of the use of any equipment that costs more than \$1,000 and is purchased with grant funds from King County for a total period of three (3) years. The records shall be compiled into a yearly evaluation report, a copy of which shall be submitted to King County by March 31 of each year through the year 2028.

11. The City agrees to credit King County on all printed materials provided by the County, which the City is duplicating, for distribution. Either King County's name and logo must appear on King County materials (including fact sheets, case studies, etc.), or, at a minimum, the City will credit King County for artwork or text provided by the County as follows: "artwork provided courtesy of King County Solid Waste Division" and/or "text provided courtesy of King County Solid Waste Division."
12. The City agrees to submit to the County copies of all written materials which it produces and/or duplicates for local waste reduction and recycling projects which have been funded through the waste reduction and recycling grant program. Upon request, the City agrees to provide the County with a reproducible copy of any such written materials and authorizes the County to duplicate and distribute any written materials so produced, provided that the County credits the City for the materials.
13. The City will provide the King County Project Manager with the date and location of each Recycling Collection Event provided by the City, as well as copies of any printed materials used to publicize each event, as soon as they are available but no later than thirty (30) days prior to the event. If there is any change in the date or the location of an event, the City will notify the County a minimum of thirty (30) days prior to the event. If the event brochure is required for admission to the City's event, the City is exempt from having to provide the brochure to King County.
14. If the City accepts funding through this grant program for the provision of recycling collection events for adjacent areas of unincorporated King County, the City shall send announcements of the events to all residences listed in the agreed upon areas listed in Exhibit A. The announcements and all other printed materials related to these events shall acknowledge King County as the funding source.
15. This project shall be administered by Laura Techico, Planning and Development Services Manager, or designee.

B. The County:

1. The County shall administer funding for the waste reduction and recycling grant program. Funding is designated by the city and is subject to the King County Council's budget approval process. Provided that the funds are allocated through the King County Council's budget approval process, grant funding to the City will include a base allocation of \$10,000 per year with the balance of funds to be allocated according to the City's percentage of King County's residential and employment population. However, if this population based allocation formula calculation would result in a city receiving less than \$10,000 per year, that city shall receive an additional allocation that would raise their total grant funding to \$10,000 per year.

2. Within forty-five (45) days of receiving a request for reimbursement from the City, the County shall either notify the City of any exceptions to the request which have been identified or shall process the request for payment. If any exceptions to the request are made, this shall be done by written notification to the City providing the reason for such exception. The County will not authorize payment for activities and/or expenditures which are not included in the scope of work and budget attached as Exhibit A, unless the scope has been amended according to Section V of this Agreement. King County retains the right to withhold all or partial payment if the City's report(s) and reimbursement request(s) are incomplete (i.e., do not include proper documentation of expenditures and/or adequate description of each activity described in the scope of work for which reimbursement is being requested), and/or are not consistent with the scope of work and budget attached as Exhibit A.
3. The County agrees to credit the City on all printed materials provided by the City to the County, which the County duplicates, for distribution. Either the City's name and logo will appear on such materials (including fact sheets, case studies, etc.), or, at a minimum, the County will credit the City for artwork or text provided by the City as follows: "artwork provided courtesy of the City of Des Moines and/or "text provided courtesy of the City of Des Moines."
4. The County retains the right to share the written material(s) produced by the City which have been funded through this program with other King County cities for them to duplicate and distribute. In so doing, the County will encourage other cities to credit the City on any pieces that were produced by the City.
5. The waste reduction and recycling grant program shall be administered by Annie DeCosta-Klipa, Project Manager, King County Solid Waste Division, or designee.

III. DURATION OF AGREEMENT

This Agreement shall become effective on either January 1, 2025 or the date of execution of the Agreement by both the County and the City, if executed after January 1, 2025, and shall terminate on June 30, 2026. The City shall not incur any new charges after December 31, 2025. However, if execution by either Party does not occur until after January 1, 2025, this Agreement allows for disbursement of grant funds to the City for County-approved programs initiated between January 1, 2025 and the later execution of the Agreement provided that the City complies with the reporting requirements of Section II.A of the Agreement.

IV. TERMINATION

- A. This Agreement may be terminated by King County, in whole or in part, for convenience without cause prior to the termination date specified in Section III, upon thirty (30) days advance written notice.
- B. This Agreement may be terminated by either Party, in whole or in part, for cause prior to the termination date specified in Section III, upon thirty (30) days advance written notice. Reasons for termination for cause may include but not be limited to: nonperformance; misuse of funds; and/or failure to provide grant related reports/invoices/statements as specified in Section II.A.3. and Section II.A.4.
- C. If the Agreement is terminated as provided in this section: (1) the County will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and (2) the City shall be released from any obligation to provide further services pursuant to this Agreement.
- D. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either Party may have in the event that the obligations, terms and conditions set forth in this Agreement are breached by the other Party.

V. AMENDMENTS

This Agreement may be amended only by written agreement of both Parties. Amendments to scopes of work will only be approved if the proposed amendment is consistent with the most recently adopted King County Comprehensive Solid Waste Management Plan. Amendments will only be approved if the proposed change(s) is (are) consistent with and/or achieves the goals stated in the scope and falls within the activities described in the scope. Funds may be moved between tasks in the scope of work, attached as Exhibit A, upon written notification by the City to King County.

VI. HOLD HARMLESS AND INDEMNIFICATION

The City shall protect, indemnify, and hold harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or issues whatsoever occurring from actions by the City and/or its subcontractors pursuant to this Agreement. The City shall defend at its own expense any and all claims, demands, suits, penalties, losses, damages, or costs of any kind whatsoever (hereinafter "claims") brought against the County arising out of or incident to the City's execution of, performance of, or failure to perform this Agreement. Claims shall include but not be limited to assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

VII. INSURANCE

- A. The City, at its own cost, shall procure by the date of execution of this Agreement and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of work pursuant to this Agreement by the City, its agents, representatives, employees, and/or subcontractors. The minimum limits of this insurance shall be \$1,000,000 general liability insurance combined single limit per occurrence for bodily injury, personal injury, and property damage. If the policy has an aggregate limit, a \$2,000,000 aggregate shall apply. Any deductible or self-insured retentions shall be the sole responsibility of the City. Such insurance shall cover the County, its officers, officials, employees, and agents as additional insureds against liability arising out of activities performed by or on behalf of the City pursuant to this Agreement. A valid Certificate of Insurance and additional insured endorsement is attached to this Agreement as Exhibit C, unless Section VII.B. applies.
- B. If the Agency is a Municipal Corporation or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a written acknowledgement of self-insurance is attached to this Agreement as Exhibit C.
- C. If the Agency is a Municipal Corporation or an agency of the State of Washington and is a member of the Washington Cities Insurance Authority (WCIA), a written acknowledgement/certification of current membership is attached to this Agreement as Exhibit C.

VIII. ENTIRE CONTRACT/WAIVER OF DEFAULT

This Agreement is the complete expression of the agreement of the County and City hereto, and any oral or written representations or understandings not incorporated herein are excluded. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

IX. TIME IS OF THE ESSENCE

The County and City recognize that time is of the essence in the performance of this Agreement.

X. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Agreement is, for any reason, found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

XI. NOTICE

Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent to the King County Solid Waste Division and the City at the addresses provided below:

Annie DeCosta-Klipa, Project Manager, or a provided designee
King County Solid Waste Division
Department of Natural Resources and Parks
adecostaklipa@kingcounty.gov

If to the City:

Laura Techico, Planning and Development Services Manager, or a provided designee
City of Des Moines
City of Des Moines
21630 11th Ave S, Suite "D"
Des Moines, WA 98198

IN WITNESS WHEREOF this Agreement has been executed by each Party on the date set forth below:

City of Des Moines


BY _____
Katherine Caffrey, City Manager

King County

BY _____
Christopher M. Stubbs, Deputy Division Director
Solid Waste Division

Date

Date

 Hazardous Waste Management Program GOVERNMENTS WORKING TOGETHER FOR A HEALTHIER AND CLEANER KING COUNTY		GRANT AGREEMENT	
<p>This Agreement is between King County and the Recipient identified below. The County department overseeing the work to be performed in this Agreement is the Department of Natural Resources and Parks (DNRP), Water and Land Resources Division (WLRD).</p>			
RECIPIENT NAME			
City of Des Moines			
RECIPIENT ADDRESS			
21630 11th Avenue S., Suite D Des Moines, WA 98198			
RECIPIENT CONTACT & EMAIL ADDRESS			
Laura Techico ltechico@desmoineswa.gov			
PROJECT TITLE			
Local Hazardous Waste Management Program Grant Funds for 2025			
AGREEMENT START DATE	AGREEMENT END DATE	AGREEMENT MAXIMUM AMOUNT	
January 1, 2025	March 31, 2026	\$14,636.55	
EXHIBITS. The following Exhibits are attached and are incorporated into this Agreement by reference:			
Exhibit A – Scope of Work Exhibit B – Budget Exhibit C – Invoice Template Exhibit D – Certificate/Evidence of Insurance			

**AGREEMENT FOR AWARD OF
LOCAL HAZARDOUS WASTE MANAGEMENT GRANT FUNDS FOR 2025**

Between

KING COUNTY and the CITY OF DES MOINES

This Agreement for Award of Local Hazardous Waste Management Grant Funds “Agreement” is made by and between King County, a charter county and political subdivision of the State of Washington, acting through its Department of Natural Resources, Water and Land Resources Division and the City of Des Moines, a municipal corporation of the State of Washington, hereinafter referred to as the “County” and the “City” respectively. The County and City may be referred to individually as a “Party” and collectively as the “Parties.”

1. RECITALS

1.1 The Local Hazardous Waste Management Plan (hereafter referred to as the “Plan”) as updated in 1997, 2010, and 2021, was adopted by the participating agencies (the King County Solid Waste Division, the Seattle Public Utilities, the King County Water and Land Resources Division, and Public Health – Seattle and King County) and the cities located in King County. The Washington State Department of Ecology in accordance with RCW 70A.300.350 subsequently approved the Plan. The City is an active and valued partner in the regional Local Hazardous Waste Management Program (hereafter referred to as the “Program”).

1.2 The Plan authorizes Local Hazardous Waste Management Funds to be provided to partner cities located in King County to help fund those cities’ activities associated with hazardous waste collection and/or educational outreach and educational services.

1.3 King County has received a proposed scope of work and budget from the City and has determined that the scope of work and budget, attached hereto and incorporated herein as Exhibit A (“Scope of Work”) and Exhibit B (“Budget”), respectively, are consistent with the Plan’s and Program’s policies, goals, and objectives.

1.4 King County and the City desire to enter into this Agreement for the purpose of establishing the terms and conditions under which King County will provide an award of Local Hazardous Waste Management Funds to the City.

NOW THEREFORE, in consideration of mutual promises and covenants contained herein, the Parties hereby agree to the terms and conditions as follows:

2. AWARD OF GRANT; CONDITIONS OF GRANT

2.1 The Recitals are an integral part of this Agreement and are incorporated herein by this reference.

Agreement No. HW1039

2.2 King County agrees to grant the City an award of Local Hazardous Waste Management Funds not to exceed \$14,636.55 (the "Award") on a reimbursement basis as described in Section 2.5. The Award shall be used by the City solely for the performance of the activities described in this Agreement.

2.3 The City shall use the grant of Local Hazardous Waste Management Funds to provide hazardous waste collection and/or education services or programs as described in Exhibit A. The total amount of funds available from this grant in 2025 shall not exceed \$14,636.55.

2.4 This Agreement provides for distribution of 2025 grant funds to the City. Reimbursement for activities carried out and expenses incurred by the City may predate the execution date of this Agreement provided that (a) the activities have been identified by the City as being within the Scope of Work and have been approved by King County as being within such Scope of Work; (b) the expenses are incurred in carrying out the Scope of Work and are authorized by the Award; and (c) such activities and expenses otherwise comply with all other terms of this Agreement. Reimbursements shall be paid to the City only after this Agreement has been fully executed.

2.5. During this one-year grant program, the City will submit a minimum of two (2), but no more than eight (8), progress reports, which include the City's reimbursement requests, to the County in a form determined by the County. Reports must be signed by a City official. These reports shall include all of the following:

- a. A description of each activity accomplished pertaining to the Scope of Work.
- b. Copies of invoices for expenditures or a financial statement prepared by the City's finance department. The financial statement should include vendor names, a description of services provided, date paid, and a check or warrant number.
- c. Reimbursement requests with an Invoice Form and an Invoice Detail Form, which is attached hereto as Exhibit C and incorporated herein by reference, unless the City has a spreadsheet similar to the Invoice Detail Form already in use, in which case the City may use that spreadsheet instead of the Invoice Detail Form. The City will submit the form or similar spreadsheet and submit backup documentation for grant expenses.
- d. If the City receives funding from sources other than the Local Hazardous Waste Management Program for any of the activities set forth in Exhibit A, then the City's reimbursement request shall acknowledge these other sources and the reimbursement request to the County shall include only a pro-rata share of the expenses.

2.5.1 If the City chooses to submit up to the maximum of eight (8) progress reports and requests for reimbursement during the one-year grant program, the reports shall be due to the County on the last day of the month following the end of each quarter (April 30, July 31, October 31, January 30), except for the final progress report and request for reimbursement, which shall be due by February 27, 2026.

2.5.2 Regardless of the number of progress reports the City chooses to submit, in order to secure reimbursement, the City must provide in writing to the County by the December 12, 2025, an

estimate or final invoice for activities completed in that calendar year for which the City has not yet submitted a reimbursement request.

2.5.3 If the City accepts funding through this grant program for the provision of hazardous waste collection or education programs and projects for other incorporated areas of King County, the City shall explain the relationship with the affected adjacent city or cities that allows for acceptance of this funding and the specifics of the proposed programs and projects within the Scope of Work document related thereto.

2.5.4 Within forty-five (45) days of receiving a request for reimbursement from the City, the Program's contract administrator shall either notify the City of any exceptions to the request which have been identified or shall process the request for payment. If any exceptions to the request are made, this shall be done by written notification to the City providing the reason for such exception. The contract administrator will not authorize payment for activities and/or expenditures which are not included in the Scope of Work and Budget attached as Exhibits A and B unless the scope has been amended according to Section 5 of this Agreement. The contract administrator retains the right to withhold all or partial payment if the City's report(s) and reimbursement request(s) are incomplete (i.e., do not include proper documentation of expenditures and/or adequate description of each activity described in the scope of work for which reimbursement is being requested), and/or are not consistent with the Scope of Work and/or Budget attached as Exhibits A and B.

2.6 The City shall be responsible for following all applicable federal, state, and local laws, ordinances, rules, and regulations in the performance of the Scope of Work described herein. The City warrants and represents that its procedures are consistent with federal, state, and local laws relating to public contract and bidding procedures. The County neither incurs nor assumes any responsibility for the City's bid, award, or contracting process.

2.7 The City shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Agreement. The City shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical.

2.8 The City shall maintain accounts and records, including personnel, financial, and programmatic records, and other such records as may be deemed necessary by the County, to ensure proper accounting for all project funds and compliance with this Agreement. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and service provided in the performance of this Agreement.

2.8.1 These records shall be maintained for a period of six (6) years after termination hereof unless permission to destroy them is granted by the Office of the State Archivist in accordance with RCW Chapter 40.14. These accounts shall be subject to inspection, review, or audit by the County and/or by federal or state officials as so authorized by law.

2.8.2 The City shall maintain a record of the use of any equipment that costs more than \$1,000 and is purchased with grant funds from King County for a total period of three (3) years. The records shall be compiled into a yearly evaluation report, a copy of which shall be submitted to King County by March 31 of each year through the year 2028.

2.9 The City agrees to appropriately acknowledge the Program in all media produced – in part or in whole – with Program funds. Where feasible, the City will use the Program’s logo. The intent of this provision is to further strengthen this regional partnership in the public’s mind.

2.9.1 The City agrees to provide the Program with copies of all media material produced for local hazardous waste management events or activities that have been funded by the Program. The City also agrees to allow the Program to reproduce media materials created with Program money provided that the Program credits the City as the originator of that material.

2.9.2 The Program agrees to credit the City on all printed materials provided by the City to the Program, which the Program duplicates, for distribution. Either the City’s name and logo will appear on such materials (including fact sheets, case studies, etc.), or, at a minimum, the Program will credit the City for artwork or text provided by the City as follows: “artwork provided courtesy of the City of Des Moines” and/or “text provided courtesy of the City of Des Moines.”

2.9.3 The Program retains the right to share the written material(s) produced by the City, which have been funded through this grant, with other King County cities for them to duplicate and distribute. In so doing, the Program will encourage other cities to credit the City on any pieces that were produced by the City.

2.10 The City designates Laura Techico; Planning and Development Services Manager; 21630 11th Avenue S., Suite D, Des Moines, WA 98198; 206-870-6595; ltechico@desmoineswa.gov, or designee, as the administrator of this Agreement for the City.

2.11 Questions or concerns regarding any issue associated with this agreement that cannot be handled by the Program’s Contract Administrator should be referred to the Local Hazardous Waste Management Program Director for resolution.

3. DURATION OF AGREEMENT

This Agreement shall become effective on either January 1, 2025, or the date of execution of the Agreement by both the County and the City and shall terminate on March 31, 2026. The City shall not incur any new charges after December 31, 2025. However, if execution by either Party does not occur until after January 1, 2025, this Agreement allows for disbursement of grant funds to the City for County-approved programs initiated between January 1, 2025, and the later execution of the Agreement provided that the City complies with the reporting requirements of Section 2.5 of the Agreement.

4. TERMINATION

4.1 King County may terminate this Agreement in whole or in part, for convenience, without cause prior to the termination date specified in Section 3, upon thirty (30) days advance written notice.

4.2 King County may also terminate this Agreement, in whole or in part, for lack of appropriation, upon thirty (30) days prior written notice to the City. In accordance with King County Code 4A.100.070, if King County terminates this Agreement for non-appropriation, then King County’s costs associated

with such termination, if any, shall not exceed the appropriation for the biennium in which termination occurs.

4.3 This Agreement may be terminated by either Party, in whole or in part, for cause prior to the termination date specified in Section 3, upon thirty (30) days advance written notice. Reasons for termination for cause may include but not be limited to nonperformance, misuse of funds, and/or failure to provide grant related reports/invoices/statements as specified in Section 2.5.

4.4 If the Agreement is terminated as provided in this section: (a) the County will be responsible to reimburse the City only for allowable expenses, in accordance with the terms of this Agreement for expenses incurred prior to the effective date of termination; and (b) the City shall be released from any obligation to provide further services pursuant to this Agreement.

4.5 Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either Party may have in the event that the obligations, terms, and conditions set forth in this Agreement are breached by the other Party.

5. AMENDMENTS

This Agreement may be amended only by written agreement of both Parties. Amendments to scopes of work will only be approved if the proposed amendment is consistent with the most recently adopted Hazardous Waste Management Plan. Amendments will only be approved if the proposed change(s) is (are) consistent with and/or achieves the goals stated in the scope and falls within the activities described in the scope. Funds may be moved between tasks in the Scope of Work, attached as Exhibit A, upon written notification by the City to King County and written approval by the County.

6. HOLD HARMLESS AND INDEMNIFICATION

6.1 The City agrees to indemnify, defend, and hold harmless King County, and its elected or appointed officials, employees and agents, from all suits, claims, alleged liability, actions, losses, costs, expenses (including reasonable attorney's fees), penalties, settlements and damages of whatsoever kind or nature arising out of, in connection with, or incident to any acts or omissions of the City, its employees, agents, contractors or subcontractors in performing its obligations under this Agreement, except of the County's sole negligence.

6.2 The City's obligations under this section shall include, but not be limited to all of the following: (a) The duty to promptly accept tender of defense and provide defense to the County with legal counsel acceptable to the County and at the City's own expense; (b) Indemnification of claims made by the City's own employees or agents; and (c) Waiver of the City's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify the County, which waiver has been mutually negotiated by the Parties. In the event it is necessary for the County to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this section, all such fees, expenses, and costs shall be recoverable from The City. The provisions of this Section 6.2 shall survive the expiration, abandonment, or termination of this Agreement.

7. INSURANCE

7.1 The City, at its own cost, or its contractor(s)/subcontractor(s) at their own cost, shall procure by the date of execution of this Agreement and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of work pursuant to this Agreement by the City, its agents, representatives, employees, contractors, and/or subcontractors. The minimum limits of Commercial General Liability insurance shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage. Such insurance shall include coverage for, but not be limited to, premises liability, ongoing operations, products and completed operations, advertising injury, and contractual liability. The minimum limit of Automobile Liability insurance shall be \$1,000,000 combined single limit per accident for bodily injury and property damage. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90, or auto pollution coverage. The minimum limit of Pollution Liability insurance shall be \$1,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean-up costs and the loss of use of tangible property that has not been physically injured or destroyed. Coverage shall include non-owned disposal sites. Any deductible or self-insured retention(s) shall be the sole responsibility of the City or its contractor(s)/subcontractor(s). Such insurance shall cover King County, its officials, employees, and agents as additional insured for full coverage and policy limits against liability arising out of activities performed by or on behalf of the City pursuant to this Agreement. A valid Certificate of Insurance and additional insured endorsement is attached to this Agreement as Exhibit D unless Section 7.2 or Section 7.3 (below) apply. Evidence of required coverage maintained by the contractor(s)/subcontractor(s) must be provided to the County prior to the commencement of any work.

7.2 If the Agency is a Municipal Corporation or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a written acknowledgement of self-insurance is attached to this Agreement as Exhibit D.

7.3 If the Agency is a Municipal Corporation or an agency of the State of Washington and is a member of the Washington Cities Insurance Authority (WCIA), a written acknowledgement/certification of current membership is attached to this Agreement as Exhibit D.

8. ENTIRE CONTRACT; NO WAIVER OF DEFAULT

This Agreement is the complete expression of the agreement of the County and City hereto, and any oral or written representations or understandings not incorporated herein are excluded. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval by the County, which shall be attached to the original Agreement.

9. TIME IS OF THE ESSENCE

The County and City recognize that time is of the essence in the performance of this Agreement. The Scope of Work set forth in Exhibit A shall be completed by the City no later than December 31, 2025. In the event that the Scope of Work is not completed by this date, then King County shall retain any unexpended Award funds.

10. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this Agreement is, for any reason, found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

11. NOTICE

Unless otherwise specified in the Agreement, all notices or documentation required or provided pursuant to this Agreement shall be in electronic form and shall be deemed duly given when received at the addresses first set forth below via electronic mail. A copy of any notice shall also be sent via first class mail to the address listed below.

Keith Quinata, Contract Administrator, or a provided designee
King County Department of Natural Resources and Parks
Water and Land Resources Division
Hazardous Waste Management Program
201 S. Jackson Street, Suite 5600
Seattle, WA 98104
hazwastegovrelations@kingcounty.gov or kquinata@kingcounty.gov

If to the City:

Laura Techico, Planning and Development Services Manager, or a provided designee
City of Des Moines
21630 11th Avenue S., Suite D
Des Moines, WA 98198
ltechico@desmoineswa.gov

Either Party hereto may, at any time, by giving ten (10) days written notice to the other Party, designate any other address in substitution of the foregoing address to which such notice or communication shall be given.

12. GENERAL PROVISIONS

12.1 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

12.2 Each Party warrants and represents that such Party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a Party warrants and represents that he/she has been fully authorized to execute this Agreement on behalf of such Party and that such Party is bound by the signature of such representative.

Agreement No. HW1039

12.3 None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

12.4 This Agreement may be signed in multiple counterparts each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

12.5 This Agreement is for the benefit of the Parties hereto only and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third-party beneficiary or other rights whatsoever hereunder.

12.6 This Agreement shall be governed by and construed according to the laws of the State of Washington. Actions pertaining to this Agreement will be brought in King County Superior Court, King County, Washington.

IN WITNESS WHEREOF this Agreement has been executed by each Party on the date set forth below:

City of Des Moines

King County

BY _____
Katherine Caffrey, City Manager

City of Des Moines

BY _____
Maythia Airhart,
Environmental Programs Section Manager
Hazardous Waste Management Program

For Dow Constantine, King County Executive

Date

Date

Exhibit A

LOCAL HAZARDOUS WASTE MANAGEMENT PROGRAM CITY OF DES MOINES 2025 SCOPE OF WORK AND BUDGET

1. PROJECT OVERVIEW:

A) Des Moines Recycling Collection Events

B) Event Dates: Spring and Fall, 2025

C) Event Hours: 9 am to 3 pm

D) Event Location: Des Moines Marina

E) Project Managers:

1) City Contact: Laura Techico
 Planning and Development Services Manager
 City of Des Moines
 21630 11th Ave S, Suite "D"
 Des Moines, WA 98198
 Tel - (206) 870-6595
 Fax - (206) 870-6544
 Email - ltechico@desmoineswa.gov

2) Outside Consultant: Olympic Environmental Resources
 4715 SW Walker Street
 Seattle, WA 98116
 TEL - (206) 938-8262
 Email – pauldevine@msn.com

F) Event Activities - materials to be collected:

- 1) Lead Acid Batteries
- 2) Household Batteries
- 3) CFC Appliances
- 4) Oil and Latex Paint*

*Will be collected if the material is paid for by Washington PaintCare program.

G) Event Educational Activities - the following educational materials will be distributed:

- 1) Information on City recycling programs
- 2) Local Hazardous Waste Management Plan educational materials produced by King County.
- 3) Other appropriate educational materials.

H) Event Promotion-event promotion will be accomplished by one or more of the following ways:

- 1) By distributing a promotional flyer through direct mailings to Des Moines households.
- 2) By including notices in City/community newsletters.
- 3) By posting a bulletin at City Hall, on the City web site, and on the City cable channel (if available).
- 4) By publicizing the events through the King County promotional activities, including County websites.

I) 2025 Budget: 14,636.55

LHWMP Grant - Estimated Costs	2025
City Staff Salary and Benefits	\$1,463.55
Consultant Services - Management/Admin/Graphics	\$7,373.00
Consultant Services - Event Staff	\$1,000.00
Collection/Hauling Costs	
Batteries	\$2,000.00
Other Material Costs	\$500.00
Flyer Printing and Mailing	\$1,800.00
Event Supplies	\$300.00
Other Expenses - rentals and mileage, etc	\$200.00
TOTALS	\$14,636.55

2. PERFORMANCE OBJECTIVES:

The City plans to send out approximately 8,530 promotional flyers per event to Des Moines households per event and publicize the events through the City website. The City will also promote events through King County promotional activities, including County websites and telephone assistance. The City anticipates collecting 10-20 tons of material from the local waste stream.

The annual expected volumes of material collected, based on past events, are as follows:

<u>Type of Material</u>	<u>Total Volume</u>
Lead Acid Batteries	25-35
Household Batteries	13,000-15,000
CFC Appliances	35-45
Oil Based Paint	250-500 pounds
Latex Paint	2,000-3,000 pounds

The benefits expected by the collection of these materials will be to divert them from the waste stream where they could damage the environment and pose health risks to Des Moines residents. The volume of materials collected and diverted will be reported to the King County Health Department at the conclusion of each event. These events will also provide an opportunity to recycle solid waste. The King County Solid Waste Division and Washington State Department of Ecology will pay for the solid waste element.

3. IMPACT OBJECTIVES:

By hosting two or more Recycling Collection Events, Des Moines can further reduce the amount of environmentally damaging materials finding its way to the landfills, storm drains, streams, and other isolated sites in our City. The City of Des Moines has a population of approximately 33,300. The City expects, based on past events, that 1,200–1,400 households will actively participate in the annual events by bringing the materials listed above to the events for proper disposal and recycling over two years. This will result in 10-20 tons of material diverted from the local waste stream for recycling over two years.

In addition to diverting materials from the City waste stream, attracting residents to these events provides an opportunity to distribute educational material on City recycling programs and the Local Hazardous Waste Management Program in King County. The educational materials can enhance the knowledge of residents and improve behavior in purchase, handling, and disposal of hazardous materials.

Des Moines will provide the following information to the County for project evaluation after each event:

- 1) The number of participating vehicles.
- 2) The volume of each material collected.
- 3) Actual event cost by budget category.
- 4) Documentation of the materials collected for recycling by the respective service provider.

Agreement # HW1039

EXHIBIT B

2025 BUDGET

LOCAL HAZARDOUS WASTE MANAGEMENT PROGRAM

City of Des Moines
21630 11th Avenue S, Suite D
Des Moines, WA 98198

Component Description	2025 Budget
Task 1: Hazardous Waste Collection Activities	\$14,636.55
Total	\$14,636.55

Footnote: Please note that the budget and grant cycle for 2025 will be for one year.



INVOICE

Agreement No. HW1039
 Exhibit C
 Period of Performance: 1/1/25-12/31/25

City of Des Moines
 21630 11th Avenue S., Suite D
 Des Moines, WA 98198
 Invoice Processing Contact: Laura Techico
 270-870-6595
ltechico@desmoineswa.gov

Submit signed invoice to:
 Keith Quinata
 Hazardous Waste Management Program
 DNRP Water and Land Resources Division

201 South Jackson Street, Suite 6300
 Seattle, WA 98104
hazwastegovrelations@kingcounty.gov

ALL FIELDS MUST BE COMPLETED FOR PROMPT PAYMENT PROCESSING

King County Accounts Payable Information	
Purchase Order #	
Supplier Name	City of Des Moines
Supplier #	1270
Supplier Pay Site	DES MOINES
Remit to Address	21630 11th Avenue S., Suite D Des Moines, WA 98198
Invoice Date	
Invoice #	
Amount to be Paid	
Requisitioner name/phone:	Amanda Miller 206-477-1649

Invoice for services rendered under this Agreement for the period of: Start Date End Date

Project	Organization	Expend Acct	Task	CPA	Amount
1114016	860000	53105	001		

Please do not enter values in shaded cells. Enter "Previously Billed" and "Current" values only.

Expenditure Item	2025 Budget	Previously Billed	Current	Cumulative	Balance
HHW Task 1	\$14,636.55	\$0.00	\$0.00	\$0.00	\$14,636.55
Total	\$14,636.55	\$0.00	\$0.00	\$0.00	\$14,636.55

Materials and quantities collected:

Gallons of motor oil	
Number of motor oil filters	
Gallons of mixed fuel	
Gallons of antifreeze	
Pounds of lead acid batteries	
Pounds of dry batteries	
Number of CFC appliances	
Number of fluorescent bulbs	
Other (please specify)	

Collection event details:

Number of collection events	
Number of participants at collection events	

Education event details:

Number of education events	
Number of participants at education events	

I, the undersigned, do hereby certify under the laws of the State of Washington penalty of perjury, that this is a true and correct claim for reimbursement services rendered. I understand that any false claims, statements, documents, or concealment of material fact may be prosecuted under applicable Federal and State laws. This certification includes any attachments which serve as supporting documentation to this reimbursement request.

 Recipient - Print Name

 Recipient Signature

 Date

 Haz Waste Program Authorization / Approval

 Date

INVOICE DETAIL

Salaries & Wages- List by Employee	Hours	Rate of Pay/ Hr	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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Subtotal			\$ -	\$ -	\$ -	\$ -	\$ -
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Fringe Benefits	Base	Rate	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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Subtotal			\$ -	\$ -	\$ -	\$ -	\$ -
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Consultant Costs- Itemize by consultant below	Unit of measure	Rate	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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			\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -	\$ -

Subtotal			\$ -	\$ -	\$ -	\$ -	\$ -
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Supplies- Please detail below	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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Subtotal	\$ -	\$ -	\$ -	\$ -	\$ -
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Travel	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
--------	--------	-------------------	---------------------	---------------------------------	----------------------------------

In State Travel	Total # of Miles	Rate			
Out of State Travel	# of People	Rate			
Per Diem and Lodging	# of People	# of Units	Unit Cost		

Subtotal	\$ -	\$ -	\$ -	\$ -	\$ -
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Other Costs- Please detail below	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -

Subtotal	\$ -	\$ -	\$ -	\$ -	\$ -
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Overhead Costs- Please detail below	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -

Subtotal	\$ -	\$ -	\$ -	\$ -	\$ -
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Direct Costs Total	Budget	Previously Billed	Current Expenditure	Cumulative (Previous + Current)	Balance (Budget less Cumulative)
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	\$ -	\$ -	\$ -	\$ -	\$ -
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Grand Total	\$ -	\$ -	\$ -	\$ -	\$ -
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Notes regarding this Invoice

Exhibit D

11/4/2024

Ref#: 15721

King County DNRP Water and Land Resources Division
Attn: Keith Quinata
201 S. Jackson Street, Suite 5600
Seattle, WA 98104

Re: City of Des Moines
2025 Hazard Waste Program Grant

Evidence of Coverage

The City of Des Moines is a member of the Washington Cities Insurance Authority (WCIA), which is a self-insured pool of over 160 public entities in the State of Washington.

WCIA has at least \$4 million per occurrence limit of liability coverage in its self-insured layer that may be applicable in the event an incident occurs that is deemed to be attributed to the negligence of the member. Liability coverage includes general liability, automobile liability, stop-gap coverage, errors or omissions liability, employee benefits liability and employment practices liability coverage.

WCIA provides contractual liability coverage to the City of Des Moines. The contractual liability coverage provides that WCIA shall pay on behalf of the City of Des Moines all sums which the member shall be obligated to pay by reason of liability assumed under contract by the member.

WCIA was created by an interlocal agreement among public entities and liability is self-funded by the membership. As there is no insurance policy involved and WCIA is not an insurance company, your organization cannot be named as an additional insured.

Sincerely,



Rob Roscoe
Deputy Director

cc: Bonnie Wilkins
Laura Techico

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2025 Vactor Truck Purchase

FOR AGENDA OF: January 23, 2025

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

- 1. Purchase Order #121

DATE SUBMITTED: January 15, 2025

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval to purchase one (1) Vactor Truck including the necessary options and freight. The purchase order for this purchase is included as Attachment 1. The following motion will appear on the consent calendar:

Suggested Motion

Motion: "I move to approve the purchase of a new Vactor Truck from Owen Equipment for a total amount of \$643,422.36 and to authorize the City Manager or the City Manager's designee to sign the purchase order at the time they are created."

Background

The vactor truck is a critical asset for the Surface Water Management Maintenance Division, serving as one of our primary tools for maintaining the drainage system. It is used extensively, averaging about 20 days per month from March through November. As the City's drainage system expands with new development and public facilities, we anticipate an increase in usage. Additionally, heightened maintenance demands driven by our Ecology permit will further require its regular deployment.

The flush truck is also essential for responding to emergency situations, particularly during major storm events. Purchased in the 2015, the City's current vector truck is scheduled for replacement in 2025.

Discussion

Staff has reviewed vehicles from a number of vendors and after thoroughly evaluating specifications, are recommending the purchase of a 12-yard Vector through the vendor Owen Equipment, Model 2100i (details are shown in Attachment 1). The quote for this vehicle includes applicable Washington State Sales Tax and totals \$643,422.36. The 2025 Vehicle Replacement Budget (Fund 501) includes a vector replacement budget of \$650,000.

Given that the estimated total of this purchase is over the City Manager's authorized signing authority of \$50,000.00, Council approval is necessary for this purchase.

Alternatives

Council could decide not to approve the purchase of the vehicle identified in Attachment 1 and direct staff to revisit the replacement.

Financial Impact

The Vehicle Replacement Fund (Fund 501) has full revenue to support estimated expenditures.

Recommendation

Staff recommends adoption of the motion.

Council Committee Review:

Not Applicable.

CITY OF DES MOINES
Finance Division
21630 11TH Avenue South
Des Moines WA 98198-6317
Phone 206.870.6511 Fax 206.870.6540



Attachment #1

PURCHASE ORDER

THE FOLLOWING NUMBER MUST APPEAR ON ALL RELATED CORRESPONDENCE, SHIPPING PAPERS, AND INVOICES:

P.O. NUMBER: PBPW 01/09/2025 #121

To: Owen Equipment
 8721 S 218th St
 Kent, WA 98031

ATTN: Peter Blaikie
 PHONE: 253.243.4665
 EMAIL: pblaikie@owenequipment.com

SHIP TO:
Trevor Bonholzer
City of Des Moines WA
21650 11th Avenue South
Des Moines WA 98198-6317
206.870.6521

P.O. DATE	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
01/09/2025	Adam O'Donnell			Net 30 days

QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
1		KW T880 chassis built in 2024 MY2025* Total Body Price	\$431,110.68	\$431,110.68
		Total Open Market Item Additions including freight	\$151,172.00	\$151,172.00
		* see attached Sourcwell Contract #101221-VTR		

Authority: At the direction of the Des Moines City Council, taken at an open public meeting on 01/23/2025. If approved, this will be used as an intent to purchase and reserve the preferred Kenworth chassis.


SUBTOTAL	\$582,282.68
10.5% SALES TAX	\$ 61,139.68
SHIPPING & HANDLING	
OTHER	
TOTAL	\$643,422.36


1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to: Address above

INTERNAL INSTRUCTIONS:
 CHARGE TO DM CITY CODE: 50106003.564450


Ordered by:
 Adam O'Donnell
 PW Maintenance Superintendent

Date
 01.09.2025


 Authorized by:
 Michael P. Slevin III, P.E.
 Public Works Director


 Date
 01.09.2025

**VACTOR 2100i SEWER CLEANER
SOURCEWELL CONTRACT 101221-VTR**

CUSTOMER: City of Des Moines				
Contact Name	Trevor Bonholzer			
Address	21630 11th Avenue South			
City/State/Zip	Des Moines, WA 98198			
Phone# / Fax #	253-592-5985			
Sales Representative	Peter Blaikie	*KW T880 chassis built in 2024 MY2025*	BMI:	
Qty	OPT #	DESCRIPTION	3/4/2024	Date: 1/9/2025 Ext
	2105i-18	2100i PD, 18" Vacuum, 5 Yard Combo	\$ 310,210.00	\$ -
	2110i-18	2100i PD, 18" Vacuum, 10 Yard Combo	\$ 310,210.00	\$ -
1	2112i-18	2100i PD, 18" Vacuum, 12 Yard Combo	\$ 319,057.00	\$ 319,057.00
	2115i-18	2100i PD, 18" Vacuum, 15 Yard Combo	\$ 327,698.00	\$ -
	2112i-1024	2100i 1024 PD, 18" Vacuum, 12 Yard Combo	\$ 346,172.00	\$ -
	2115i-1024	2100i 1024 PD, 18" Vacuum, 15 Yard Combo	\$ 354,812.00	\$ -
	2105i-SE2	2100i SEF, Dual Stage, 5 Yard Combo	\$ 321,370.00	\$ -
	2110i-SE2	2100i SEF, Dual Stage, 10 Yard Combo	\$ 321,370.00	\$ -
	2112i-SE2	2100i SEF, Dual Stage, 12 Yard Combo	\$ 330,200.00	\$ -
	2115i-SE2	2100i SEF, Dual Stage, 15 Yard Combo	\$ 341,677.00	\$ -
	2105i-18-CB	2100i PD, 18" Vacuum, 5 Yard Catch Basin	\$ 259,766.00	\$ -
	2110i-18-CB	2100i PD, 18" Vacuum, 10 Yard Catch Basin	\$ 259,766.00	\$ -
	2112i-18-CB	2100i PD, 18" Vacuum, 12 Yard Catch Basin	\$ 268,872.00	\$ -
	2115i-18-CB	2100i PD, 18" Vacuum, 15 Yard Catch Basin	\$ 277,768.00	\$ -
	2112i-1024-18-CB	2100i 1024 PD, 18" Vacuum, Catch Basin	\$ 296,785.00	\$ -
	2115i-1024-18-CB	2100i 1024 PD, 18" Vacuum, 15 Yard Catch Basin	\$ 305,679.00	\$ -
	2105i-SE2-CB	2100i SEF, Dual Stage, 5 Yard Catch Basin	\$ 261,800.00	\$ -
	2110i-SE2-CB	2100i SEF, Dual Stage, 10 Yard Catch Basin	\$ 261,800.00	\$ -
	2112i-SE2-CB	2100i SEF, Dual Stage, 12 Yard Catch Basin	\$ 270,630.00	\$ -
	2115i-SE2-CB	2100i SEF, Dual Stage, 15 Yard Catch Basin	\$ 282,109.00	\$ -
GENERAL SPECIFICATIONS				
	2014iSTD	1000 Gallons STD		
	2019iSTD	600 Gallons STD (Single Axle)		
	2015iSTD	1300 Gallon Water Total (15 Yard Only)		
	009iSTD	Under Engine Toolbox		
	010iSTD	48"W or 40" Wx 22"H x 24"D Curbside Toolbox		
	011iSTD	Aluminum Fenders		
	012iSTD	Mud Flaps		
	014iSTD	Electric/Hydraulic Four Way Boom		
	016iSTD	Color Coded Sealed Electrical System		
	019iASTD	Intuitouch Electronic Package		
	020iSTD	Double Acting Hoist Cylinder		
	025iASTD	Handgun Assembly w/ 35' x 1/2" Hose with Quick Disconnects		
	026iSTD	Ex-Ten Steel Cylindrical Debris Tank		
	030iSTD	Flexible Hose Guide		
	032iSTD	3 Nozzles with Carbide Inserts		
	045iSTD	Suction Tube Storage (4 Pipe) Rear Door Fixed /Curb Frame		

**VACTOR 2100i SEWER CLEANER
SOURCEWELL CONTRACT 101221-VTR**

046iSTD	1" Nozzle Pipe		
048iSTD	10' Leader Hose		
1001iSTD	Flat Rear Door with Hydraulic Locks		
1005iSTD	Dual Stainless Steel Float Shutoff System		
1024iSTD	Debris Body Vacuum Relief System		
1031iSTD	Debris Deflector Plate		
1033iSTD	60" Dump Height		
1041iSTD	Debris Body Up Message and Alarm		
2001iSTD	Low Water Indicator on Screen w/ Alarm and Flow Indicator		
2011iSTD	3" Y-Strainer at Fill, 25' Fill Hose		
2014iSTD	1000 Gallons Standard		
2022iSTD	Additional Water Tank Gauge		
2023iSTD	Liquid Float Level Indicator		
3019iSTD	Digital Water Pressure Gauge		
4000iSTD	180 Degree Non-Extending Boom		
4006iSTD	Front Joystick Boom Control		
4010iSTD	Boom Hose Storage, Post for 5x5 Boom		
4017iSTD	Boom Out of Position Message and Alarm		
4022iSTD	Telescopic Boom Elbow		
5005iSTD	10GPM/1000PSI Water System		
5010iSTD	Rodder System Accumulator - Jackhammer On/Off Control		
5011iSTD	3" Y-Strainer at Pump		
5015iSTD	Midship Handgun Coupling		
5019iSTD	Chassis Engine Cooling Package		
5022iSTD	Side Mounted Water Pump		
6000iBSTD	400'x1" Sewer Hose 2500 or 3000 PSI, Pirahna		
6005iDSTD	Digital Hose Footage Counter		
6007iSTD	Hose Reel Manual Hyd Extend/Retract		
6009iSTD	Hose Reel Chain Cover		
6017iSTD	Hydraulic Tank Shutoff Valves		
6020iSTD	Hydraulic Extending 15", Rotating Hose Reel, 800' Capacity		
6025iSTD	Hose Wind Guide (Dual Roller) - Manual		
7001iSTD	Tachometer/Chassis Engine w/Hourmeter		
7003iSTD	Water Pump Hour Meter		
70041iSTD	PTO Hour Meter		
7005iSTD	Hydraulic Oil Temp Alarm		
7006iSTD	Tachometer and Hourmeter for Centrifugal Compressor		
7007iSTD	Tachometer and Hourmeter for Blower		
8000iSTD	Circuit Breakers		
8025iSTD	LED Lights, Clearance, Back-Up, Stop, Tail, Turn		
9002iSTD	Tow Hooks, Front/Rear		
9003iSTD	Electronic Back-Up Alarm		
9021iSTD	Camera System, Rear Only		
S390ASTD	8" Vacuum Pipe Package		
S390BSTD	7" Vacuum Package		
S560STD	Emergency Flare Kit		

**VACTOR 2100i SEWER CLEANER
SOURCEWELL CONTRACT 101221-VTR**

	S590STD	Fire Extinguisher 5LB		
	i110STD	Module Paint, DuPont Imron Elite, Wet on Wet		
VACTOR OPTIONS TO ADD/DEDUCT				
	009i	Control Panel Box with Lighting	\$ 322.00	\$ -
1	010i	Toolbox, Curbside with Lighting (adds lightng to side toolbox)	\$ 322.00	\$ 322.00
	018i	Remote Pendant Control with 35' Cord	\$ 1,732.00	\$ -
1	1003i	Debris Body Washout	\$ 1,984.00	\$ 1,984.00
1	1003iB	Rear Door Valve Flushout	\$ 545.00	\$ 545.00
	1004iB	Onboard Digital Scale System w/ Vacuum Relief	\$ 16,273.00	\$ -
1	1005iA	SS Float Ball Cage for Float Shut Off System	\$ 724.00	\$ 724.00
	1007i	6" Rear Door Butterfly Valve, 3:00	\$ 1,057.00	\$ -
	1007iA	6" Rear Door Butterfly Valve w/Port & Screen, 6:00	\$ 1,350.00	\$ -
	1008i	6" Rear Door Knife Valve w/Camloc, 3:00	\$ 1,587.00	\$ -
	1008iA	6" Rear Door Knife Valve w/Camloc w/Screen, 6:00	\$ 1,892.00	\$ -
	1008iB	6" Rear Door Drain Port w/Fixed Screen, 6:00	\$ 744.00	\$ -
	1008iE	6" Rear Door Knife Valve w/Camloc, Air-Actuated, 3:00	\$ 2,388.00	\$ -
1	1008iF	6" Rear Door Knife Valve w/Camloc, Air-Actuated, 6:00	\$ 2,689.00	\$ 2,689.00
	1008iG	6" Rear Door Port - Removed 3:00		\$ -
	1009i	Internally Mounted Trash Pump w/Screen	\$ 13,813.00	\$ -
	1009iA	Externally Mounted Trash Pump w/Floating Arm	\$ 14,896.00	\$ -
	1009iB	Internal Body Screen w/Pump Off Port Only	\$ 888.00	\$ -
1	1009iD	Full Rear Door Swinging Screen	\$ 1,012.00	\$ 1,012.00
	1009iE	Externally Mounted Trash Pump w/ Basket Intake Screen	\$ 14,986.00	\$ -
	1010i	Pump Off Plumbing to Front	\$ 3,814.00	\$ -
	1010iA	Pump Off Ports Only	\$ 744.00	\$ -
	1010iB	Pump Off Ports and Programming	\$ 3,097.00	\$ -
	1012i	6" Decant System w/Knife Valve, Curbside	\$ 2,972.00	\$ -
	1012iA	6" Decant System w/Knife Valve, Streetside	\$ 2,942.00	\$ -
	1013i	Additional Water, Water and Debris Tanks Joined	\$ 3,065.00	\$ -
1	1014i	Centrifugal Separators (Cyclones)	\$ 6,931.00	\$ 6,931.00
	1014iA	Centrifugal Separators (Cyclones), 304 Stainless Steel	\$ 8,940.00	\$ -
	1014iB	304SS Centrifugal Separators/Dust Boxes/Plenum/Crossovers	\$ 12,881.00	\$ -
	1015i	Folding Pipe Rack, Curbside 8" Pipe	\$ 1,377.00	\$ -
	1015iA	Folding Pipe Rack, Streetside 8" Pipe	\$ 1,377.00	\$ -
1	1015iAB	Folding Pipe Rack, Streetside 7" Pipe	\$ 1,377.00	\$ 1,377.00
	1015iAC	Folding Pipe Rack, Streetside 6" Pipe	\$ 1,377.00	\$ -
	1015iAH	Folding Pipe Rack, Streetside, Hydraulic 8" Pipe	\$ 2,571.00	\$ -
1	1015iAJ	Folding Pipe Rack, Streetside, Hydraulic 7" Pipe	\$ 2,571.00	\$ 2,571.00
	1015iAK	Folding Pipe Rack, Streetside, Hydraulic 6" Pipe	\$ 2,571.00	\$ -
	1015iB	Folding Pipe Rack, Rear Door 8" Pipe	\$ 1,377.00	\$ -
	1015iBA	Folding Pipe Rack, Rear Door 7" Pipe	\$ 1,377.00	\$ -
	1015iBH	Folding Pipe Rack, Rear Door, Hydraulic 8" Pipe	\$ 2,571.00	\$ -
	1015iBJ	Folding Pipe Rack, Rear Door, Hydraulic 7" Pipe	\$ 2,571.00	\$ -
	1015iBL	Folding Pipe Rack, Rear Door 6" Pipe	\$ 1,377.00	\$ -

**VACTOR 2100i SEWER CLEANER
SOURCEWELL CONTRACT 101221-VTR**

	1015iBM	Folding Pipe Rack, Rear Door, Hydraulic 6" Pipe	\$ 2,571.00	\$ -
	1015iG	Folding Pipe Rack, Curbside 7" Pipe	\$ 1,377.00	\$ -
	1015iH	Folding Pipe Rack, Curbside, Hydraulic 8" Pipe	\$ 2,471.00	\$ -
	1015iHA	Folding Pipe Rack, Curbside, Hydraulic 7" Pipe	\$ 2,571.00	\$ -
	1015iHB	Folding Pipe Rack, Curbside, Hydraulic 6" Pipe	\$ 2,571.00	\$ -
	1015iJ	Folding Pipe Rack, Curbside 6" Pipe	\$ 1,377.00	\$ -
1	1022i	Rear Door Splash Shield	\$ 2,020.00	\$ 2,020.00
1	1023i	Lube Manifold	\$ 2,999.00	\$ 2,999.00
1	1023iA	Plastic Lube Chart	\$ 83.00	\$ 83.00
	1025i	Flat Rear Door Ports	\$ 324.00	\$ -
1	1026i	Debris Body Vibrator, Electric	\$ 3,528.00	\$ 3,528.00
	1030i	Debris Body Inspection Port w/Ladder	\$ 1,607.00	\$ -
	1053i	Stainless Steel Water Barrel for Jet Rodder Pump	\$ 3,937.00	\$ -
	2003i	Laval Water Separator at Fill	\$ 2,259.00	\$ -
	2004i	Continuous Water Tank Fill	\$ 2,259.00	\$ -
1	2006i	Air Purge	\$ 1,699.00	\$ 1,699.00
1	2016i	Additional Water, 1300 Gallons Total	\$ 3,520.00	\$ 3,520.00
	2018i	Additional Water, 1500 Gallons Total	\$ 5,273.00	\$ -
	2020i	6" Gravity Fill Port on Water Tank	\$ 1,152.00	\$ -
	2021i	Additional Water Tank Fill	\$ 948.00	\$ -
	2025i	304 Stainless Steel Water Tanks ILO Aluminum, Single Axle	\$ 10,510.00	\$ -
	2025iA	304 Stainless Steel Water Tanks ILO Aluminum, Tandem Axle	\$ 13,138.00	\$ -
	3013iB	Vac on the Go for the Single Engine Fan	\$ 42,704.00	\$ -
1	3015i	Front Blower Controls	\$ 1,918.00	\$ 1,918.00
1	3017i	Blower High Temp Safety Shutdown	\$ 684.00	\$ 684.00
1	3020i	Digital Water Level Indicator	\$ 883.00	\$ 883.00
1	3021i	Debris Body Level Indicator	\$ 1,185.00	\$ 1,185.00
	3022i	Digital Gray Water Level Indicator	\$ 2,374.00	\$ -
	4005i	180 Degree 10ft Extendable Boom	\$ 12,545.00	\$ -
1	4008i	Grate Lifting Hook, Installed on Boom	\$ 404.00	\$ 404.00
	4009i	Water Ring Assembly, at Hose End	\$ 1,047.00	\$ -
1	4009iA	Water Ring Assembly, at Debris Body Inlet	\$ 1,047.00	\$ 1,047.00
	4011iA	Wireless Controls w/ 2-way Communication & LED Display	\$ 3,094.00	\$ -
1	4011iB	Bellypack Wireless Controls w/ Hose Reel Controls	\$ 4,084.00	\$ 4,084.00
	4011iC	Handheld Wireless Controls	\$ 3,201.00	\$ -
	4011iD	Bellypack Wireless Controls	\$ 4,222.00	\$ -
1	4013i	Rotatable Boom Inlet Hose	\$ 744.00	\$ 744.00
	4014i	180 Degree, 5x5 Extendable/Telescopic Boom	\$ 22,666.00	\$ -
	4015i	180 Degree 10ft Telescopic Boom	\$ 20,062.00	\$ -
1	4016i	180 Degree 10x15 Rapid Deployment Boom	\$ 28,321.00	\$ 28,321.00
1	4016iA	Heavy Duty RDB Hose	\$ 1,925.00	\$ 1,925.00
	4020i	Anti-Splash Valve	\$ 494.00	\$ -
1	4021i	Vacuum Accumulator -Constant Speed	\$ 5,451.00	\$ 5,451.00
	4021iA	Vacuum Accumulator -Variable Speed	\$ 5,451.00	\$ -
	4022iA	Telescopic Boom Elbow, Hard Hat Style	\$ 595.00	\$ -

**VACTOR 2100i SEWER CLEANER
SOURCEWELL CONTRACT 101221-VTR**

	4022iD	Telescopic Boom Elbow, Nickel Plated	\$ 511.00	\$ -
	5002iA	80GPM/2500PSI Rodder Pump		\$ -
1	5003iA	70GPM/3000PSI Rodder Pump		\$ -
	5004i	100GPM/2000PSI Rodder Pump w/ 1-1/4" x 500' Hose	\$ 5,105.00	\$ -
	5004iA	100GPM/2000PSI Rodder Pump w/ No Hose	\$ 2,792.00	\$ -
	5005iB	40GPM/2500PSI Water System - HXX Kit 2	\$ 19,233.00	\$ -
	5008iB	Cold Water Recirculator, PTO Driven, 25GPM	\$ 2,254.00	\$ -
	5010iA	Rodder System Accumulator On/Off at Hose Reel	\$ 1,027.00	\$ -
1	5015i	Handgun Couplers, Front and Rear	\$ 794.00	\$ 794.00
1	5016i	Additional Rodder System Accumulator	\$ 3,410.00	\$ 3,410.00
	5017i	Hose Reel - Freespool	\$ 1,302.00	\$ -
	5019i	Chassis Engine Cooling Package	\$ 4,602.00	\$ -
1	5021iC	Hydro Excavation Kit	\$ 3,415.00	\$ 3,415.00
	5023i	Fan Flushout System	\$ 656.00	\$ -
	5024iA	Water Heater, 400,000 BTUs	\$ 17,109.00	\$ -
	5024iC	Water Heater, 800,000 BTUs, 12V	\$ 21,228.00	\$ -
	5026iA	Insulated, Wrapped Water Lines	\$ 5,068.00	\$ -
	5026iB	Heat Traced and Wrapped Water Lines	\$ 6,282.00	\$ -
1	5029i	Cyclone Washout System	\$ 637.00	\$ 637.00
1	5029iA	RDB Washout Coupling	\$ 140.00	\$ 140.00
	5030i	Water Recycler	\$ 134,275.00	\$ -
	5032i	Fresh Water Electric Recirculation System (Recycler)	\$ 2,887.00	\$ -
	5033i	Blanket Heated Rear Door Frame	\$ 11,861.00	\$ -
	6002iB	600' x 1" Pirahna Sewer Hose 2500PSI ILO Standard	\$ 1,191.00	\$ -
	6002iB3	600' x 1" Pirahna Sewer Hose 3000PSI ILO Standard	\$ 1,622.00	\$ -
1	6004iD	Rodder Hose Pinch Roller	\$ 1,827.00	\$ 1,827.00
	6005iA	Additional Hose Footage Counter, Rear of Hose Reel	\$ 615.00	\$ -
	6006i	Rodder Hose Guard, Lexan	\$ 1,478.00	\$ -
1	6008i	Hose Reel Manual Rewind	\$ 674.00	\$ 674.00
	6012i	Lateral Cleaning Kit w/150' Hose and Nozzle, 25GPM/2000PSI	\$ 3,957.00	\$ -
	6012iA	Lateral Cleaning Kit w/150' Hose and Nozzle, 25GPM/2000PSI Located at Side	\$ 5,386.00	\$ -
	6013i	Hydraulic Tool Package	\$ 1,897.00	\$ -
	6014i	High Pressured Hose Reel	\$ 1,917.00	\$ -
1	6014iA	Two High Pressured Hose Reels	\$ 3,688.00	\$ 3,688.00
1	6019i	Rodder Pump Drain Valves	\$ 643.00	\$ 643.00
1	6019iA	Final Filter and Silencer Ball Valve Drains	\$ 579.00	\$ 579.00
	6020iC	Hydraulic Extending 15", Rotating Hose Reel, 1,000' Cap.	\$ 3,040.00	\$ -
	6025iA	Hose Wind Guide (Dual Roller), Auto, Non-Indexing	\$ 4,373.00	\$ -
1	6025iB	Hose Wind Guide (Dual Roller), Auto, Indexing	\$ 4,930.00	\$ 4,930.00
	6025iE	Hose Wind Guide (Dual Roller), Auto, Power Indexing	\$ 6,184.00	\$ -
1	6026i	Washington State DOT Legal Front Hose Reel		\$ -
	6027iA	25' Leader Hose ILO Standard	\$ 451.00	\$ -
	6029i	Heated Rodder Pump Cabinet	\$ 11,529.00	\$ -
	6030i	Heated Handgun Cabinet	\$ 9,017.00	\$ -
1	6031i	Front Hose Reel Storage	\$ 387.00	\$ 387.00

**Vector 2100i
5 OF 7**

**VECTOR 2100i SEWER CLEANER
SOURCEWELL CONTRACT 101221-VTR**

	8001iJ	Rear Directional Control, LED Arrowboard	\$ 3,335.00	\$ -
	8001iL	Rear Directional Control, LED Split Arrowboard	\$ 2,822.00	\$ -
1	8001iM	Rear Directional Control, LED Arrowstick	\$ 2,310.00	\$ 2,310.00
	8001iN	Front Directional Control, LED Arrowstick	\$ 2,310.00	\$ -
	8002i	Hand Light w/ Bumper Plug	\$ 482.00	\$ -
1	8002iA	Rechargeable Wireless LED Spotlight	\$ 467.00	\$ 467.00
	8003i	Hand Light w/ Retractable Reel	\$ 716.00	\$ -
1	8004iD	Rear Mounted - LED Beacon Light	\$ 1,291.00	\$ 1,291.00
1	8004iE	Front Mounted - LED Beacon Light	\$ 1,291.00	\$ 1,291.00
	8004iF	Rear Mounted - LED Beacon Light w/ Limb Guard	\$ 1,335.00	\$ -
	8004iG	Front Mounted - LED Beacon Light w/ Limb Guard	\$ 1,335.00	\$ -
	8005i	HALO (Handsfree Accessory Light Option)	\$ 3,720.00	\$ -
	8012i	Additional Handlight Connector, Rear	\$ 188.00	\$ -
	8020iE	Lighting Package, 6 Federal Signal Strobe Lights	\$ 2,030.00	\$ -
	8020iH	10 Light Package, 10 Federal Signal Strobe Lights, LED	\$ 2,743.00	\$ -
1	8020iL	14 Light Package, 14 Federal Signal Strobe Lights, LED	\$ 4,226.00	\$ 4,226.00
	8020iM	Federal Signal Strobe Lights - 4 Light LED System	\$ 836.00	\$ -
1	8027i	LED Mid-Ship Turn Signals	\$ 701.00	\$ 701.00
	8028i	Worklights (2), LED, Boom	\$ 1,036.00	\$ -
1	8028iA	Worklights (2), Self-Leveling Boom LED	\$ 1,036.00	\$ 1,036.00
1	8029i	Worklights (2), LED, Rear Door	\$ 841.00	\$ 841.00
1	8029iA	Worklight, LED, Operators Station	\$ 770.00	\$ 770.00
1	8029iB	Worklight, LED, Hose Reel Manhole	\$ 770.00	\$ 770.00
1	8029iC	Worklight, LED, Curb Side	\$ 765.00	\$ 765.00
1	8029iD	Worklight, LED, Street Side	\$ 765.00	\$ 765.00
1	8030i	Hose Reel Wrapped for Delivery		\$ -
	8035i	(1) 110 Volt 3000 Watt GFCI Electrical Outlet Passenger Side	\$ 7,695.00	\$ -
	9001i	Ziebart Corrosion Protection	\$ 465.00	\$ -
	9001iA	Road Salt Protection	\$ 465.00	\$ -
	9021iA	Camera System, Front and Rear	\$ 977.00	\$ -
1	9021iB	Camera System, Front, Rear, Both Sides	\$ 1,955.00	\$ 1,955.00
	9021iC	Camera System - Rear & Sides Only	\$ 1,953.00	\$ -
1	9023i	Safety Cone Storage Rack - Drop-In Style	\$ 212.00	\$ 212.00
	9023iA	Safety Cone Storage Rack - Post Style	\$ 212.00	\$ -
1	9023iB	Additional Safety Cone Storage Rack - Drop-In Style	\$ 212.00	\$ 212.00
	9023iC	Additional Safety Cone Storage Rack - Plate Style	\$ 212.00	\$ -
	9024i	Water Cooler Storage Rack	\$ 212.00	\$ -
	9027iA	Chassis Engine DPF Soot Load Information	\$ 580.00	\$ -
	9070iA	Toolbox, Front Bumper Mounted (2), LED Markers	\$ 2,561.00	\$ -
1	9070iB	Long Handle Tool Storage	\$ 453.00	\$ 453.00
1	9070iC	Tool Baskets - Front Bumper Mounted (2), LED Markers	\$ 1,830.00	\$ 1,830.00
	9071i	Tooltray, Behind Cab	\$ 935.00	\$ -
	9071iA	Partial Toolbox BOC 17x30x48	\$ 3,177.00	\$ -
	9071iAL	Partial Toolbox BOC 17x30x48 with Lighting	\$ 3,496.00	\$ -
	9071iE	Toolbox, BOC, 16x30x96	\$ 4,085.00	\$ -

**VACTOR 2100i SEWER CLEANER
SOURCEWELL CONTRACT 101221-VTR**

	9071iEL	Toolbox, BOC, 16x30x96 with Lighting	\$ 4,407.00	\$ -
	9071iF	Toolbox, BOC, 14x36x96	\$ 4,117.00	\$ -
	9071iFL	Toolbox, BOC, 14x36x96 with Lighting	\$ 4,438.00	\$ -
	9071iG	Toolbox, BOC 16x30x96 with Tool Tray	\$ 6,079.00	\$ -
	9071iGL	Toolbox, BOC 16x30x96 with Tool Tray with Lighting	\$ 6,400.00	\$ -
	9072iA	Toolbox, Driver Side Frame, 60x24x24	\$ 3,363.00	\$ -
1	9072iAL	Toolbox, Driver Side Frame, 60x24x24 with Lighting	\$ 3,685.00	\$ 3,685.00
	9072iB	Toolbox, Driver Side Frame, 24x24x24	\$ 2,070.00	\$ -
	9072iBL	Toolbox, Driver Side Frame, 24x24x24 with Lighting	\$ 2,390.00	\$ -
	9072iC	Toolbox, Driver Side Chassis Frame 72x18x24	\$ 3,959.00	\$ -
	9072iCL	Toolbox, Driver Side Chassis Frame 72x18x24 with Lighting	\$ 4,203.00	\$ -
	9073iA	Toolbox, Passenger Side Frame, 30x18x24	\$ 2,211.00	\$ -
	9073iAL	Toolbox, Passenger Side Frame, 30x18x24 with Lighting	\$ 2,532.00	\$ -
	9074iA	Toolbox, Driver Side Subframe, 18x24x24	\$ 1,711.00	\$ -
1	9074iAL	Toolbox, Driver Side Subframe, 18x24x24 with Lighting	\$ 2,033.00	\$ 2,033.00
	9074iB	Toolbox, Driver Side Subframe, 16x20x24	\$ 1,711.00	\$ -
	9074iBL	Toolbox, Driver Side Subframe, 16x20x24 with Lighting	\$ 2,033.00	\$ -
	9074iC	Toolbox, Driver Side Subframe, 18x15x10	\$ 1,711.00	\$ -
	9074iCL	Toolbox, Driver Side Subframe, 18x15x10 with Lighting	\$ 2,033.00	\$ -
	9075iA	Toolbox, Driver Side Subframe, 60x20x12	\$ 2,094.00	\$ -
	9075iAL	Toolbox, Driver Side Subframe, 60x20x12 with Lighting	\$ 2,416.00	\$ -
	9075iB	Toolbox, Driver Side Subframe, 48x20x12	\$ 1,904.00	\$ -
	9075iBL	Toolbox, Driver Side Subframe, 48x20x12 with Lighting	\$ 2,222.00	\$ -
	9075iC	Toolbox, Driver Side Subframe, 36x20x12	\$ 1,711.00	\$ -
	9075iCL	Toolbox, Driver Side Subframe, 36x20x12 with Lighting	\$ 2,033.00	\$ -
		TOTAL ADDITIONS		\$ 125,387.00
		TOTAL BODY PRICE		\$ 444,444.00
		Sourcewell Discount (-3%)		\$ 13,333.32
		CONTRACT BODY PRICE		\$ 431,110.68
OPEN MARKET ITEMS				
		Freight from Factory to the City of Des Moines, WA		\$ 5,250.00
1		KW T880 Tandem Rear Axle, 370HP PX-9, Allison 3000 AT		\$ 195,000.00
		Engine Brake set to all speeds (<35mph), Steering Stops Max		
1		Location of HP Hose Reel mounted behind RF bumper facing curb, second HP Reel mid-ship facing curb (N/C for locations)		
1		500655-30 2 Total Printed Full Vactor Manuals		\$ 175.00
1	512117A-30	7"x78" Higbee Catch Basin Nozzle		\$1,870.00
1	R26559	3/4" x 800' Piranha Hose 3000psi (ILO 1" Standard)		\$3,877.00
1		2015 Vaccon Model V311LHAEG-P SN: 11157362		(\$55,000.00)
		TOTAL OPEN MARKET ITEM ADDITIONS		\$ 151,172.00
		Build Price		\$ 582,282.68
		Sales Tax 10.5%	\$	61,139.68
		Total	\$	643,422.36

Customer Approval _____

Date _____



CIT TRUCKS - PERU (C251)
2650 MAY ROAD
PERU, Illinois 61354

VACTOR MANUFACTURING
1621 S ILLINOIS ST
STREATOR, Illinois 61364
United States of America

Grant Magerkurth
Cell Phone:
Office Phone: 815 224-4410
Email: gmagerkurth@cittrucks.com

Jared Dippel

Vehicle Summary

	Unit		Chassis	
Model:	T880 Series Conventional	Fr Axle Load (lbs):		20000
Type:	FULL TRUCK	Rr Axle Load (lbs):		46000
Description 1:	PAKT370A2025	G.C.W. (lbs):		66000
Description 2:				
	Application	Road Conditions:		
Intended Serv.:	Construction: Vehicles used in the cons	Class A (Highway)		85
Commodity:	Excavated Earth	Class B (Hwy/Mtn)		10
		Class C (Off-Hwy)		5
		Class D (Off-Road)		0
	Body	Maximum Grade:		6
Type:	Vacuum Tank	Wheelbase (in):		261
Length (ft):	23	Overhang (in):		71
Height (ft):	13.5	Fr Axle to BOC (in):		68
Max Laden Weight (lbs):	4000			
		Cab to Axle (in):		193
		Cab to EOF (in):		264
		Overall Comb. Length (in):		380.5
	Trailer			
No. of Trailer Axles:	0			
Type:				
Length (ft):	0			
Height (ft):	0			
Kingpin Inset (in):	0			
Corner Radius (in):	0			
	Restrictions			
Length (ft):	120			
Width (in):	102			
Height (ft):	13.5			

Approved by: _____

Date: _____

Note: All sales are F.O.B. designated plant of manufacture.

Price Level: January 1, 2024
 Deal: PAKT370A2025
 Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023
 Quote Number: QUO-971586-P2H3G5



Sales Code	Std/Opt	Description	\$ List	Weight
Model				
0000810	S	T880 Series Conventional	234,126	15,549
0070060	S	T880	0	0
0072001	O	Chassis Operation Will Include Stationary application used in lower 48 states [US only]. Stationary operation is defined as running the engine under load while stationary at a substantial fraction of engine gross horsepower (60% or greater) for an extended period of time (longer than 5 - 10 minutes).	0	0
0080314	O	EPA Clean Idle Label - PACCAR PX Engines	36	0
0090096	O	T880 with PX-9	0	0
0098413	O	State of Registry: Illinois	0	0
Engine & Equipment				
0130226	O	PACCAR PX-9 370 370@1600 1250@1200, 2024 With Turbo Exhaust Brake (VGT Brake) N09420 C333 0.....Reserve Speed Limit Offset (N09380 C334 0.....Maximum Cycle Distance (N202 N09360 C400 252...Reserve Speed Function Reset N09200 C399 120...Standard Maximum Speed Limit N09400 C401 10....Maximum Active Distance (N20 N09220 C402 0.....Expiration Distance (N207) N09540 C395 0.....Expiration Distance (N209) N09260 C121 68....Max Vehicle Speed in Top Gea N09440 C234 NO....Engine Protection Shtdwn N09460 C231 NO....Gear Down Protection N09580 C133 5.....Idle Shtdwn Time N09680 C233 NO....Idle Shtdwn Override N09480 C132 1400..Max PTO Speed N09300 C128 68....Max Cruise Control Speed N09500 C239 NO....Cruise Control Auto Resume N09520 C238 NO....Auto Engine Brake in Cruise N09780 C190 80....High Ambient Temperature Thr N09740 C188 40....Low Ambient Temperature Thre N09760 C189 60....Intermediate Ambient Tempera N09720 C382 YES...Enable Hot Ambient Automatic N09600 C396 YES...Enable Impending Shutdown Wa N09620 C397 60....Timer For Impending Shutdown N09640 C206 35....Engine Load Threshold N09560 C225 YES...Enable Idle Shutdown Park Br	-8,530	-895
1000046	O	EPA Emissions Warranty Engine	0	0
1000151	S	PremierSpec	0	0
1000170	O	Enable Engine Regeneration in PTO Mode Cummins	0	0

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Sales Code	Std/ Opt	Description	\$ List	Weight
1000244	O	Gearing Analysis: Balance power/economy blend results.	0	0
1000254	O	Customer's Typical Operating Spd: 65 MPH	0	0
1000524		Registration Year Year of Registration: 2024	0	0
1000684	O	Effective VSL Setting NA	0	0
1000858	O	Engine Idle Shutdown Timer Disabled	0	0
1000859	O	Enable EIST Ambient Temp Override	0	0
1000891	O	Eff EIST NA Expiration Miles Use only with MX and Cummins engines	0	0
1002060	O	Air Compressor: Cummins 18.7 CFM For Cummins And PACCAR PX engines.	-67	0
1051200	S	Air Cleaner: Composite Firewall Mounted PACCAR or Cummins Engines	0	0
1105230	O	Fan Hub: Horton 2-Speed for PX-9 or L9N or ISL	16	0
1123555	S	Cooling module: 1330 square inches. Includes aluminum radiator core, aluminum charge air cooler, translucent surge tank and washer bottle, silicone hoses, and extended life coolant.	0	0
1247263	S	EXH: Single Can 2024 RH Under with RH Side-of-Cab Vertical Tailpipe	0	0
1290118	O	Tailpipe: 5 in. Single 18 in. 45 degree curved.	-95	0
1321109	O	Fuel Filter:PACCAR Standard Service Interval Fuel/Water Separator. 2017 and Later Emissions	74	0
1321200	O	Run Aid:None *For Fuel Filter	0	0
1321300	O	Start Aid:None *For Fuel Filter	0	0
1500029	O	Kenworth Fuel Cooler Required for Cummins engines with a single fuel tank. Required for PACCAR MX-13 engine with a single fuel tank and stationary use: High RPM, low vehicle speed, sustained for longer than 1 hour. Optional for all other applications.	219	6
1504002	O	Immersion Block Heater120V 1000W W/ Plug Under Door on C500 and T800	161	0
1509099	U	ACTUAL CODE: 1509029 SHUTOFF VALVES F/TRLR HEAT W/HOSES ROUTED 3" BOC/BOS	290	0
1816260	O	Alternator: PACCAR 160 amp, Brush Type	-6	0
1821225	O	Batteries: 2 PACCAR GP31 Threaded Post (1000) 2000 CCA starting.	-235	-59
1836106	O	Mitsubishi 105P55 12V Starter with Cummins and PX	0	0

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Date: December 01, 2023
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Sales Code	Std/Opt	Description	\$ List	Weight
		PACCAR 12 volt electrical system. W/ centralized power distribution incorporating plug-in style relays. Circuit protection for serviceability, 12-volt light system w/circuit protection circuits number & color coded. Only for Cummins or PX engines.		
1840065	S	12V Low Voltage Disconnect for Battery Protection	0	0
1901017	S	Remote PTO/Throttle, 12-Pin, Engine Bay Remote Control Provision	0	0
1901078	O	J1939 Harness Extension Under Hood at Firewall Driver Side	136	0
Transmission & Clutch				
2011003	U	ALLISON 3000RDS COOLER LINES RUN TO PORTS ON FRONT SIDE OF TRANS	61	0
2011613	O	Transmission: Allison 3000RDS 6-speed, With PTO drive gear. 6th Generation controls. Includes heat exchanger & oil level sensor. Rugged Duty Series for vocational applications. Requires a push button shift control code. Oil temperature gauge is standard on class 8 models. Transynd transmission fluid is standard on all Allison 1000, 2000, 3000 & 4000 series transmissions.	6,777	-76
2349099	U	ACTL S/C:2349006:JACKSHAFT INST <i>Narr ACTL S/C:2349006:JACKSHAFTINSTREQUIRED WITH CUST DRWING</i>	3,388	0
2406005	O	45 degree Yokes on Interaxle Drivelines.	599	11
2406457	U	3 SPL170XL 1 C/B	1,900	0
2410018	O	Torque Converter Included W/ Allison Transmission.	0	0
2410099	U	ACTUAL CODE: 2410072: AUTO NEUTRAL NOT REQ'D THIS APPLICATION	0	0
2410151	O	Pushbutton Control Center Console Mounted. Class 8 with Allison Transmission.	0	0
2410204	O	Allison Fuel Sense: Delete	0	0
2410433	U	Allison 5th Gen RDS PKG 172 for 3000,	0	0
2429358	O	Rear Transmission Support Springs for transmission PTO applications are required to ensure that engine flywheel housings are not overloaded when transmission PTO's are installed.	92	0
2429379	O	Customer Installed Transmission PTO in the RH Mounted position (4 o'clock) for Allison 3000 transmissions.	0	0
2460068	U	Optional location transmission oil cooler	692	0
2480315	O	Severe Service Rear Transmission Support Spring(s).	92	15
2495022	O	Steel Centerbearing Crossmember Installed with Heavy-Duty Aluminum Gussets Replacing Standard.	245	26

Price Level: January 1, 2024
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 Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023
 Quote Number: QUO-971586-P2H3G5



Sales Code	Std/ Opt	Description	\$ List	Weight
Front Axle & Equipment				
2506181	O	Dana Spicer D2000 Front Axle rated 20K standard track.	373	-27
2621078	O	Front Brakes: 22K Bendix ES S-Cam 16.5x6 in.	-513	-46
2690013	O	Front Brake Drum: 20K Meritor X30 light weight 16.5x6 in.	120	42
2701319	S	Front Hubs Aluminum Hub Pilot 20,000 lbs. 16.5x6in. or 7in. or air disc brakes. 10 Bolt, 11-1/4 in. bolt circle.	0	0
2741970	S	ConMet PreSet Plus Hub Package; Front Axle.	0	0
2750001	S	Hubcap: Front Vented.	0	0
2765001	O	Front Auto Slack Adjuster for Drum Brakes.	0	0
2866020	S	Front Springs: Taperleaf 20K W/ Shock Absorbers w/ maintenance-free elastomer spring pin bushings. Standard with rubber pins except for C500 which has threaded pins. Not available on W900L. W900B use 2866021.	0	0
2893642	O	Dual Power Steering Gear: 16-22K TRW THP60 Not for use on T3.	73	54
2899336	S	Power Steering Cooler:Radiator Mounted Air-to-Oil	0	0
2900024	O	Front Frame Raised: 1 in.	49	0
Rear Axle & Equipment				
3144183	O	Dual Dana Spicer D46-172HP Rear Axle rated at 46K. w/ 16mm housing and 2.06in. shaft diameter. Includes pump. Tandem rear axles.	2,453	-156
3200525	O	Rear Axle Ratio - 5.25.	0	0
3334004	O	Dual Rear Brakes 16-1/2x7 in. to 46K; Bendix ES-extended service S-cam.	-1,567	0
3392005	O	Dual Rear Brake Drums: Cast. For use with 16.5X7" or 16.5X8.625" brake.	-638	208
3407050	S	Dual Rear Hubs: Aluminum Hub Pilot 46K; 11.25" bolt circle. Requires "R" series outer ends.	0	0
3441972	S	ConMet PreSet Plus Hub Package; Dual Rear Axle.	0	0
3465002	O	Tandem Rear Axle Automatic Slack Adjusters. For use with drum brakes.	286	0
3485207	O	Spring Brake: 3030 Long Stroke Dual 30 Square inches travel. For drum brakes. Helps keep brakes in adjustment longer.	356	88
3495226	O	Bendix 4S/4M Anti-Lock Brake System.	-3,688	0
3500057	O	Interaxle Driveline: 1 Dana SPL170XL Tandem Rear Axles Only	-159	-2

Price Level: January 1, 2024
 Deal: PAKT370A2025
 Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023
 Quote Number: QUO-971586-P2H3G5



Sales Code	Std/ Opt	Description	\$ List	Weight
3747460	O	Rear suspension: Tandem Hendrickson RT463 46K. 54 in. axle spacing. Steel beams & barpin bushing. 6 in. saddle height. Unladen Height: 11.1 in. Laden Height: 10 in.	656	689
3830145	O	Delete Standard Heavy-Duty Air Springs for Rear suspension.	-24	-28
Tires & Wheels				
4080019	O	Front tires: Continental HAC3 425/65R22.5 20PR with pressure sensor included	101	-6
4280057	O	Rear tires: Continental HDR2+ 11R22.5 14PR	-3,684	176
4900008	O	Rear Tire Quantity: 8	0	0
5045216	O	Front Wheel: Alcoa 82362 22.5x12.25 aluminum, with Lvl One [TM] finish High Polish, hub-pilot mount. 11400lb. maximum rating. Super single. Standard track axles may be over 102 in. w/425 tires. Air disc brake compatible.	-5	-10
5243550	O	Rear Wheel: Alcoa ULA18 22.5x8.25 MagnaForce aluminum alloy, hub-pilot mount. 7400lb maximum rating. Air Disc Brake compatible. High polish.	1,636	-316
5900008	O	Rear Wheel/Rim Quantity: 8	0	0
Frame & Equipment				
6054600	O	Frame Rails: 10-5/8 x 3-1/2 x 5/16 in. Steel to 337 in. to 416 in. Truck frame weight is 2.91 lb.-in. per pair of rails. Section modulus is 14.80, RBM is 1,776,000 in.-lbs per rail. Frame rail availability may be restricted based upon application, axle/suspension capacity, fifth wheel setting, or component/dimensional specifications. The results of the engineering review may result in a change to the requested frame rail. If a change is required Kenworth Application Engineering will advise the dealer of the appropriate material specification for a substitute rail.	490	323
6141600	O	Full Steel Insert: for 10-5/8 in. or 10-3/4 in. Steel 337 in. to 416 in. or 2nd insert for 11-5/8 in. steel frame. Adds 1,149,000 in.-lb to main rail RBM. Truck insert weight is 2.05 lb.-in. per pair of rails. Full frame insert length is equal to wheelbase plus rear frame cutoff plus dimension forward of front axle by model. See databook addendum section 7.2.	2,785	724
6309910	U	DELETE BUMPER: REQUIRES A BUMPER SETTING CODE.	-406	-40
6319485	S	48.5 in. Bumper Setting. Requires a Bumper Code.	0	0
6391201	O	Custom Frame Layout: One Chassis CFL C/M: Layout Similar to Previous Chassis 258212 CFL DEF: LOCATE AS CLOSE AS POSSIBLE TO FUEL TANK CFL A/D: BRKT#G11-1740R, MOUNT INSIDE LH RAIL TO REAR AS CLOSE AS POSS. TO FWD DRIVE FWD CROSSMEMBER PER DRWG CFL A/T: 2 AIR TANKS PERP TO FRAME RAIL BEHIND DPF/SCR, 2 AIR TANKS IN AFTERFRAME, SAME AS 258212	1,380	0
6400633	O	Battery Box: Temporary Across the Rails. Includes	387	-110

Price Level: January 1, 2024
 Deal: PAKT370A2025
 Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023
 Quote Number: QUO-971586-P2H3G5



Sales Code	Std/Opt	Description	\$ List	Weight
		maximum cable length available.		
6409908	O	Battery Box Location: BOC Across the Rails.	0	0
6451090	S	T470,C5, T6, T8 Non-Polished DPF/SCR or CNG Cover diamond plate w/ step. For use w/ 2010 or later exhaust systems. For T8, use extended length non-polished battery box on opposite rail to match the length of under cab components. End plates will be painted standard black frame color.	0	0
6679995	O	Customer Will Install Structural End-of-Frame crossmember before vehicle is placed in service.	0	0
6721102	S	Rear Mudflap Arms: Betts B-25 Standard-Duty, straight. Includes B1732 mounting brackets as standard.	0	0
6722000	S	Rear Mudflap Shields: White Plastic Antisail W/ Kenworth logo.	0	0
6742009	S	Square End-of-Frame W/O Crossmember; Non-Towing.	0	0
6790003	O	Special Frame Drill: Dealer to Provide Drawing with dimensions and revision level. Acceptable hole diameters range from 10.2 mm to 40.4 mm. Preferred file format is .pdf. Not for use for rear suspension, fifth wheel or other published frame drilling code. Does not replace clear frame space requests or custom frame layout. <i>Narr 504400NA REVB SAME AS PREV 258212</i>	1,797	0
Fuel Tanks & Equip				
7210090	O	Fuel Tank: 90 US Gallon 24.5 in. Aluminum Under replace. Class 8 fuel tanks w/o locking caps include an anti-siphon device on the filler neck.	156	-4
7722153	S	Small Round DEF Tank, 14 Gallons. The DEF tank will be located on the side you specified. If you have specific configuration or body builder concerns, please utilize the Custom Frame Layout option. Standard capacity is calculated by fuel capacity of the vehicle and will accommodate two diesel fill-ups for every DEF fill-up. For 1:1 DEF fuel fill ratio, add 7889204.	0	0
7831008	O	6 in. Wide Lower Fuel Tank Step, for One 22 in. or 24.5 in. tank LH.	90	2
7881300	O	Welded-In Fitting W/ Gasket & Cover Plate for mounting customer-installed fuel tank heater.	54	0
7881310	O	Plate and Gasket Moved to Rear of Under Cab Fuel tank. For customer installed fuel tank heaters only.	55	0
7889203	S	DEF to Fuel Fill Ratio 2:1 or Greater.	0	0
7889245	S	Anti-Siphon Device in Fuel Tank Filler Neck. For any number of fuel tanks.	0	0
7889604	S	DEF Tank Location is LH.	0	0
7920090	O	Location: 90 gal fuel tank LH under cab	0	0
Cab & Equipment				
8025301	S	Cab: Stamped Aluminum Cab with Panoramic Curved	0	0

Price Level: January 1, 2024
 Deal: PAKT370A2025
 Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023
 Quote Number: QUO-971586-P2H3G5



Sales Code	Std/ Opt	Description	\$ List	Weight
		glass windshield. Standard with stamped aluminum doors, heavy duty in-swinging hinges, and triple sealed doors. Manufactured using self-piercing rivets and structural adhesive. Includes LED exterior marker lights and turn signals.		
8090605	S	Hood: T880 Set-Back Short Length. 116.7 inch BBC W/ Std Bumper.	0	0
8108011	S	Cab HVAC - Day Cab and 40 in. Sleeper System With Defrost, A/C, and 48,000 BTU/hr Heater. Includes automatic temperature control with one touch defrost operation and dash mounted cab temperature and solar intensity sensors. Pleated fresh air filter and cabin recirculation air filter standard. The Kenworth HVAC system is designed to provide optimal heating and cooling in all operating environments without need for additional insulation. Cab HVAC without sleeper heater AC is available with 40in sleeper.	0	0
8201047	S	Kenworth Smartwheel: 18 in. Non-Leather With Integrated Radio and Cruise Controls.	0	0
8201051	O	Column Mtd Retarder Control, RH Side Use with Manual & Allison Transmissions Only.	0	0
8201200	S	Adjustable Telescoping Tilt Steering Column.	0	0
8205135	O	Information for Customer-Installed PTO Muncie 10-bolt.	0	0
8205202	U	PTO WIRING W/O DASH SWITCH	30	0
8209999	O	Spare Power Wiring For Customer Installed Devices Behind Dash Cluster. Includes 2 batt, 2 ign, 1 acc, 1 LVD at 20A each.	95	2
8222413	S	Gauge: DD Virtual Gauge - Manifold Pressure Boost	0	0
8222414	S	Gauge: DD Virtual Gauge - Engine Percent Torque	0	0
8282027	S	Main Instrument Package: 15" Digital Display. Includes Speedometer, Tachometer, Primary Air Pressure, Secondary Air Pressure, Fuel Level #1, DEF Level, DPF Filter Status, Fuel Economy, Oil Pressure, Coolant Temp, OAT and Voltmeter, and Air Application.	0	0
8282107	O	Large Flat Panel on Rider Side Dash for customer-installed controls. Reduces gauge count by 6.	40	0
8282120	O	USB Charging Port - Dash Panel *Requires 15" Digital Display 8282027/8282028	30	0
8300008	S	Interior Color: Slate Gray	0	0
8330102	S	Interior Package: Vantage Daycab Includes durable headliner and vinyl sidewalls with geometric patterned trim and anodized aluminum accents throughout. Convenient overhead storage cubbies, full size glove box, two center console cupholders, and large door pad map pocket. Standard LH/RH power windows, electric door locks, interior LED lighting, nighttime-friendly red ambient lighting for dash and footwell, and door mounted courtesy light. Includes two standard 12V power outlets. Driver sunvisor includes strap.	0	0

Price Level: January 1, 2024
 Deal: PAKT370A2025
 Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023
 Quote Number: QUO-971586-P2H3G5



Sales Code	Std/Opt	Description	\$ List	Weight
8390634	S	Rubber Floormat	0	0
8410278	O	Driver Seat: GT702 HB with DuraCloth w/ Vinyl material. The GT702 is standard with a single air bag, scissor linkage seat suspension that incorporates seat height memory, auto-leveling valves with exit air dump, and adjustable damper. It includes a dual chamber lumbar support, 10in Fore/Aft adjustment, 5in Up/Down adjustment with protection zones, 2.5in pan extension, 51 degree seat back recline, and 16 degree full seat tilt. Includes 3-point matching seat belts. DR seat standard w/ dual armrests.	294	10
8460206	O	Rider Seat: GT701 HB with DuraCloth w/ Vinyl material. The GT701 is standard with a single air bag, scissor linkage seat suspension. It includes a single chamber lumbar support, 10in Fore/Aft adjustment, 7in Up/Down adjustment, 2.5in pan extension, 51 degree seat back recline, and 16 degree full seat tilt. Includes 3-point matching seat belts. RD seat standard w/ LH armrest.	474	34
8490181	S	Seat Color: Black	0	0
8601432	O	Kenworth Radio DEA710 AM/FM/WB/USB, Bluetooth	36	0
8698974	S	Base Level Audio System - Daycab:High Performance Door Speakers.	0	0
8700196	O	Turn Signal: Self-Cancelling	273	0
8700283	S	LH and RH Trip Ledge Rain Deflectors	0	0
8700634	O	Provision For Ram Side Of Dash Allows To Maintain 12 Gauges	50	0
8700663	S	Kenworth TruckTech+: This system provides the World's Best reporting of engine and aftertreatment fault codes, as well as enhanced support for the truck owner through rapid communication of fault severity and recommended actions. This is standard on all Kenworth models with a PACCAR MX engine, Cummins X15 engine, PX engine or Natural Gas engine.	0	0
8800372	O	Grabhandle: LH, Exterior, Side of Cab - Ergonomic Grab Handle Mounted To The Left Hand Exterior Of The Cab For Entry and Exit.	150	3
8800402	S	Dual Cab Interior Grabhandles: A Pillar Mounted Dash Wrap and B Pillar Mounted Grabhandles	0	0
8832113	S	Kenworth Daylite Door With Standard LH/RH electric door locks and LH/RH electric window controls.	0	0
8841411	S	Single Air Horn Under Cab.	0	0
8850139	S	Look-Down, Pass. Door, Black 11x6	0	0
8865002	S	Aero Mirror: Dual Kenworth Aerodynamic Motorized heated mirrors, 7in X 13in with cab color mirror shell and black mirror arms. Also includes LH/RH heated 6in X 7in convex mirrors. Mirror brackets set for 8-1/2 ft load width. Mirror controls located on driver side door pad.	0	0

Price Level: January 1, 2024

Deal: PAKT370A2025

Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023

Quote Number: QUO-971586-P2H3G5



Sales Code	Std/ Opt	Description	\$ List	Weight
8871446	S	Rear Cab Stationary Window 19in x 36in	0	0
8890101	S	One-Piece Bonded-In Windshield With Curved Glass. Standard.	0	0
8890135	S	Exterior Stainless Steel Sunvisor.	921	19
8890348	O	Wheelwell Fender Extension: 4.5 inches	45	1
8890876	S	Kenworth Cab/Sleeper Air Suspension.	0	0
Lights & Instruments				
9010553	S	Headlamps: SAE Dual Halogen Complex Reflector	0	0
9022137	S	Marker Lights: Five, Rectangular, LED	0	0
9030016	S	Turn Signal Lights: Flush Mounted LED. Mounted at top of fender wheel arc.	0	0
9030052	S	LED Stop, Turn, Tail: With Two LED Backup Lights and With An LED License Plate.	0	0
9090000	O	Daytime Running Lamps.	180	0
9090039	S	Marker Lights: Interrupter Switch. Included in Turn Signal For All Models Except T3. The T3 Switch Is In The Dash.	0	0
9090049	S	Omit Brake Light with Engine Brake. Can only be selected when chassis also has engine brake. Cannot be used with options to delete engine brake.	0	0
9090115	O	Reflectors: Two Midframe	24	0
9090126	O	Electric Backup Alarm: Meets SAE J994 & OSHA requirements.	175	4
9090302	O	Junction Box: Mounted Behind Cab or Sleeper Not Mounted at End of Frame.	176	1
9090849	O	Polyswitches Replacing Fuses. Switch Will automatically reset after removal of excess load.	49	0
Air Equipment				
9101218	S	Air Dryer: Bendix AD-HF Puraguard Heated	0	0
9108001	S	Moisture Ejection Valve W/ Pull Cable Drain.	0	0
9140020	S	Nylon Air Tubing in Frame & Cab, Excluding Hoses subject to excessive heat or flexing.	0	0
9140252	O	Locate Air Dryer Inside LH Rail BOC. This code requires the use of a custom frame layout code.	0	0
Extended Warranty				
9200008	O	Base Warranty - PACCAR PX-9 Engine 24 months / 250,000 miles / 402,336 km / 6250 hours.	0	0

Price Level: January 1, 2024

Deal: PAKT370A2025

Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023

Quote Number: QUO-971586-P2H3G5



Sales Code	Std/Opt	Description	\$ List	Weight
9200021	S	Base Warranty - Standard Service Heavy Duty 12 months / 100,000 miles / 160,000 km.	0	0
9212659	O	TruckTech+ RD - 3YR Sub PACCAR PX Engines	499	0
9220001	O	Base Warranty: Emissions 5YR/100K MI - EPA Engine	0	0
Miscellaneous				
9409852	O	GHG Secondary Manufacturer: Does Not Apply	0	0
9490003	O	Additional Lead Time Required for Off Highway & /or specialty component truck.	0	0
9491659	S	VMUX Architecture	0	0
Promotions				
Paint				
9700000	O	Paint Color Number(s). N9702 A - L0006 WHITE N9720 FRAME N0001 BLACK	0	0
9943004	O	Bumper Unpainted	0	0
9943048	O	Day Cab Bulk Paint	0	0
9943050	O	Day Cab Standard Paint	0	0
9944820	S	1 - Color Paint - Day Cab Color will be White if no other color is specified.	0	0
9965510	S	Base Coat/ Clear Coat. The Kenworth Color Selector contains additional instructions, as well as information on Kenworth paint guidelines and surface finish applications. Kenworth is standard with Dupont Imron Elite paint.	0	0

Special Requirements

- Special Requirement 1 0098025
- Special Requirement 2
- Special Requirement 3
- Special Requirement 4

Order Comments

Price Level: January 1, 2024
 Deal: PAKT370A2025
 Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023
 Quote Number: QUO-971586-P2H3G5



Total Weight

16,212

Prices and Specifications Subject to Change Without Notice.

Unpublished options may require review/approval.

Dimensional and performance data for unpublished options may vary from that displayed in CRM.

PRICING DISCLAIMER

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Price Level: January 1, 2024
Deal: PAKT370A2025
Printed On: 11/30/2023 8:35:43 PM

Date: December 01, 2023
Quote Number: QUO-971586-P2H3G5



Shipping Destinations

Intermediate Destination:

Final Destinations	Quantity
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Price Level: January 1, 2024
Deal: PAKT370A2025
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Date: December 01, 2023
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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Award of Contract for the Des Moines Marina Dock Replacement Phase 1-L, M, N Docks Project to Quigg Bros. Inc.

FOR AGENDA OF: January 23, 2025

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: January 16, 2025

ATTACHMENTS:

1. Proposal
2. Bid Tabulation
3. Moffatt Nichol Recommendation
4. Agreement – Standard Form Public Works Contract

CLEARANCES:

- Community Development _____
- Marina *SW*
- Parks, Recreation & Senior Services _____
- Public Works _____
- Legal /s/ TG
- Finance *RL*
- Courts _____
- Police _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose

The purpose of this agenda item is to present the bid opening results for the Marina’s L, M,N Dock Replacement Project and recommend to the City Council to award the construction contract to the low bidder, Quigg Bros., Inc. from Aberdeen, Washington and authorize the City Manager to sign a construction contract agreement..

Suggested Motion

Motion: “I move to approve the agreement between the City of Des Moines and Quigg Bros. Inc. in the amount of \$10,466,355.20 and a contingency of \$1,569,953.00, for the purpose of replacing L,M and N Docks, and to authorize the City Manager to sign the agreement substantially in the form as attached.”

Background

The Marinas L, M and N Docks were built in 1969-70 as part of the original Marina project. Some open moorage slips were added to L Dock in the 1970's but M and N Docks are still in their original configuration. Of the fourteen docks in the Marina, L-Dock, with 36-foot slips, M-Dock, with 40-foot slips and N-Dock with 50-foot slips have always had the highest occupancy rates. After 55 years of service all three docks are still at near 100% occupancy and make a significant contribution to the financial performance of the Marina.

The first bulkhead replacement project, completed in 2011 also replaced all the utilities supporting L, M and N Docks so no landside work will be necessary as part of this project. The most difficult decision the City faced in replacing the docks was "should the City replace the covered moorage..." At the beginning of the design process the consultants and City staff went thru an extensive cost-benefit analysis and determined that the difference in revenue between open and covered moorage did not justify the additional cost of construction. Also, we were informed by our consultants who work closely with federal permitting agencies that trying to get the federal permits for replacing the covered moorage would have resulted in expensive mitigation requirements. Due to the permitting and cost prohibitive predictions, Council decided to move forward with replacing the docks with open moorage.

Discussion

The Marina Dock Replacement Project was included in the City's 2021 Capital Improvement Plan and in 2022 the City issued bonds to fund several projects, including the L, M, and N Docks Replacement. The design, engineering and permitting phase of the project started in early 2022 and was completed in the fall of 2024.

In November of 2024, Marina staff and consultants prepared the bid documents and advertised the project, with a bid opening date of January 14, 2025. The City received four bids, three of which were within 5% of the engineers estimate. Given the tight spread of the bids and the reputations of the companies submitting the bids, staff is confident the City has received realistic and responsive bids for the project. The low bidder, Quigg Bros. Inc. from Aberdeen WA has been in business in western Washington for 75 years and is well known in the marine construction industry.

Alternatives

1. Approve the Agreement as written.
2. Approve the Agreement with amendments.
3. Do not authorize the Agreement and give staff further direction.

Financial Impact

The low bid from Quigg Bros. is \$10,466,355.00 and with a 15% contingency the staff is requesting a total budget authorization of \$12,036,308.00. The original CIP budget totaled \$14,419,000.00, funded with Marina revenues and bond proceeds. \$925,000.00 was allocated to design, engineering and permitting and \$13,494,000.00 allocated to construction. At this point, \$723,420.00 has been spent on design, engineering and permitting leaving a balance of \$201,580.00 to pay the engineering/consultants for bid support and tasks associated with the actual construction of the docks. Nothing has been spent from the construction budget of \$13,494,000.00 leaving a total of \$13,695,580.00 in the budget allocated to this project.

Recommendation

City staff recommends that the Council accept the bids for the Marina Redevelopment, L, M, N Docks Replacement Project, Phase 1 and award the contract to the low bidder, Quigg Bros., Inc.

Attachment #1



1:53pm

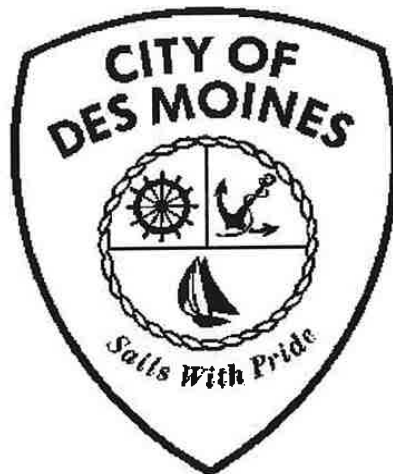


SEALED BID
Project Name: Des Moines Marina Redevelopment
Project No: 211150
Bid Time: 2:00 PM
Bid Date: January 14, 2025

Bid Specifications, Proposal, and Contract Documents for:

DES MOINES MARINA REDEVELOPMENT
L-M-N DOCKS REPLACEMENT PHASE #1

November 26, 2024



CITY OF DES MOINES
Marina

22307 Dock Avenue South
Des Moines, WA 98198-6317

Public Works Small Works Roster - 2



BIDDER CHECKLIST

THE BIDDER'S ATTENTION IS ESPECIALLY CALLED TO THE FOLLOWING FORMS WHICH MUST BE EXECUTED IN FULL AS REQUIRED:

(a) Proposal

The unit prices bid must be shown in the space provided. Final sheet on proposal must be filled in and signed by the bidder. Refer to "Instructions for Bidders" regarding submittal of proposals.

(b) Bond Accompanying Bid

This form is to be executed by the Bidder and the surety company unless bid is accompanied by a cashier's check or certified check. The amount of this bond shall be not less than five percent (5%) of the total bid, including sales tax, if applicable, and may be shown in dollars or on a percentage basis. On federally funded projects, a surety's name must also appear on the United States' Treasury Department's list of authorized sureties - Circular 570 as amended.

(c) Non-Collusion Affidavit

This form must be filled in, signed, and notarized.

(d) Certificate of Non-segregated Facilities

Must be completed and accompany each bid.

(e) Statement of Bidder's Qualifications

(f) Certification of Compliance with Wage Payment Statutes

(g) Statement of Bidder Responsibility Criteria

(h) Statement of Proposed Subcontractors and Material Suppliers

All subcontractors must be approved in writing by the Engineer prior to commencing any work.

BIDDER CHECKLIST
10 OF 44



PROPOSAL

**Des Moines Marina Redevelopment
L-M-N Docks Replacement – Phase #1**

This document is a proposed form of agreement. It is subject to revision by agreement of the parties, following award of the contract, and prior to execution of the final agreement.

TO: Honorable Mayor and City Council
City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198

The undersigned Bidder hereby certifies that they have examined the site of all the proposed work under this Contract and that he has read and thoroughly understands the Plans, Specifications and other Contract Documents pertaining to this Contract, that he is fully aware of the construction problems and costs involved, and proposes to perform all work for the following stated prices.

NOTE: The Bidder shall complete the entire proposal or the bid may be considered non-responsive. Additionally, the Owner has the right to correct obvious mathematical errors and reserves the right to update and/or modify contract documents before final execution.

DEMOLISH AND REPLACE DOCKS L, M AND N

Item No.	Pay Item Identification	Quantity	Unit	Total Cost
1	MOBILIZATION & DEMOBILIZATION	1	LS	435,000.00
2	PROJECT ADMINISTRATION	1	LS	440,000.00
3	PROJECT CLOSEOUT	1	LS	25,000.00
SUB-TOTAL ITEMS 1-3				900,000.00
L DOCK				
4	ENVIRONMENTAL CONTROLS AND MONITORING	1	LS	35,000.00
5	FIELD ENGINEERING & SURVEY	1	LS	12,000.00

Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scale



Item No.	Pay Item identification	Quantity	Unit	Total Cost
6	DEMOLITION AND DISPOSAL	1	LS	445,000.00
7	FURNISH FLOAT GUIDE PILES	41	3,800.00EA	155,800.00
8	INSTALL FLOAT GUIDE PILES	41	3,000.00EA	123,000.00
9	FURNISH FLOAT SYSTEM		LS	1,480,000.00
10	INSTALL FLOAT SYSTEM	1	LS	130,000.00
11	FURNISH AND INSTALL WATER SYSTEM	1	LS	85,000.00
12	FURNISH AND INSTALL FIRE PROTECTION SYSTEM	1	LS	140,000.00
13	FURNISH AND INSTALL ELECTRICAL SYSTEM	1	LS	385,000.00
14	FURNISH AND INSTALL FLOAT APPURTENANCES	1	LS	12,000.00
SUB-TOTAL ITEMS 4 - 14				3,002,800.00
M DOCK				
15	ENVIRONMENTAL CONTROLS AND MONITORING	1	LS	35,000.00
16	FIELD ENGINEERING & SURVEY	1	LS	12,000.00
17	DEMOLITION AND DISPOSAL	1	LS	415,000.00
18	FURNISH FLOAT GUIDE PILES	31	3,800.00EA	117,800.00
19	INSTALL FLOAT GUIDE PILES	31	3,000.00 EA	93,000.00
20	FURNISH FLOAT SYSTEM		LS	1,470,000.00
21	INSTALL FLOAT SYSTEM	1	LS	115,000.00
22	FURNISH AND INSTALL GANGWAY	1	LS	53,000.00
23	FURNISH AND INSTALL WATER SYSTEM	1	LS	85,000.00
24	FURNISH AND INSTALL FIRE PROTECTION SYSTEM	1	LS	140,000.00
25	FURNISH AND INSTALL ELECTRICAL SYSTEM	1	LS	385,000.00
26	FURNISH AND INSTALL FLOAT APPURTENANCES	1	LS	12,000.00
SUB-TOTAL ITEMS 15 - 26				2,932,800.00



Item No.	Pay Item Identification	Quantity	Unit	Total Cost
N DOCK				
27	ENVIRONMENTAL CONTROLS AND MONITORING	1	LS	35,000.00
28	FIELD ENGINEERING & SURVEY	1	LS	12,000.00
29	DEMOLITION AND DISPOSAL	1	LS	420,000.00
30	FURNISH FLOAT GUIDE PILES	25	EA	95,000.00
31	INSTALL FLOAT GUIDE PILES	25	EA	75,000.00
32	FURNISH FLOAT SYSTEM		LS	1,240,000.00
33	INSTALL FLOAT SYSTEM	1	LS	110,000.00
34	FURNISH AND INSTALL GANGWAY	1	LS	53,000.00
35	FURNISH AND INSTALL WATER SYSTEM	1	LS	85,000.00
36	FURNISH AND INSTALL FIRE PROTECTION SYSTEM	1	LS	140,000.00
37	FURNISH AND INSTALL ELECTRICAL SYSTEM	1	LS	385,000.00
38	FURNISH AND INSTALL FLOAT APPURTENANCES	1	LS	12,000.00
SUB-TOTAL ITEMS 27 - 38				2,662,000.00

SUB-TOTAL ALL ITEMS \$ 9,497,600.00

W.S.S.T 968,755.20

TOTAL BID \$10,466,355.20

PROPOSAL (cont'd)

Name of Bidder: Quigg Bros., Inc.



Registration or license, Division of Professional Licensing:

- 1. License number: QUIGGBI022RT
- Date: 01 / 29 / 2026
- 2. Bidder's Signature: *[Handwritten Signature]*
- Title: Vice-President

Address of Bidder: 819 West State Street, Aberdeen, WA 98520
Street City Zip Code

Bidder Telephone Number: 360-533-1530 360-310-6612
Office Cell

Bidder E-mail Address: qbibid@quiggbros.com

Date of Bid: 01 / 14 / 2025

The undersigned Bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date for this Project, the Bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Bidder's Signature: *[Handwritten Signature]* Date: 1/14/2025

PROPOSAL (cont'd)

Receipt is hereby acknowledged for the following Addenda:



<u>Addendum No.</u>	<u>Date Received</u>	<u>Signature</u>
#1	12 / 16 / 2024	<i>[Handwritten Signature]</i>
#2	12 / 27 / 2024	<i>[Handwritten Signature]</i>
#3	01 / 03 / 2025	<i>[Handwritten Signature]</i>
#4	01 / 10 / 2025	<i>[Handwritten Signature]</i>
#5	01 / 10 / 2025	<i>[Handwritten Signature]</i>



FORM OF A BID BOND

BID BOND DEPOSIT

Herewith find deposit in the form of a bid bond (state whether certified check, cashier's check, postal money order, or bid bond) for the amount of 5% of total bid amount, which amount is not less than five percent (5%) of the total bid, including sales tax.

[Signature]
Signature

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, Quigg Bros., Inc., as Principal, and Travelers Casualty and Surety Company of America, as Surety, are held and firmly bound unto the City of Des Moines, as Obligee, in the penal sum of Five Percent of the Total Bid Amount (5%) dollars (\$) for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The Condition of this obligation is such that if the Obligee shall make award to the Principal for the **Des Moines Marina Redevelopment – L-M-N Docks Replacement – Phase #1**, according to the terms of the proposal or bid made by the Principal therefore and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Obligee; or, if the Principal shall in case of failure so to do, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids; then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS 7th DAY OF January, 2025.
Quigg Bros., Inc.



[Signature]
PRINCIPAL
Thomas Buell
Travelers Casualty and Surety Company of America
SURETY Thomas Buell, Attorney-in-Fact

Received return of deposit in the sum of _____

Date: _____

Signature: _____



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Thomas Buell** of **SEATTLE**, **Washington**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, **2021**.



State of Connecticut

By:

Robert L. Raney, Senior Vice President

City of Hartford ss.

On this the **21st** day of **April**, **2021**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2026**



Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **7th** day of **January**, **2025**.



Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**



TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

Travelers Casualty and Surety Company of America ("Travelers") hereby grants your agency (together with its employees, the "Agency") permission to use the electronic image of Travelers' corporate seal (the "Digital Seal") subject to the following conditions as well as any other terms and conditions communicated to the Agency by Travelers:

- The Digital Seal shall be used solely for the purpose of electronically affixing a seal to surety bonds or related instruments authorized by Travelers and executed on behalf of Travelers by the Agency pursuant to a valid Power of Attorney;
- The Agency may not transfer the Digital Seal to any other person or entity without the written consent of Travelers; and
- Travelers may revoke permission to use the Digital Seal at any time.

Please note that, in making the Digital Seal available for use at your own discretion, Travelers is not making any representations about the extent to which any particular obligee will find the Digital Seal acceptable.

To download the Digital Seal, please click [here](#).

By: 
Robert L. Raney, Senior Vice President



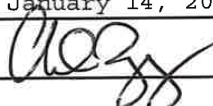
CERTIFICATION OF NON-SEGREGATED FACILITIES

The Bidder certifies that they do not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not permit their employees to perform services at any locations under their control where segregated facilities are maintained. The undersigned certifies further that they will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they will not permit their employees to perform their services at any location under their control where segregated facilities are maintained. The undersigned agrees that a breach of this certification will be in violation of the Equal Opportunity clause set forth in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

The undersigned agrees that, except where they have obtained identical certification from subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that they will obtain identical certifications from subcontractors and that they will retain such certifications in their files.

DATE: January 14, 2025

Signature: 

Name/Title: Charles Quigg, Vice-President

Bidder Name: Quigg Bros., Inc.

Address: 819 West State Street

City/State/Zip: Aberdeen, WA 98520

CERTIFICATION OF NON-SEGREGATED FACILITIES
1 OF 1



STATEMENT OF BIDDER'S QUALIFICATIONS

Each bidder submitting a proposal on work included in these Plans and Specifications shall prepare and submit as part of this bid the following schedule:

1. Name of bidder: Quigg Bros., Inc.
2. Business address and telephone number:
819 West State Street
Aberdeen, WA 98520
360-533-1530
3. Name of Owner: John D. Quigg, Neil Quigg, Charles Quigg, Peter Ewen,
Kevin Cucchiara
4. Year Business Originated: 1937
5. How many years has said bidder been engaged in the contracting business under present firm name: 71 Years
6. Have you operated three years without interruption? Yes No
7. Contracts now in hand (gross amount): \$ 44M
8. Bank references:
Umpqua Bank
2820 Harrison Ave NW, Olympia WA 98502
Brandon Barnes - 360-742-6094
9. Dept. of Labor and Industries' firm number: 096,612-00-7
10. Dept. of Revenue registration number: 144-002-313
11. Washington State Business License Number: QUIGGBI022RT
12. Identify at least two other public agencies that the company has provided equivalent services to within the past three years. Identify other work performed in the past three years to detail additional experience and qualifications.

1) Customer Reference: Port of Poulsbo - John Piccone

STATEMENT OF BIDDER'S QUALIFICATIONS
19 OF 44



2) Dollar value of work on an annualized basis: \$ 7,600,000.00

Customer Phone Number: 1-360-337-0029

Date of Work: March 2022 to December 2023

May we Contact the Named Customer? Yes No

3) Customer Reference: Port of Seattle - Nash Johnson

Dollar value of work on an annualized basis: \$ 906,000.00

Customer Phone Number: 1-206-475-8857

Date of Work: November 2024 to January 2025

May we Contact the Named Customer? Yes No

4) Customer Reference: Quillayute Nation - Kristin Helberg

Dollar value of work on an annualized basis: \$ 5,700,000.00

Customer Phone Number: 1-425-698-5833

Date of Work: October 2024 to December 2024

May we Contact the Named Customer? Yes No

5) Customer Reference: _____

Dollar value of work on an annualized basis: \$ _____

Customer Phone Number: _____

Date of Work: _____

May we Contact the Named Customer? Yes No

Quigg Bros., Inc.

Name of Bidder

By: Charles Quigg

Title: Vice-President

Date: January 14, 2025

STATEMENT OF BIDDER'S QUALIFICATIONS
2 OF 44



Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (**INSERT DATE**), the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Quigg Bros., Inc.

Bidder's Business Name

[Handwritten Signature]

Signature of Authorized Official*

Charles Quigg

Printed Name

Vice-President

Title

1/14/2025 Aberdeen WA

Date City State or country

Check One:

Sole Proprietorship Partnership Joint Venture Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

Washington

If a co-partnership, give firm name under which business is transacted:

N/A

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*



STATEMENT OF BIDDER RESPONSIBILITY CRITERIA

I, by signing the proposal and this statement, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association, or corporation meet all the bidder responsibility criteria for public works contracts under RCW 39.04.350.
2. That the undersigned person(s), firm, association, or corporation meet all the bidder responsibility as identified in the Contract Documents.
3. That by signing the proposal and this form, I am deemed to have signed and to have agreed to the provisions of this statement.
4. That by signing the proposal and this form, if omissions are found the bidder will be deemed an unresponsive bidder or if awarded a public works project, the contract will be immediately terminated by the Contracting Agency.

Contract Title: Des Moines Marina Redevelopment

Bidder's Business Name: Quigg Bros., Inc.

Bidder's Name: Charles Quigg

Bidder's Signature: 

Bidder's Title: Vice-President

Date: January 14, 2025



STATEMENT OF PROPOSED SUBCONTRACTORS AND MATERIAL SUPPLIERS

Subcontractor's Name, Address and Phone Number	Description of Work
N/A	HVAC
N/A	Plumbing
Division 26 Electric, LLC	Electrical
10115 Greenwood Ave. N Suite 100 Seattle, WA 206-552-0014	
Self-Perform	Structural Steel Installation
N/A	Rebar Installation

Material Suppliers	Material (major items only)
Marine Floats, 313 East F Street, Tacoma, WA, 253-383-2740	Floats
Pipe and Piling Supplies, 3506 A St. SE Auburn, WA 877-217-0276	Steel Pipe Pile

SUBCONTRACTORS AND MATERIAL SUPPLIERS
23 OF 44

Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scal

BID TABULATION FORM CITY OF DES MOINES MARINA DES MOINES MARINA REDEVELOPMENT - L,M,N, DOCKS REPLACEMENT - PHASE #1 Tuesday, January 14, 2025										
BIDDER	TOTAL BID	FORM COMPLETE WITH SIGNATURES	RECEIVED ADDENDUMS NO.'S 1 THRU 5	BID BOND	NON-COLLUSION AFFIDAVIT	CERTIFICATION OF NON-SEGREGATED FACILITIES	STATEMENT OF BIDDERS QUALIFICATIONS	STATEMENT OF COMPLIANCE WITH WAGE PAYMENT STATUTES	STATEMENT OF BIDDER RESPONSIBILITY CRITERIA	STATEMENT OF PROPOSED SUBCONTRACTORS AND MATERIAL SUPPLIERS
Redsrie Construction	11,188,220.30	y	y	y	y	y	y	y	y	y
Quiqg Brothers	10,466,355.20	y	y	y	y	y	y	y	y	y
Ballard Construction	14,554,189.00	y	y	y	y	y	y	y	y	y
Bellingham Marine Ind.	10,900,467.16	y	y	y	y	y	y	y	y	y
ENGINEERS ESTIMATE	\$ 10,928,938.21									
15% CONTINGENCY	\$ 1,639,340.73									
TOTAL ENGINEERS ESTIMATE	\$ 12,568,278.94									



600 University Street, Suite 610.
Seattle, WA 98101

(206) 622-0222
www.moffattnichol.com

Attachment #3

January 16, 2025

Scott Wilkins
Harbormaster, City of Des Moines Marina
22307 Dock AVE S.
Des Moines, WA 98198

Subject: Des Moines Marina Redevelopment L-M-N Docks Replacement Phase #1 – Apparent Low Bidder

Dear Scott:

Quigg Bros., Inc. as the prime contractor teamed with Marine Floats for float fabrication and supply is an experienced contractor team that appears to understand the project as presented and is capable of performing the work.

Quigg Bros., Inc is a Washington based firm with a history going back over 80 years and a continuing strong focus on marine construction. Marine Floats is a local fabricator with facilities off of the Thea Foss Waterway in Tacoma and a history going back over 40 years. Marine Floats has produced floats for the Des Moines Marina in the past.

It is reasonable to enter into contract negotiations with Quigg Bros., Inc. as the apparent low bidder.

Sincerely,
MOFFATT & NICHOL

A handwritten signature in black ink, appearing to read "William Gerken".

Bill Gerken, PE
Senior Coastal Engineer

Page 1



PUBLIC WORKS CONTRACT
Between City of Des Moines and
QUIGG BROS., INC.

THIS CONTRACT is made and entered into by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and QUIGG BROS., INC. organized under the laws of the State of WASHINGTON, located and doing business at 819 West State Street, Aberdeen, WA 98520-0281, 360-533-1530 – Contact - Charles Quigg, (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

Contractor shall perform the services for the City as specifically described in Exhibit "A" Scope of Work, Plans/drawings and Specifications attached hereto and incorporated herein by reference.

The tasks described in Exhibit "A", Plans/drawings, Specifications and all other items of work needed to satisfactorily complete the project/

- a. Contractor represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.
- b. The Contractor shall provide and furnish any and all labor, materials, tools, equipment and utility and transportation services along with all miscellaneous items necessary to perform this Contract except for those items mentioned therein to be furnished by the City.
- c. All work shall be accomplished in a workmanlike manner in strict conformity with the attached plans and specifications including any and all Addenda issued by the City, City Regulations and Standards, other Contract Documents hereinafter enumerated.



In addition, the work shall be in conformance with the following documents which are by reference incorporated herein and made part hereof:

- (i) the Standard Specifications of the Washington State Department of Transportation (WSDOT) (current edition);
- (ii) the American Public Works Association (APWA) (current edition);
- (iii) The Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (current edition);
- (iv) the Standard Plans for Road, Bridge and Municipal Construction (as prepared by the WSDOT/APWA current edition);
- (v) The American Water Works Association Standard (AWWA) (current edition), and;
- (vi) shall perform any changes in the work in accord with the Contract Documents.

d. Any inconsistency in the parts of the Contract and the documents referenced in section I c above shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Terms and provisions of the Contract
2. Addenda,
3. Proposal Form,
4. Contract Plans and Technical Specifications,
5. Amendments to the Contract Plans and Technical Specifications,
6. Amendments to the Standard Specifications,
7. WSDOT Standard Specifications for Road, Bridge and Municipal Construction,
8. Contracting Agency's Standard Plans (if any), and
9. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

II. TIME OF COMPLETION. The parties agree that work on the tasks described in Section I above and more specifically detailed in Exhibit "A" attached hereto will begin immediately upon execution of this Contract. Upon the effective date of this Contract, the Contractor shall complete the work described in Section I by **February 15, 2026**. If said work is not completed within the time specified, the Contractor agrees to pay the City the sum specified in Section VI - Liquidated Damages of this contract.

III. COMPENSATION. The City shall pay the Contractor a total amount not to exceed **\$10,466,355.20, (TEN MILLION FOUR HUNDRED SIXTY-SIX THOUSAND THREE HUNDRED FIFTY-FIVE DOLLARS AND 20 CENTS)** including applicable Washington State Sales Tax, for the work and services contemplated in this Contract per attached Exhibit "A". The Contractor shall invoice the City monthly. The City shall pay to the Contractor, as full consideration for the performance of the Contract, an amount equal to the unit and lump sum prices set forth in the bid. The Contractor will submit requests for Progress payments on a monthly basis and the City will make progress payment within 45 days after receipt of the



Contractor's request until the work is complete and accepted by the City. The City's payment shall not constitute a waiver of the City's right to final inspection and acceptance of the project.

- A. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted within 30 days upon entering into this Contract, through a bonding company meeting standards established by the City.
- B. Defective or Unauthorized Work. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor. Notwithstanding the terms of this section, the City's payment to contractor for work performed shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.
- C. Final Payment: Waiver of Claims. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

IV. INDEPENDENT CONTRACTOR. The parties understand and agree that Contractor is a firm skilled in matters pertaining to construction and will perform independent functions and responsibilities in the area of its particular field of expertise. Contractor and its personnel, subcontractors, agents and assigns, shall act as independent contractors and not employees of the City. As such, they have no authority to bind the City or control employees of the City, contractors, or other entities. The City's Public Works Director or his or her designated representative shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

The Contractor acknowledges that all mandatory deductions, charges and taxes imposed by any and all federal, state, and local laws and regulations shall be the sole responsibility of the



Contractor. The Contractor represents and warrants that all such deductions, charges and taxes imposed by law and/or regulations upon the Contractor are, and will remain, current. If the City is assessed, liable or responsible in any manner for those deductions, charges or taxes, the Contractor agrees to indemnify and hold the City harmless from those costs, including attorney's fees.

V. TERMINATION. The City may terminate this Contract for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Contract.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.
- F. The Contractor's breach of any portion of this Contract.

If the City terminates this Contract for good cause, the Contractor shall not receive any further money due under this Contract until the Contract work is completed. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project which may be used by the City without restriction.

VI. LIQUIDATED DAMAGES. This section of the Contract shall apply only in the event of a delay in the completion of the work within the timeframe specified in the Contract. This being a Public Works project performed for the benefit of the public, and there being a need for the completion of the project in the time specified in the Contract, City and Contractor agree that damages for delay in the performance or completion of the work are extremely difficult to ascertain. However, City and Contractor agree that due to the expenditure of public funds for the work specified in this Contract, and the need to provide the work for the benefit of the health, safety and welfare of the public, the failure to complete the work within the time specified in the Contract will result in loss and damage to City. City and Contractor agree that a delay will result in, but not be limited to, expense to the City in the form of salaries to City employees, the extended use of City equipment, delays in other portions of the project on which Contractor is working, increased cost to the City for the project, delays in other projects planned by City, and loss of use and inconvenience to the public.

Although difficult to quantify and ascertain, City and Contractor agree that the sum listed as liquidated damages represents a fair and reasonable forecast of the actual damage caused by a delay in the performance or completion of the work specified in the Contract. In addition, City and Contractor agree that the liquidated damages set forth below are intended to compensate



the City for its loss and damage caused by delay. The liquidated damages are not intended to induce the performance of Contractor.

Contractor declares that it is familiar with liquidated damages provisions, and understands their intent and purpose. By signing this Contract, Contractor further declares that it understands the liquidated damages provision of this contract, that it is a product of negotiation, and that it is a fair estimation of the damage and loss that City will suffer in the event of delay.

City and Contractor further agree that the contractor shall not be charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes.

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **\$XXX** [*Liquidated Damages = (0.15*Contract Amount)/Time for Completion*] shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

In the event that the Contract is terminated by City for cause pursuant to the general conditions of the contract, this liquidated damages section shall apply, but only to the extent that the contract is delayed. In addition to liquidated damages, City shall be permitted to recover from Contractor the cost of completion of the work if the cost of completion exceeds the original sum of money agreed upon.

VII. PREVAILING WAGES. Contractor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Contract work and an Affidavit of prevailing wages paid after completion of the work. The Statement of Intent to Pay Prevailing Wages," shall include Contractor's registration certificate number and the prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020, and the estimated number of workers in each classification. Contractor shall pay prevailing wages in effect on the date the bid is accepted or executed by Contractor, and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries must be submitted to the City by Contractor. It shall be the responsibility of Contractor to require all subcontractors to comply with Chapter 39.12 RCW and this section of the Contract.

VIII. HOURS OF LABOR. Contractor shall comply with the "hours of labor" requirements and limitations as set forth in Chapter 49.28 RCW. It shall be the responsibility of Contractor to require all subcontractors to comply with the provisions of Chapter 49.28 RCW and this section of the Contract. The Contractor shall pay all reasonable costs (such as over-time of crews) incurred by the City as a result of work beyond eight (8) hours per day or forty (40) hours per week. Additional hours beyond a forty (40)-hour workweek will be pro-rated against contractual workdays.

IX. COMPLIANCE WITH WAGE, HOUR, SAFETY, AND HEALTH LAWS. The Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 29 U.S.C. 201 et seq, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq, the



Washington Industrial Safety and Health Act, Chapter 49.17 RCW, and any other state or federal laws applicable to wage, hours, safety, or health standards.

X. DAYS AND TIME OF WORK. Unless otherwise approved by the City, the working hours for this project will be limited to the following hours:

Monday through Friday: 7:00 a.m. to 7:00 p.m.
Saturday, Sunday and Holidays: 8:00 a.m. to 5:00 p.m.

XI. WORKERS' COMPENSATION. The Contractor shall maintain Workers' Compensation insurance in the amount and type required by law for all employees employed under this Contract who may come within the protection of Workers' Compensation Laws. In jurisdictions not providing complete Workers' Compensation protection, the Contractor shall maintain Employer's Liability Insurance in the amount, form and company satisfactory to the City for the benefit of all employees not protected by Workers' Compensation Laws.

The Contractor shall make all payments arising from the performance of this Contract due to the State of Washington pursuant to Titles 50 and 51 of the Revised Code of Washington.

Whenever any work by the Contractor under the authority of this Contract is on or about navigable waters of the United States, Workers' Compensation coverage shall be extended to include United States Longshoreman and harbor worker coverage. The Contractor shall provide the City with a copy of the necessary documentation prior to the start of any activity.

XII. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Contract, section XXII(C), within seven (7) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section XIII, Claims, below.

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

XIII. CLAIMS. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction,



interpretation, or determination by the City, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the City of all claims within seven (7) calendar days of the occurrence of the events giving rise to the claims, or within seven (7) calendar days of the date the Contractor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

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

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

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
1. The date of the Contractor's claim;
 2. The nature and circumstances that caused the claim;
 3. The provisions in this Contract that support the claim;
 4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
 5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

- B. Records. The Contractor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Contractor's records needed for evaluating the protest.

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

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



XIV. LIMITATION OF ACTIONS. CONTRACTOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

XV. WARRANTY. Upon acceptance of the contract work, Contractor must provide the City a warranty bond for one year in the amount of the contract value specified in Section III above and in a form acceptable to the City. In the event any defects are found within the first year, the warranty bond shall be extended for an additional year. The Contractor shall correct all defects in workmanship and materials within one (1) year from the date of the City's acceptance of the Contract work. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

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

XVII. INDEMNIFICATION. Contractor 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 the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

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

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the 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. It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor'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.

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

XVIII. INSURANCE. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may



arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

No Limitation. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

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

C. Other Insurance Provisions

The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.



D. Acceptability of Insurers

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

E. Verification of Coverage

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

F. Subcontractors

The Contractor shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

G. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

H. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

I. Working On, Over, Or Near Navigable Waters

This Contract involves work on or adjacent to and/or work contributing to commerce on Navigable Waters of the United States, as defined by the U.S. Code of Federal Regulations. The Contractor therefore shall provide proof of insurance coverage in compliance with the statutory requirements of the U.S. Longshore and Harbor Workers Compensation Act.

If the Contractor is working from barges or any other watercraft, owned or non-owned, the Contractor must maintain Protection and Indemnity (P&I) insurance providing coverage for actions of the crew to third parties in the amount of at least \$2,000,000 each occurrence or accident. The Public Entity shall be named by endorsement as an additional insured on the Contractor's Protection and Indemnity insurance policy. The Contractor must also provide proof of insurance coverage in compliance with the statutory requirements of the Merchant Marine Act of 1920 (Jones Act).

J. Environmental Risk

Contractors Pollution Liability insurance covering losses caused by pollution conditions that arise from the operations of the Contractor. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000. Contractors Pollution Liability shall cover bodily injury, property



damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense or settlement of claims.

If the Contractors Pollution Liability insurance is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under the Contract is completed.

The City shall be named by endorsement as an additional insured on the Contractors Pollution Liability insurance policy.

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

XX. BOND - SEPARATE PAYMENT AND PERFORMANCE BONDS REQUIRED. Pursuant to Chapter 39.08 RCW, the Contractor shall, prior to the execution of the Contract, furnish both a performance bond and a payment bond to the City, both in the full amount of the bid with a surety company as surety. The purpose of the bonds is to ensure that the Contractor shall faithfully perform all the provisions of this Contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such Contractor or subcontractors with provisions and supplies for the carrying on of such work. Such bonds shall provide that any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original Contractor. In addition, the surety company/companies providing such bonds shall agree to be bound to the laws of the State of Washington, and subjected to the jurisdiction of the State of Washington and the King County Superior Court in any proceeding to enforce the bond. This Contract shall not become effective until said bonds are supplied and approved by the Engineer and filed with the City Clerk.

In the event that the Compensation called for in Section III of this Contract is less than \$150,000.00, which sum shall be determined after the addition of applicable Washington State sales tax, the Contractor may, prior to the execution to this contract and in lieu of the above mentioned bonds, elect to have the City retain 10% of the contract amount for a period of either thirty (30) days after final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

XXI. DEBARMENT. The Contractor must certify that it, and its subcontractors, have not been and are not currently on the Federal or the Washington State Debarment List and if the Contractor or its subcontractors become listed on the Federal or State Debarment List, the City will be notified immediately.



XXII. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written Contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

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

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

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

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



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

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

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

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

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

K. Severability. If any one or more sections, sub-sections, or sentences of this Contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Contract and the remainder shall remain in full force and effect.

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

<p>CONTRACTOR:</p> <p>By: _____ <i>(Signature)</i></p> <p>Print Name: <u>Charles Quigg</u></p> <p>Its: <u>Vice-President</u> <i>(Title)</i></p> <p>DATE: _____</p>	<p>CITY OF DES MOINES:</p> <p>By: _____ <i>(Signature)</i></p> <p>Print Name: <u>Katherine Caffrey</u></p> <p>Its: _____ <u>City Manager</u> <i>(Title)</i></p> <p>DATE: _____</p> <p style="text-align: right;">Approved as to Form: _____ City Attorney</p> <p style="text-align: right;">DATE: _____</p>
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NOTICES TO BE SENT TO:	NOTICES TO BE SENT TO:
CONTRACTOR: Charles Quigg Quigg Bros., Inc. PO Box 1707 Aberdeen, WA 98520-0281 360-533-1530 (telephone) qbibid@quiggbros.com (e-mail address)	CITY OF DES MOINES: Scott Wilkins City of Des Moines 22307 Dock Avenue South Des Moines, WA 98198 (206) 824-5700 (telephone) swilkins@desmoineswa.gov (e-mail address)

At the direction of the Des Moines
City Council taken at an open
Public meeting on January 23, 2025 .



EXHIBIT "A" – SCOPE OF WORK



Exhibit “A” -- Scope of Work
City of Des Moines Marina
Des Moines Marina Redevelopment
L-M-N Docks Replacement – Phase #1

SCOPE OF WORK

1. The contractor shall retain the service of professional engineer(s) registered in the state of Washington to design some of the components and appurtenances identified on the Contract Plans and in the Specifications. See Contract Plans and Specification for performance criteria.
2. The contractor shall furnish, deliver, and install the components and appurtenances identified on these drawings and/or in the specifications.
3. All deviations from these plans and specifications must be approved prior to implementation and recorded on a set of "as-built" drawings the contractor drawings to the engineer in accordance with the specification section contract close out.
4. The restrictions on in-water work contained in the Federal and State permits will result in a compressed work schedule for the in-water portion of this project. The Contractor must adhere to the following In-Water Work Schedule.

Construction window(s) for marina replacement:

- City move boats – Sept 1, 2025 to Sept 7, 2025 (1 week)
- “N” dock demolition and installation (suitable for occupancy) – Sept 8, 2025, to Oct 24, 2025 (7 weeks)
- City move boats – Oct 27, 2025 to Nov 2, 2025 (1 week)
- “M” dock demolition and installation (suitable for occupancy) – Nov 3, 2025, to Dec 12, 2025 (6 weeks)
- City move Boats - (1 week)
- “L” dock demolition and installation (suitable for occupancy) – Dec 22, 2025, to Feb 13, 2026 (7 weeks/holidays)
- City move boats, contractor finish up work not necessary for occupancy. (to Feb. 15, 2026)

5. Contractor shall coordinate with the city of Des Moines (owner) on available laydown area identified to perform the work. Lay down location may change during construction as directed by the owner.
6. Refer to project plans and specifications for design and performance criteria and other technical requirements.
7. Areas of the facility not under construction shall remain in operation during construction. Keep all construction activities and personnel clear of facility operations and tenant access.
8. The owner has obtained the following project permits identified below:



- City of Des Moines State Environmental Policy Act (SEPA) Exemption and Shoreline Substantial Development Permit (SSDP) Exemption
- US Army Corps of Engineers (USACE) Nationwide Permit (NWP)
- Washington Department of Fish and Wildlife (WDFW) Hydraulic Project Approval (HPA)

The permits listed above will be included in the final contract document as an appendix and the contractor shall keep a copy of the permits on-site at all times. The contractor will be responsible for complying with all the conditions and special conditions of the listed permits including providing for any required on-site monitoring.

The marina will apply for and pay the fees for the permits required by the city's building department. Typically the city will require permits for work involving electrical, potable water and fire suppression. Immediately upon receiving the notice to proceed from the city the contractor will provide the marina with the contractor's information and signatures required to complete the building department permits. Copies of the permits shall be kept on-site at all times and the contractor will be responsible for complying with all the permit conditions and requirements, including scheduling the required inspections.

9. Reference information is attached as exhibits to this contract to describe the subsurface soil conditions (see Exhibit C- geotechnical data report) and reference drawings for the existing covered moorage docks (see Exhibit D).

10. The contractor shall verify all conditions and dimensions at the project site before starting work and shall immediately notify the owner of any discrepancies before beginning affected work site shall be returned to the equivalent of their pre- construction condition, to the satisfaction of the owner.

11. The contractor shall coordinate and arrange for all utility connections, utility relocations, and/or service interruptions with the appropriate utility owner and with the city of Des Moines.

12. Existing utility lines in services which are damaged due to construction work shall be repaired at contractor's expense and inspected and accepted by utility owner's representative.

13. The contractor shall notify the owner forty-eight (48) hours in advance of all water service interruptions, hydrant shutoffs, street closures, or other access blockage. The contractor shall also notify the fire department of all new, relocated, or eliminated hydrants resulting from this work.

14. These drawings are not intended to show all features associated with the work area. Contractor is responsible for being familiar with the site conditions affecting the cost of work which would have been disclosed by reasonable examination of the site.

15. Existing pile locations on these drawings are schematic and piles may not be located exactly as shown. Contractor shall field verify all piling location as necessary for demolition.

16. Salvaged materials during construction shall be delivered to the owner as specified in the contract documents.

17. The City anticipates that this project will be completed by the end date for the 2024-2025 fish window as specified by State and Federal Agencies.



Project Location:

Des Moines Marina
22307 Dock Avenue South
Des Moines, WA 98198

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Transportation impact fee reduction
for early learning facilities

FOR AGENDA OF: 01/23/2025




DEPT. OF ORIGIN: Legal

ATTACHMENTS:

- 1. Draft Ordinance no. 24-074

DATE SUBMITTED: 01/13/2025

CLEARANCES:

- City Clerk 
- Community Development _____
- Courts _____
- Director of Marina Redevelopment _____
- 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 for the City Council to consider Draft Ordinance no. 24-074, which would exempt qualifying early learning facilities from fifty percent of the transportation impact fees imposed on new development.

Suggested Motion

Motion: “I move to approve Draft Ordinance no. 24-074 creating a partial exemption from transportation impact fees for qualifying early learning facilities”

Background

Cities and counties planning under the Growth Management Act are required to encourage efficient multimodal transportation systems that will reduce greenhouse gas emissions and per capita vehicle miles traveled, while ensuring that public facilities and services necessary to support development shall be adequate to serve development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards. In short, as development occurs, cities must ensure that the transportation system keeps up with development.

One mechanism the Legislature has provided to allow cities to meet this mandate is transportation impact fees. Impact fees allow cities to assess a charge on new development to account for the increased use of the transportation system created by the development, rather than putting the burden on city transportation funds already stressed to maintain the existing system.

The Legislature has also recognized that impact fees can have a deterrent effect on the development of needed facilities that have a high traffic impact that result in high impact fees, such as day cares or other early learning facilities. For early learning facilities, defined as “a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods of less than twenty-four hours,” the Legislature permits cities to exempt these facilities from a percentage of transportation fees in order to encourage the development of new facilities.

Discussion

Staff surveyed area cities to determine what sort of impact fees are imposed on daycare facilities and whether the cities have created exemptions for these facilities. For a 4,000 square foot facility in the City of Des Moines, the facility would be subject to impact fees of approximately \$190,000.

Staff has determined that a 50% reduction in traffic impact fees for these facilities would strike a good balance of encouraging the development of these needed facilities while not unduly sacrificing needed funds for system improvement. The draft ordinance as written will have retroactive application dating back one year from the effective date of the ordinance so that the developer who requested this code change will not be prejudiced by paying the impact fees rather than waiting for the Council to take action.

Staff contacted other area cities to conduct a survey of traffic impact fees assessed on these facilities and whether similar reductions have been adopted locally. Impact fees for a 4,000 square foot facility ranged between approximately \$20,000 and \$460,000 with an average of \$150,000. The cities of Renton, SeaTac, and Tukwila reported they have adopted a reduction for early learning facilities, each with a reduction of 80%.

Following a question from the Transportation Committee, staff investigated whether a change in use could potentially result in a refund of impact fees. Staff found language in the existing code that could plausibly be argued to allow a refund, even though the code has never been interpreted this way. The draft ordinance amends the existing language to clarify that there is no entitlement to a refund under these circumstances.

Alternatives

The Council may:

1. Enact the Draft Ordinance as presented
2. Enact the Draft Ordinance with changes

3. Decline to enact the Draft Ordinance

Financial Impact

Adopting the draft ordinance will result in a reduction in fees to support traffic system improvements from early learning facility developments. For a 4,000 square foot facility, the amount of impact fees collected would be reduced by approximately \$95,000.

Recommendation

Staff recommends that the Council enact Draft Ordinance 24-074 as presented.

Council Committee Review

The Transportation Committee were briefed on a request from a developer for the City Council to adopt an exemption on transportation impact fees for early learning facilities at the September 14, 2023 meeting. Staff was asked to research locally applied exemptions and to bring back a percentage discount to be applied that was appropriate for Des Moines' needs.

Staff presented a proposal to the Transportation Committee of a 50% reduction on transportation impact fees for early learning facilities at the September 12, 2024 meeting. The committee recommended that staff bring a draft ordinance forward to the full Council at the next reasonable opportunity.

CITY ATTORNEY'S FIRST DRAFT 01/13/2025

DRAFT ORDINANCE NO. 24-074

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to transportation funding, creating a partial exemption from transportation impact fees for qualifying early learning facilities, and amending DMMC 12.40.070, 12.40.100, and 12.40.120.

WHEREAS, cities planning under the Growth Management Act are authorized pursuant to RCW 82.02.050 to impose impact fees on development activity as part of the financing for public facilities, and

WHEREAS, the City of Des Moines has imposed transportation impact fees on new growth and development to help support new transportation facilities needed to serve the new growth and development through DMMC chapter 12.40, and

WHEREAS, the Legislature enacted Substitute House Bill 1331 in 2021 to support the development of new early learning facilities in the state by allowing cities to partially exempt these facilities from impact fees, and

WHEREAS, the City Council finds that a reduction of fifty percent on transportation impact fees for early learning facilities appropriately balances encouraging the development of these needed facilities with ensuring that funds are available to meet the transportation needs of the City, and

WHEREAS, the provisions of this Ordinance are necessary and proper to promote public safety, health, and welfare; now therefore,

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

Sec. 1. DMMC 12.40.070 and section 120 of Ordinance No. 1578 are each amended to add the following definition:

Definitions - Use of words and phrases.

As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings. Terms

otherwise not defined herein shall be defined pursuant to RCW 82.02.090, or given their usual and customary meaning.

...

"Early learning facility" has the same meaning as in RCW 43.31.565.

...

Sec. 2. DMMC 12.40.100 and section 123 of Ordinance No. 1578 as amended by section 1 of Ordinance No. 1588 as amended by section 2 of Ordinance No. 1659 are each amended to read as follows:

Imposition of transportation impact fees on development activity.

(1) The City hereby authorizes the assessment and collection of transportation impact fees on development activity within the City, based on the methodology described in the rate study. The maximum allowable transportation impact fee rate established by the rate study is \$6,380. Instead of setting the base rate at this level, the base rate for the calendar year 2016 is established at \$5,151.21 per new p.m. peak hour trip. The base transportation impact fee rate is subject to annual adjustment in accordance with subsection (5) of this section. Accordingly, using the methodology described in the rate study, the Department will annually update the fee schedule identified in the rate study, and make the fee schedule available for public use.

...

(6) For a change in use of an existing building or dwelling, including any alteration, expansion, replacement or new accessory living quarters, the net transportation impact fees shall be the applicable transportation impact fees calculated for the land use category of the new use, reduced by an amount equal to the current transportation impact fees calculated for the prior use up to the full amount of the impact fees calculated for the new use. This reduction shall not result in an amount less than zero dollars.

...

(11) Where the transportation impact fees imposed are determined by the square footage of the development, the Department may at its discretion or at the written request of the feepayer review the constructed development prior to the issuance of a certificate of occupancy or an occupancy permit to confirm that the square footage of the constructed development is consistent with the square footage used to determine the final assessment and payment of the transportation impact fee. If the final square footage of the development is in excess of the square footage used to determine the final assessment and payment of the transportation impact fee, any difference will be due prior to the issuance of a certificate of occupancy or an occupancy permit, using the transportation impact fee rate in effect at that time. If the final square footage is less than the square footage used to determine the final assessment and payment of the transportation impact fee, the Department shall give a refund for the difference.

Sec. 3. DMMC 12.40.120 and section 125 of Ordinance No. 1578 are each amended to read as follows:

Exemptions.

(1) Except as provided for below, the following shall be exempted from the payment of transportation impact fees:

(a) Alteration or replacement of an existing structure that does not expand the usable space, add any residential units or generate any additional p.m. peak trips.

(b) Miscellaneous improvements which do not generate increased p.m. peak trips, including, but not limited to, fences, decks, walls, residential swimming pools, and signs.

(c) Demolition or moving of a structure when additional p.m. peak hour trips are not generated.

(d) A change of use that does not generate one or more p.m. peak hour trips.

(2) Early learning facilities shall be exempted from paying fifty percent (50%) of the transportation impact fees imposed under this chapter.

(3) The Planning, Building and Public Works Director shall be authorized to determine whether a particular development activity falls within an exemption identified in this section or under other applicable law. Determinations of the Planning, Building and Public Works Director shall be in writing and shall be subject to the appeals procedures set forth in DMMC 12.40.160.

Sec. 4. Retroactive application.

It is the intent of the City Council that the exemption provided in section 2(2) of this ordinance shall be applied to impact fees assessed after one year prior to the effective date of this ordinance.

Sec. 5. Severability - Construction.

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

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

Sec. 6. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

Ordinance No. ____
Page 5 of 5

City Attorney

ATTEST:

City Clerk

Published:

Effective Date:

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: City Logo Discussion

FOR AGENDA OF: January 23, 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: *Katherine Coffey*

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

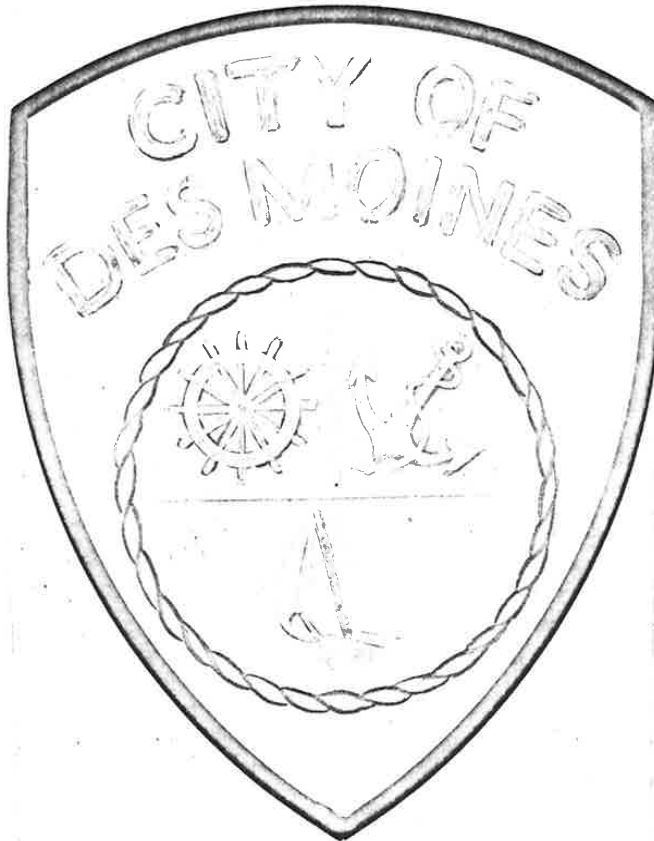
WHEREAS, the City Council of the City of Des Moines desires to adopt a municipal seal which may be alterable at the pleasure of the City Council,

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 26 day of April 1972.

APPROVED AS TO FORM:

Robert W. Parnell
City Attorney

Robert W. Parnell
MAYOR

ATTEST: Marie Lovell
City Clerk

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

16 City Suits @ 8.75
(4) Admin 36.75
Stk 110

24 CE
2 way Stw.

DESIGN.....
SHOULDER EMB. PRICES \$1.25
FLAG PRICES APPLIED \$165.00 ea.
\$185.00 1st P.M.
\$65.00 2nd and after
Banner
\$98.00 2 x 4
\$108.00 2 x 6
16 or more \$8.75 ea or \$14.00
Dicals 14"-16" long
JIMPSY'S
RETURN TO
SIGNED

April - 4672
June - 9881
July 3

EMMENTHAL
1820 1ST AVE
SEATTLE, WASHINGTON 98101

TO

DES MOINES CITY COUNCIL MEETING

FROM

DATE

SUBJECT:

MESSAGE

↑

RETURN TO
SIGNED

REPLY

SIGNED

DATE

PERSON ADDRESSED RETURN THIS COPY TO SENDER

UNITED STATES AIR MAIL
FIRST CLASS PERMIT NO. 1000
SEATTLE, WASH. 98101



*City
Dept*

OPAC or Corp

Set up charge included

12	\$37 each
25	21.75 each
50	13.95 each
100	10.00 each

Shelf life 4 years

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 O. 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:

Ordinance No. 777
Page 2 of 2

(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."

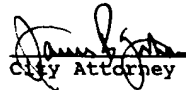
Section 5. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

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

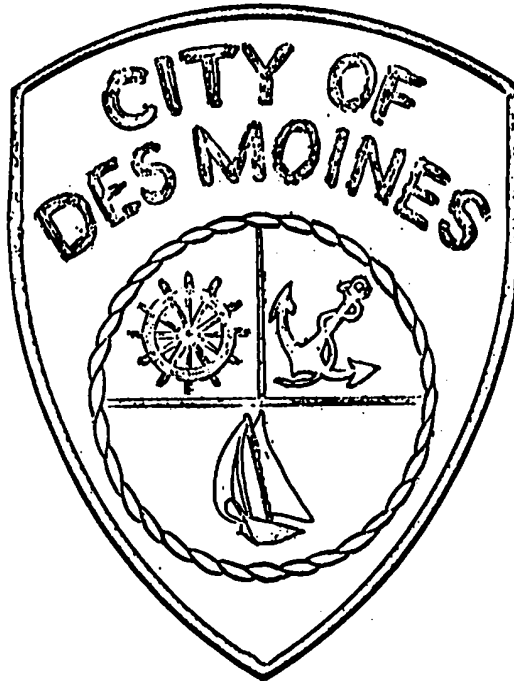
WHEREAS, the City Council of the City of Des Moines desires to adopt a municipal seal which may be alterable at the pleasure of the City Council,

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:

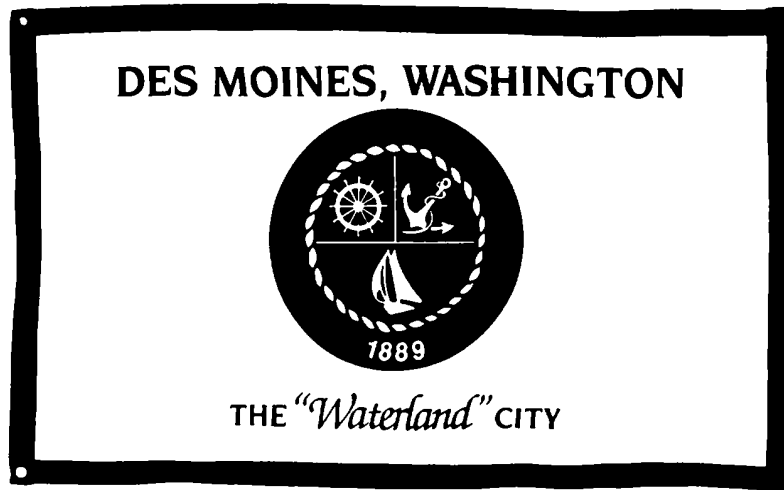
Richard W. ...
City Attorney

Albert W. ...
MAYOR

ATTEST:

Marie ...
City Clerk

EXHIBIT "B"





LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

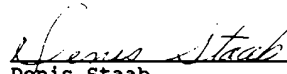
CITY OF DES MOINES

ORDINANCE NO.777, Adopted November 10, 1988.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

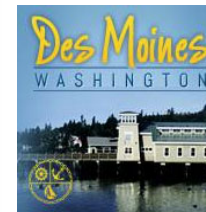
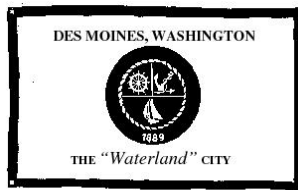
This ordinance regulates the use of the Official City flag and Centennial Logo, prohibiting unauthorized use, and creating a civil infraction and penalty for violation thereof.

The full text of the ordinance will be mailed without cost upon request.


Denis Staab
City Clerk

Published: November 27, 1988

CITY LOGOS



City Manager's Office
21630 11th AVENUE S, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.O.D. (206) 824-6024 FAX: (206) 870-6540



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Redondo Fishing Pier Replacement Project – Amended Task Assignment for Consultant Design

FOR AGENDA OF: January 23, 2025

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: January 15, 2025

1. Exeltech Consulting, Inc., 2020-2021 On-Call General Civil Engineering Services Amendment Task Assignment 2020-4.1

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Emergency Management _____
- Finance *WZ*
- 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 to seek City Council approval for the 2020-2021 On-Call General Civil Engineering Services Amendment Task Assignment 2020-4.1 (Attachment 1) with Exeltech Consulting, Inc. to provide engineering design services for the Redondo Fishing Pier Replacement.

Suggested Motion

Motion: “I move to approve the 2020-2021 On-Call General Civil Engineering Amendment Task Assignment 2020-4.1 with Exeltech Consulting Inc., to provide engineering design services for the Redondo Fishing Pier Replacement Project in the amount of \$211,524.25, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

Background

The Redondo Fishing Pier facility has exceeded its expected service life and exhibited significant degradation despite the City's maintenance activities before being closed indefinitely in July 2019. Upon its closure, the City worked with Exeltech Consulting to design a replacement pier and obtain all the required federal, state, and local permits.

At the June 25, 2020 City Council meeting, City Council approved the 2020-2021 On-Call General Civil Engineering Services Task Assignment 2020-4 with Exeltech Consulting, providing engineering services for the Redondo Fishing Pier and Restroom Replacement Project. City Council at the same meeting also authorized the acceptance of a Washington State Department of Commerce 2021 Local and Community Projects Program Grant in the amount of \$339,500.00. This grant was utilized for the engineering design and preliminary permitting for the fishing pier and associated bulkhead.

At the September 14, 2023 City Council meeting, City Council authorized the acceptance of a Washington State Department of Commerce Grant in the amount of \$1,852,000 and the Recreation and Conservation Office Grant in the amount of \$681,903 for the construction of the fishing pier and restroom facility.

On March 13, 2024, City staff advertised the Redondo Fishing Pier and Restroom Replacement Project for solicitation of bids.

At the April 25, 2024 City Council meeting, City Council directed staff to reject the bid for the Redondo Fishing Pier and Restroom Replacement Project and investigate alternatives.

Discussion

The combined Redondo Fishing Pier and Restroom Replacement Project was advertised for bid and received only a single bid from Quigg Bros., Inc. that was significantly above the engineering estimate and rejected by the City Council. Staff then evaluated various options and proceeded with bidding the Redondo Restroom Replacement Project separately in order to avoid jeopardizing any associated grant funding. The construction of the Redondo Restroom is currently underway.

During the investigation of alternative designs of the pier, City staff worked with the design consultant, Exeltech Consulting, to identify various design changes that could potentially lower the construction cost of the project. In order to fully incorporate these changes and potential solutions into the redesign of the fishing pier, additional design support is needed.

The design of the fishing pier adheres to strict environmental regulations from the US Army Corps of Engineers, Department of Natural Resources, U.S. Fish and Wildlife Services, and the Washington Department of Fish and Wildlife. As the requirements of the various permitting agencies strongly influence the design of the pier, any changes will require the design team to reengage and coordinate with these agencies and additional consultant support will be needed.

The On-Call General Civil Engineering Services Amendment Task Assignment 2020-4.1 with Exeltech Consulting will allow the design team to redesign different structural components of the fishing pier, modify the original project plans and specifications, perform a constructability review, prepare the project bid package, and provide consultant support during project advertisement.

Specific elements of work included within the Amendment Task Assignment include:

- Project Management
- Environmental Permitting and Coordination
- Redesign of the Fishing Pier
- Project Bid Documents
- Constructability Review of the new Fishing Pier Design.

The Amendment Task Assignment 2020-4.1 with Exeltech Consulting will position the project to be ready for construction bid advertisement in 2025, with anticipated construction to begin soon after subject to City Council approval.

Alternatives

The City Council could elect not to approve the 2020-2021 On-Call General Civil Engineering Services Amendment Task Assignment 2020-4.1 with Exeltech Consulting, Inc., for engineering design services. The City does not have adequate internal resources to perform the redesign of the Redondo Fishing Pier and the Project would be placed on hold.

Financial Impact

The City's adopted CIP Budget Worksheet includes revenues to achieve full funding for this Amendment Task Assignment.

Recommendation

Staff recommends adoption of the motions.

Council Committee Review

The Transportation and Municipal Facilities Committees have been routinely updated on the status of this project.



FORMAL TASK ASSIGNMENT DOCUMENT

Task No. 2020_4.1

The general provisions and clauses of the Agreement 2020-2021 On-Call General Civil Engineering Services between City of Des Moines and Exeltech Consulting, Inc., a Bowman Company, shall be in full force and effect for this Task Assignment.

Location of Project: City of Des Moines – Redondo Fishing Pier

Project Title: Redondo Fishing Pier Replacement Redesign Project

Maximum Amount Payable Per Task Assignment Amendment: \$211,524.25; includes Management Reserve of \$23,262.73

Completion Date: July 31, 2025; or earlier date if agreed to by both parties.

Description of Work:

- See Attached Scope of Work and Budget

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ See Attachment Dated: _____

Consultant Signature:  Date: 12/12/24

Agency Approving Authority: _____ Date: _____

**Scope of Services
City of Des Moines
Redondo Fishing Pier Replacement Redesign**

November 2024

Prepared by:
Exeltech Consulting, Inc
8729 Commerce Pl Dr NE, Suite A
Lacey, WA 98516



INTRODUCTION

Under this Agreement, Exeltech Consulting, Inc., hereinafter referred to as the "Consultant", will perform professional services for the City of Des Moines hereinafter referred to as the "CITY". This Scope of Work ("SOW") provides for Environmental Permit Coordination and PS&E Redesign services for the Redondo Fishing Pier Replacement Redesign.

1.1 Project Management

Consultant will assist the CITY with meetings and correspondence for the SOW. Tasks include billing, document review, and progress tracking.

3.2 Environmental Coordination

The Consultant will work with the CITY to determine the changes needed for the existing permit to address the redesign. The Consultant will coordinate with the needed permitting agencies.

4.4 PS&E Redesign

The sheets assumed for the PS&E are listed in the Modifications to Plan Sheet(s) Table below. After the 30% Submittal, the plans will be sent to the CITY in logical packages for their review and comments, these packages shall constitute the 60% submittal. Such, by the time there is a 90% submittal as stated below the CITY will have seen the project plans. Also addressed will be:

- Structural Calculations for the new fishing pier.
- The Consultant's internal QA/QC procedures and documentation.
- The Consultant will update Special Provisions and probable construction cost following WSDOT format. Historical bid unit prices for projects in Western Washington will be used to determine appropriate unit bid prices for the opinion of probable cost.
- After receiving comments from the CITY on the 30% design, the Consultant will respond to comments, complete the analysis, and prepare final design (90% and 100% design development) for the bulkhead improvements, and new fishing pier. After the 100% Submittal, Consultant will incorporate CITY/Agency review comments and resubmit as the Bid Documents.
- The Consultant will assimilate sub-consultant developed PS&Es into one package for advertisement.
- The Consultant will develop the bid documents per the CITY standards.

With the Design PS&E submittal, the Consultant will have its Office Engineer and Project Inspector conduct a constructability review. This review will check the plans for coordination with existing facilities, site constraints, utilities, staging, and access. The Consultant will develop the Record of Materials (ROM) while performing the constructability review of the contract plans and verify that items of work have been incorporated into the Contract.

Modifications to Plan Sheet(s) Table

Plan Sheet(s)	Modification(s)
S2.01	Updating the cap beams and pipe pile sizes
S2.02	Updating the cap beams and pipe pile sizes
S2.03	Updating the cap beams/Guardrail attachment details
S3.01	Updating the cap beams/Details/Sections
S3.02	Updating the cap beams
S3.03	Updating the cap beams details and sections
S3.04	Updating the cap beams sections/Base plate details
S3.05	Updating the cap beams sections/Base plate details
S3.06	Updating the guardrail connection to cap beams
S3.07	Updating the stairs connection to cap beams
S3.08	Updating the anchor plates connection to cap beams
S3.09	Updating the anchor plates connection to cap beams
S4.01	Updating the cap beams

5.1 Project Advertisement

The Consultant will work with the CITY to develop the Contractor selection through the bid process. The Consultant will provide support to the CITY during the project advertisement.

MANAGEMENT RESERVE

At the request of the CITY, the Consultant will provide additional services as requested.

LIMITATIONS AND ASSUMPTIONS

The scope will have the following limitations and assumptions:

- Structural piles are 18" pipe piles grade A252 Grade 3 with min. 65 ksi yield strength (Thickness to be determined).
- Pile caps are steel beam (Double I-beams).
- Piers will be spaced at max. 14'O.C. and piles in each pier will be spaced no more than 15'.
- Deck support framing is designed using steel channels and FRP grating is utilized for deck.
- The CITY will have one round of review in Bluebeam for each submittal and transmit consolidated review comments via email to the Consultant using Consultant provided Excel spreadsheet template. Comments from the review will be addressed by the Consultant in the subsequent submittal.
- AutoCAD/Civil3D version 2022 will be used for all project deliverables.
- The Consultant has flexibility to move budget between tasks.

Exhibit B-1
Hours Sheet

		Exeltech													
Task	Principal Engineer	Sr. Project Manager	Senior Structural Engineer/QC	Senior Structural Engineer	Civil Engineer	Sr. Structural Engineer	Urban Designer/Landscape Architect	Environmental Lead	Sr. Environmental Scientist	Environmental Scientists/Planner	Design Engineer	CADD Technician	Admin	Total Exeltech Hours	
1.1 Project Management														0	
1.2 Grant Assistance														0	
1.3 Coordination														0	
1.4 Community Outreach														0	
1.5 City Council Meetings														0	
2.1 Surveying														0	
2.2 Preliminary Geotechnical														0	
2.3 Urban Design and Pedestrian Circulation														0	
2.4 Preliminary Architecture for Restroom														0	
2.5 Fishing Pier Alternatives														0	
3.1 Biological Studies and Supporting Documentation														0	
3.2 Environmental Coordination		16						24	92					132	
3.3 Cultural Resources Evaluation Section 106														0	
4.1 Coastal Design and Wave Forces														0	
4.2 Geotechnical Engineering														0	
4.3 Architecture														0	
4.4 PS&E Redesign														0	
4.4.1 Design Validation Meeting (30%)	16	30		60		40						80		226	
4.4.2 60% PS&E	16	12	60	120	48	48						156		460	
4.4.3 100% PS&E	10	12	40	100	36	40						120		358	
4.5 PS&E Review														0	
5.1 Project Advertisement		32	40	40										112	
5.2 Requests for Information		8												8	
GRAND TOTAL	42	110	140	320	84	128	0	24	92	0	0	356	0	1,296	

Notes items in yellow set aside for management reserve (\$23,262.73) per Exhibit B-2

10.29.2024

**Exhibit B-2
Fee Determination - Summary Sheet**

Project Name Redondo Fishing Pier Replacement
Client Name City of Des Moines
Task Description:
Consultant Fee Determination: Exeltech

Start Date

End Date

Project #

Classification	Man Hours		Direct LaborRate		Dollars
Principal Engineer	42	x	\$100.32	=	\$4,213.44
Sr. Project Manager	110	x	\$81.76	=	\$8,993.60
Senior Structural Engineer/QC	140	x	\$60.00	=	\$8,400.00
Senior Structural Engineer	320	x	\$64.50	=	\$20,640.00
Civil Engineer	84	x	\$57.18	=	\$4,803.12
Sr. Structural Engineer	128	x	\$73.00	=	\$9,344.00
Urban Designer/Landscape Architect	0	x	\$66.83	=	\$0.00
Environmental Lead	24	x	\$80.60	=	\$1,934.40
Sr. Environmental Scientist	92	x	\$66.95	=	\$6,159.40
Environmental Scientist/Planner	0	x	\$44.16	=	\$0.00
Design Engineer	0	x	\$40.00	=	\$0.00
CADD Technician	356	x	\$37.03	=	\$13,182.68
Admin	0	x	\$37.50	=	\$0.00
Total Hours	1,296				
Total DSC				=	\$77,670.64

Overhead (OH Cost -- including Salary Additives)

OH Rate x DSC of 158.00% x \$77,670.64 = **\$122,719.61**

Fixed Fee (FF):

FF Rate x DSC of 0.00% x \$77,670.64 = **\$0.00**

Subtotal

\$200,390.25

Reimbursables

Itemized

	Quantity	Units	Rate		
Reproduction and Printing	0	copies @	\$0.10	=	\$0.00
Field Equipment Rental	0	each @		=	\$0.00
Mileage	200	Est @	\$0.670	=	<u>\$134.00</u>

Reimbursables Total

\$134.00

Subconsultant

Merrick Lentz Architecture Lighting Design

\$11,000.00

Subconsultant Total

\$11,000.00

Grand Total

\$211,524.25

Note items in yellow set aside for management reserve