



**AGENDA**  
**DES MOINES CITY COUNCIL**  
**REGULAR MEETING**  
**City Council Chambers**  
**21630 11th Avenue S, Suite C**  
**Des Moines, Washington**  
**Thursday, July 24, 2025 - 6:00 PM**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL**

**COMMENTS FROM THE PUBLIC**

**REGIONAL COMMITTEE REPORT**

**CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS**

Item 1. PHASE 3 OF THE SOUTH LINK CONNECTIONS PROJECT

**CONSENT AGENDA**

Item 1. APPROVAL OF VOUCHERS

**Motion:** To approve the payment vouchers through July 10, 2025 and payroll transfers through July 03, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#12098-12164	\$ 790,497.09
Wires	#3014-3030	\$ 381,050.66
Accounts Payable Checks	#166879-166917	\$ 881,921.46
Payroll Checks	#19953-19973	\$ 9,885.52
Payroll Advice	#14089-14253	\$490,798.27

Total Checks and Wires for A/P & Payroll: \$2,554,153.00

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES

**Motion:** To approve the minutes from the City Council Study Session held on June 05, 2025, as well as the City Council Regular Meetings held on June 12, 2025, and June 26, 2025.

[Approval of Minutes](#)

Item 3. ANTI-CRUISING ORDINANCE - 2nd Reading

**Motion:** To approve Draft Ordinance No 25-065 prohibiting cruising.

[Anti-Cruising Ordinance](#)

Item 4. TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH HYPERFIBER - 2nd Reading

**Motion:** To adopt Draft Ordinance No. 25-038 approving a Telecommunications Franchise Agreement with HyperFiber.

[Telecommunications Franchise Agreement with HyperFiber – 2nd Reading](#)

Item 5. 2025 DOE LOCAL SOLID WASTE FINANCIAL ASSISTANCE AGREEMENT

**Motion:** To authorize the City Manager to sign the 2025-2027 Local Solid Waste Financial Assistance Grant agreement between the City of Des Moines and the Washington State Department of Ecology, substantially in the form as attached.

[2025 DOE Local Solid Waste Financial Assistance Agreement](#)

## NEW BUSINESS

Item 1. CITIZEN'S ADVISORY BOARD ORDINANCE

[Citizen's Advisory Board Ordinance](#)

Item 2. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

## COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

## PRESIDING OFFICER'S REPORT

## EXECUTIVE SESSION

## NEXT MEETING DATE

August 07, 2025 City Council Regular Meeting

## ADJOURNMENT

### [Projected Future Agenda Items](#)

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

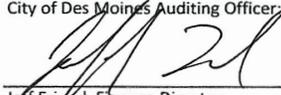
Consent Agenda Item #1

**CITY OF DES MOINES**  
**Voucher Certification Approval**  
**July 24, 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 July 24, 2025 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through July 10, 2025 and payroll transfers through July 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
<b>Claims Vouchers:</b>				
EFT's		12098	12164	790,497.09
Wires		3014	3030	381,050.66
AP Checks		166879	166917	881,921.46
<b>Total Vouchers paid</b>				<b>2,053,469.21</b>
<b>Payroll Vouchers</b>				
Payroll Checks		19953	19973	9,885.52
Payroll Advice	7/3/2025	14089	14253	490,798.27
<b>Total Paychecks &amp; Direct Deposits</b>				<b>500,683.79</b>
<b>Total checks and wires for A/P &amp; Payroll</b>				<b>2,554,153.00</b>

**MINUTES**

**DES MOINES CITY COUNCIL  
STUDY SESSION  
City Council Chambers  
21630 11th Avenue S, Des Moines, Washington  
Thursday, June 5, 2025 - 5:00 PM**

**CITY COUNCIL COMMITTEE OF THE WHOLE**  
**5:00 p.m. - 5:50 p.m.**

**CALL TO ORDER**

Mayor Traci Buxton called the Committee of the Whole meeting to order at 5:00 p.m.

**ROLL CALL**

**Council Present:**

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

**Council via Zoom:**

Councilmember Jeremy Nutting

**Staff Present:**

City Manager Katherine Caffrey; City Attorney Tim George; Assistant City Manager Adrienne Johnson-Newton; Director of Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Public Works Director Mike Slevin; Finance Director Jeff Friend; City Engineer Tommy Owen; Community Development Director Rebecca Deming; Planning & Development Services Manager Laura Techico; Assistant City Attorney Matt Hutchins; City Prosecutor Tara Vaughn; and City Clerk Taria Keane

**COMMITTEE OF THE WHOLE ITEMS**

- Item 1: MODERA WOODMONT DEVELOPMENT
- City Attorney Tim George and Community Development Director Rebecca Deming presented a PowerPoint on the Modera Woodmont Development Agreement.
- Item 2: SOUND TRANSIT FEDERAL WAY LINK EXTENSION UPDATE

Study Session Minutes  
June 5, 2025

- Public Works Director Mike Slevin, accompanied by Linneth Riley-Hall the Executive Project Director with Sound Transit, presented a PowerPoint on the Sound Transit Federal Way Link Extension Project Updates.
- Item 3: DRAFT 2026-2045 TRANSPORTATION IMPROVEMENT PLAN (TIP)
- City Engineer Tommy Owen presented a PowerPoint on the 2026-2045 Transportation Improvement Plan (TIP) Updates.

**CITY COUNCIL STUDY SESSION,**  
**6:00 p.m. - 9:00 p.m.**

**CALL TO ORDER**

Mayor Traci Buxton called the City Council Study Session 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; and Councilmember Matt Mahoney

**Council Via Zoom:**

Councilmember Jeremy Nutting

**Staff Present:**

City Manager Katherine Caffrey; City Attorney Tim George; Assistant City Manager Adrienne Johnson-Newton; Director of Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Public Works Director Mike Slevin; Finance Director Jeff Friend; Community Development Director Rebecca Deming; Planning & Development Services Manager Laura Techico; Assistant City Attorney Matt Hutchins; City Prosecutor Tara Vaughn; and City Clerk Taria Keane

**CORRESPONDENCE**

- There was no further correspondence beyond the emails already received by Council.

## COMMENTS FROM THE PUBLIC

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

- There were no public comments.

## DISCUSSION ITEMS

Item 1: UPDATING RESOLUTION 1118 CONCERNING THE PROCESS OF PUBLIC CONTRACTING

- Assistant City Attorney Matt Hutchins presented a PowerPoint on proposed updates to the City of Des Moines Public Works Contracting Policies.

Item 2: COMPREHENSIVE PLAN UPDATE

- Community Development Director Rebecca Deming, accompanied by Planning and Development Services Manager Laura Techico, presented an in-depth PowerPoint briefing to the Council on the Comprehensive Plan Update.

Item 3: CITY COUNCIL PROTOCOL MANUAL REVIEW

Councilmember Yoshiko Grace Matsui suggested the following changes:

- Item 1: Bring back 26a - Second to reading of all ordinance changes. Council discussed change. Proposed amendment to have ordinance changes brought back on the Consent Agenda for a second reading.
- Item 2: Adjournment 8.06 (Q) Order of Business. Council discussed change. Proposed amendment to extend the ending time without a vote to 10:00p.m.
- Item 4: Code of Conduct. Proposed to add Weapons Policy and Equal Opportunity/Nondiscrimination Policies.

Mayor Traci Buxton suggested the following changes:

- Item 8: 5.03.B - Proposed the following disclaimer: "The following is my opinion alone and may or may not reflect that of City of Des Moines Staff or my colleagues." Council discussed and it was proposed to remove "staff".
- Item 9: 5.07.A, B and C - Recommended keeping A and eliminating B regarding communication to a Councilmember. Council discussed and approved the proposed amendment.

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- Item 10: 8.08.F - Proposed clarification on procedure for remote attendance to Council meetings. Council discussed item and approved the amendment.

Councilmember Matt Mahoney suggested the following changes:

- Item 11: 4.02 Add C - Proposed needing Council approval for expenses exceeding \$1,000. Council discussed eliminating tuition from the paragraph, but it did not have the support of Council to move forward. Council agreed to move forward with \$1,200.
- Item 12: 5.07 C Add 5 - Proposed to create an amendment to reference the RCW regarding personal emails. Council discussed and approved the change.
- Item 13: 7.06 3rd paragraph - Recommend adding "shall request or direct the City Manager, Department Directors, Staff or outside entity to initiate any action or prepare any report..." Council discussed the amendment and it was approved.
- Item 14: 7.08 - It was proposed to add "Councilmember interactions with staff, including the City Manager, shall be in a respectful and professional manner at all times." The amendment was approved.

Councilmember JC Harris suggested the following changes:

- Item 15: 2.08A.4 - Proposed to amend to "All committee meetings shall be noticed to the public, video recorded, and available to the public for viewing..." Council discussed and agreed to amend it further to state "staffed and appointed committees of the Council", rather than "all committee meetings".
- Item 16: 2.08 A.6 - Proposed to remove "Councilmembers may be appointed or removed by the Mayor". Council discussed the change and to also add "from committee". The amendment did not move forward.
- Item 17: 2.08 - Regarding Councilmembers being appointed as a liaison. This will be discussed further when the code is revised in regards to committees.
- Item 19: 5.01 - Recommended changing the first sentence to "An important role of a Councilmember is communication". The amendment moved forward.
- Item 20: 5.04 - Proposed to strike the first paragraph "To promote a favorable image of the City" in regards to the Mayor's role. This proposed amendment did not move forward.

## **EXECUTIVE SESSION**

Mayor Traci Buxton called the Special Meeting to order at 8:33 p.m.

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**ROLL CALL**

**Council Present:**

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

**Council Via Zoom:**

Councilmember Jeremy Nutting

**Staff Present:**

City Manager Katherine Caffrey; City Attorney Tim George; Assistant City Manager Adrienne Johnson-Newton

The purpose of the Special Meeting was to hold an Executive Session to discuss the performance of a public employee under RCW 42.30.110(1)(g). The Executive Session was expected to last 20 minutes.

No formal action was taken. The Executive Session lasted 20 minutes.

**NEXT MEETING DATE**

June 12, 2025 City Council Regular Meeting

**ADJOURNMENT**

**Direction/Action**

**Motion** made by Councilmember JC Harris to adjourn; seconded by Councilmember Matt Mahoney.

Motion passed 6-0.

The meeting adjourned at 9:00 p.m.

[Projected Future Agenda Items](#)

**MINUTES**

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11th Avenue S, Suite C  
Des Moines, Washington  
Thursday, June 12, 2025 - 6:00 PM**

**CALL TO ORDER**

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

**PLEDGE OF ALLEGIANCE**

The flag salute was led by Deputy Mayor Harry Steinmetz.

**ROLL CALL**

**Council Present:**

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

**Council via Zoom:**

Councilmember Jeremy Nutting

**Staff Present:**

City Manager Katherine Caffrey; Assistant City Manager Adrienne Johnson-Newton; City Attorney Tim George; Police Chief Ted Boe; Director of Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Finance Director Jeff Friend; Public Works Director Mike Slevin; Community Development Director Rebecca Deming; IT Director Chris Pauk; City Prosecutor Tara Vaughn; Planning and Development Services Manager Laura Techico; City Engineer Tommy Owen; Surface Water Utility Manager Tyler Beekley; Administrative Coordinator Laura Hopp; and Deputy City Clerk Sara Lee

**PROCLAMATIONS**

DES MOINES FARMERS MARKET 20 YEAR PROCLAMATION

**Direction/Action**

**Motion** made by Councilmember Yoshiko Grace Matsui to adopt the Proclamation recognizing and celebrating the 20th season of the Des Moines Farmers Market; seconded by Deputy Mayor Harry Steinmetz. Motion passed 7-0.

**CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL**

- No additional correspondence outside of the emails already received by Council.

**COMMENTS FROM THE PUBLIC**

- There were no public comments.

**COMMITTEE CHAIR REPORTS**

**ENVIRONMENT COMMITTEE:** Chair JC Harris

- Councilmember JC Harris provided an update on the Environment Committee Meeting held on June 12, 2025.

**REGIONAL COMMITTEE REPORT**

**PUBLIC ISSUES COMMITTEE:** Deputy Mayor Harry Steinmetz

- Deputy Mayor Harry Steinmetz gave an update on the Public Issues Committee Meeting for the Sound Cities Association meeting held on June 11, 2025.

**GATEWAY PROJECT COMMITTEE:** Councilmember Matt Mahoney

- Councilmember Matt Mahoney gave an update on the SR167 and SR509 Puget Sound Gateway Project meeting.

**PUGET SOUND REGIONAL COUNCIL - TRANSPORTATION POLICY BOARD:** Councilmember Matt Mahoney

- Councilmember Matt Mahoney gave an update on the Transportation Policy Board Meeting for the Puget Sound Regional Council held on June 12, 2025.

**EMERGENCY MANAGEMENT ADVISORY COMMITTEE:**

Councilmember JC Harris

- Councilmember JC Harris gave an update on the Emergency Management Advisory Committee Meeting.

**CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS**

Item 1: WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (WSDOT) SR 509 COMPLETION PROJECT UPDATE

- WSDOT gave Council a PowerPoint Presentation on the SR509 completion project.

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- Item 2: DISCUSSION OF 2025 CITY LEGISLATIVE PRIORITIES
- Legislative Advocate Anthony Hemstad gave Council a PowerPoint Presentation on the 2025 City Legislative Priorities.

**CONSENT AGENDA**

- Item 1: APPROVAL OF VOUCHERS
- Motion:** To approve the payment vouchers through May 29, 2025 and payroll transfers through May 20, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#11851-11941	\$ 845,899.60
Wires	#2967-2976	\$1,962,630.80
Accounts Payable Checks	#166763-166796	\$1,134,275.95
Payroll Voided Advice	#11879	\$ (3,000)
Payroll Advice	#13608-13764	\$ 474,354.00

Total Checks and Wires for A/P & Payroll: \$4,414,160.35

- Item 2: APPROVAL OF MINUTES
- Motion:** To approve the minutes from the City Council Study Session held on May 01, 2025 and the City Council Regular Meeting held on May 08, 2025.
- Item 3: WATER RESOURCE INVENTORY AREA 9 - INTERLOCAL AGREEMENT RENEWAL
- Motion:** To approve the 2026-2035 Interlocal Agreement between the jurisdictions located within Water Resource Inventory Area 9 for the purpose of sharing costs for implementing the Salmon Habitat Plan, and to authorize the City Manager to sign such agreement substantially in the form submitted.
- Item 4: 2026 SKHHP WORK PLAN AND BUDGET
- Motion:** To enact Draft Resolution No. 25-046, approving the 2026 South King Housing and Homelessness Partners Budget and the 2026 Work Plan.
- Item 5: AMENDMENT TO INTERAGENCY AGREEMENT BETWEEN WSDOT AND CITY OF DES MOINES
- Motion:** To approve the Amended Interagency Agreement between the Washington State Department of Transportation and the City of Des Moines – Agreement GCB 3807, and further authorize the City Manager to sign said Agreement substantially in the form as submitted.

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- Item 6:       CONTRACT FOR CONSTRUCTION SUPPORT SERVICES WITH  
                  MOFFATT & NICHOL  
**Motion:** To approve the contract with Moffatt & Nichol for construction  
support services of the Dock Replacement Project in the amount of  
\$179,102.00 plus a contingency of \$18,000.00 for a total authorization of  
\$197,102.00 and authorize the City Manager to sign the contract  
substantially in the form as attached.

**Direction/Action**

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

Council JC Harris pulled Consent Agenda Item #4.

The remainder of the Consent Agenda passed 7-0.

Council discussed Consent Agenda Item #4.

**Motion** made by Councilmember Jeremy Nutting to approve Consent  
Agenda Item #4 as presented; seconded by Councilmember Matt  
Mahoney.

Motion passed 6-1.

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

**Against:** Councilmember JC Harris.

**PUBLIC HEARING/CONTINUED PUBLIC HEARING**

- Item 1:       WOODMONT BEACH APARTMENTS LLC DEVELOPMENT  
                  AGREEMENT

At 7:05 p.m. Mayor Traci Buxton opened the Public Hearing.

Community Development Director Rebecca Deming gave council a  
PowerPoint Presentation regarding the Woodmont Beach Apartments  
LLC Development Agreement.

Public Comment

- Tina Jurewicz - Opponent
- Niki Crawford - Opponent
- Matt Jurewicz - Opponent

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- Nathan Roenick - Opponent
- Tes Awaden - Opponent

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

Mayor Traci Buxton asked Council if they had any questions.

At 7:55 p.m. Mayor Traci Buxton closed the Public Hearing.

**Direction/Action**

**Motion:** made by Councilmember JC Harris to move Public Hearing Item #1 for a second reading. Motion died due to lack of second.

**Motion:** made by Councilmember Jeremy Nutting to approve to adopt Draft Resolution 25-052 approving the Woodmont Beach Apartments LLC Development Agreement and authorize the City Manager to sign the Development Agreement substantially in the form as submitted; seconded by Councilmember Matt Mahoney.  
Motion passed 6-1.

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

**Against:** Councilmember JC Harris.

Item 2: ACCESSORY DWELLING UNITS

At 8:16 p.m. Mayor Traci Buxton opened the Public Hearing.

Community Development Director Rebecca Deming gave Council a PowerPoint Presentation regarding Accessory Dwelling Units.

Public Comment

- Arris Toker - Proponent

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

Mayor Traci Buxton asked Council if they had any questions.

At 8:39 p.m. Mayor Traci Buxton closed the Public Hearing.

**Direction/Action**

**Motion:** made by Councilmember Jeremy Nutting to approve Draft Ordinance 25-056 relating to land use, updating regulations related to accessory dwelling units and amending Draft Ordinance 25-056, Section 3(3) to read Design Standards. The ADU should be complimentary with the architectural style and materials of the primary residence components considered to include materials and roofline; seconded by Councilmember Matt Mahoney.  
Motion passed 7-0.

## **UNFINISHED BUSINESS**

Item 1: AIRPORT ADVISORY COMMITTEE ESTABLISHMENT AND APPOINTMENTS  
Community Development Director Rebecca Deming gave Council a PowerPoint Presentation about the Airport Advisory Committee Establishment and Appointments.

### **Direction/Action**

**Motion 1:** made by Councilmember Matt Mahoney to approve Draft Resolution 25-034 establishing an ad-hoc committee to address issues related to Sea-Tac Airport; seconded by Deputy Mayor Harry Steinmetz.  
Motion passed 7-0.

**Motion 2:** made by Councilmember Matt Mahoney to appoint Joe Dusenbury to an open position on the Des Moines Airport Advisory Committee, effective immediately and expiring on December 31, 2027; seconded by Deputy Mayor Harry Steinmetz.  
Motion passed 7-0.

**Motion 3:** made by Councilmember Matt Mahoney to confirm the Mayoral appointment of Jeffrey Bogen to an open position on the Des Moines Airport Advisory Committee, effective immediately and expiring on December 31, 2027; seconded by Deputy Mayor Harry Steinmetz.  
Motion passed 7-0.

**Motion 4:** made by Councilmember Matt Mahoney to confirm the Mayoral appointment of Barton DeLacy to an open position on the Des Moines Airport Advisory Committee, effective immediately and expiring on December 31, 2027; seconded by Deputy Mayor Harry Steinmetz.  
Motion passed 7-0.

**Motion 5:** made by Councilmember Matt Mahoney to confirm the Mayoral appointment of Todd Downing to an open position on the Des Moines Airport Advisory Committee, effective immediately and expiring on December 31, 2027; seconded by Deputy Mayor Harry Steinmetz.

Motion passed 7-0.

**Motion 6:** made by Councilmember Matt Mahoney to confirm the Mayoral appointment of Steve Reagin to an open position on the Des Moines Airport Advisory Committee, effective immediately and expiring on December 31, 2027; seconded by Deputy Mayor Harry Steinmetz.  
Motion passed 7-0.

## **PUBLIC HEARING/CONTINUED PUBLIC HEARING**

Item 3: MIDDLE HOUSING

At 8:48 p.m. Mayor Traci Buxton opened the Public Hearing.

Planning and Development Services Manager Laura Techico gave Council a PowerPoint Presentation on Middle Housing.

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

### **Direction/Action**

**Motion:** made by Mayor Traci Buxton to extend the meeting to 9:15 p.m.; seconded by Councilmember Yoshiko Grace Matsui.  
Motion Passed 7-0.

Mayor Traci Buxton asked Council if they had questions.

At 9:00 p.m. Mayor Traci Buxton closed the Public Hearing.

### **Direction/Action**

**Motion:** made by Councilmember Matt Mahoney to approve Draft Ordinance 25-057 relating to zoning and the regulation of Middle Housing; seconded by Deputy Harry Steinmetz.  
Motion Passed 7-0.

**Amended Motion:** made by Mayor Traci Buxton to reduce the size of the Cottage Housing to a minimum of 500 square feet; seconded by Councilmember JC Harris.  
Amended Motion passed 4-3.

**For:** Mayor Traci Buxton, Councilmember Gene Achziger, Councilmember JC Harris, Councilmember Yoshiko Grace Matsui.

**Against:** Deputy Mayor Harry Steinmetz, Councilmember Matt Mahoney, Councilmember Jeremy Nutting.

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## **COUNCILMEMBER REPORTS**

(4 minutes per Councilmember) - 30 minutes

DEPUTY MAYOR HARRY STEINMETZ

- Public Issues Committee (PIC)

COUNCILMEMBER MATT MAHONEY

- Thanked Staff for Veterans Day Memorial

COUNCILMEMBER YOSHIKO GRACE MATSUI

- Farmers Market

COUNCILMEMBER JC HARRIS

- Airport Committee

COUNCILMEMBER GENE ACHZIGER

- Legacy Foundation

COUNCILMEMBER JEREMY NUTTING

- Men's Mental Health Awareness Month

## **PRESIDING OFFICER'S REPORT**

- Maritime High School Student Job Shadowing

## **NEXT MEETING DATE**

June 26, 2025 City Council Regular Meeting

## **ADJOURNMENT**

### **Direction/Action**

**Motion:** made by Deputy Mayor Harry Steinmetz to adjourn the meeting; seconded by Councilmember Yoshiko Grace Matsui. Motion passed 7-0.

The meeting adjourned at 9:13 p.m.

[Projected Future Agenda Items](#)



# Des Moines

WATERLAND CITY

AGENDA

DES MOINES CITY COUNCIL

REGULAR MEETING

City Council Chambers

21630 11th Avenue S, Suite C

Des Moines, Washington

Thursday, June 26, 2025 - 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 Matt Mahoney.

## ROLL CALL

### Council Present:

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

### Council via Zoom:

Councilmember Jeremy Nutting; and Councilmember Gene Achziger

### Staff Present:

City Manager Katherine Caffrey; Assistant City Attorney Matt Hutchins; Director of Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Public Works Director Mike Slevin; Finance Director Jeff Friend; City Engineer Tommy Owen; Police Chief Ted Boe; Assistant Police Chief Cory Stanton; Sergeant Nate Chevallier; Sergeant Courtney Duncan; Crisis Response Specialist Monica Ortiz-Lara; Civil Engineer Mike Kwispond; Administrative Coordinator Laura Hopp; Deputy City Clerk Sara Lee; and City Clerk Taria Keane

## CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

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- No additional correspondence outside of the emails already received by Council.

### **COMMENTS FROM THE PUBLIC**

- Gary Petersen Jr., Street Racing and Sign
- Regional Manager Felicia Wilson and Librarian and Information Services Manager Erik Matthews with the King County Library System spoke about services available at the Woodmont and Des Moines Library.

### **REGIONAL COMMITTEE REPORT**

CITIZENS ADVISORY BOARD MEETING UPDATE: Deputy Mayor Harry Steinmetz

- Deputy Mayor Harry Steinmetz provided an update on the recent Citizens Advisory Board meeting held June 25, 2025.

REGIONAL TRANSIT COMMITTEE MEETING UPDATE:  
Councilmember JC Harris

- Councilmember JC Harris provided an update on the recent Regional Transit Committee meeting held on June 18, 2025.

SOUTH COUNTY AREA TRANSPORTATION BOARD MEETING  
UPDATE: Councilmember Matt Mahoney

- Councilmember Matt Mahoney provided an update on the recent South County Area Transportation Board meeting held on June 17, 2025.

### **CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS**

Item 1: PROMOTION TO SERGEANT

- Police Chief Ted Boe promoted Courtney Duncan and Nate Chevallier to the rank of Sergeant.

Item 2: UPDATE ON THE CITY STRATEGIC PLANNING AND FACILITATION SERVICES

- City Manager Katherine Caffrey gave an update on the City Strategic Planning and Facilitation Services.

Item 3: 2024 4TH QUARTER FINANCIAL REPORT

- Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2024 4th Quarter Financial Report.

Item 4: 2025 1ST QUARTER FINANCIAL REPORT

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- City Manager Katherine Caffrey and Finance Director Jeff Friend gave Council a PowerPoint Presentation on the 2025 1st Quarter Financial Report.

Item 5: DES MOINES COMMUTE TRIP REDUCTION (CTR) PLAN

- Civil Engineer Mike Kwispond gave Council a PowerPoint Presentation on the Des Moines Commute Trip Reduction Plan.

**CONSENT AGENDA**

Item 1: APPROVAL OF VOUCHERS

**Motion:** To approve the payment vouchers through June 12, 2025 and payroll transfers through June 05, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#11942-12037	\$2,185,465.27
Wires	#2977-3002	\$1,415,530.11
Accounts Payable Checks	#166797-166830	\$ 537,784.56
Accounts Payable Voided Checks	#166589, 166727	\$ (1,164.55)
Payroll Checks	#199446-19950	\$ 9,257.48
Payroll Advice	#13765-13926	\$ 462,906.89
Payroll Advice	# 13927-13927	\$ 18,402.08

Total Checks and Wires for A/P & Payroll: \$4,146,872.87

Item 2: APPROVAL OF MINUTES

**Motion:** To approve the minutes from the City Council Regular Meeting held on May 22, 2025.

Item 3: ANNUAL GENERATOR MAINTENANCE AGREEMENT

**Motion:** To approve the Goods and Services Contract with Cummins Sales and Service for the Annual Planned Maintenance and Load Bank Testing of our four (4) Standby Generators in the amount of \$73,496.34, and further authorize the City Manager to sign said Contract substantially in the form as submitted.

Item 4: DRAFT RESOLUTION 25-032 UPDATING PUBLIC WORKS CONTRACTING POLICIES

**Motion:** To approve Draft Resolution 25-032, updating the City's public works contracting policies.

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- Item 5: STATE PARKS GRANT AGREEMENT FOR FUNDING OF ANNUAL OPERATING AND MAINTENANCE OF THE NEW PUMP-OUT EQUIPMENT

**Motion:** To approve Grant Agreement No. CVA 325-300 to provide \$36,225.00 from the State's Clean Vessel Act for the purpose of Operation and Maintenance of the Marinas Pump-out equipment and to authorize the City Manager to sign the grant agreement substantially in the form attached.

- Item 6: DES MOINES COMMUTE TRIP REDUCTION (CTR) PLAN

**Motion:** To enact Draft Ordinance No. 25-070 approving the 2025-2029 Commute Trip Reduction Plan and amending Chapter 12.70 of the Des Moines Municipal Code.

**Direction/Action**

**Motion** made by Deputy Mayor Harry Steinmetz to approve the Consent Agenda as read; seconded by Councilmember Jeremy Nutting. Motion passed 7-0.

**PUBLIC HEARING/CONTINUED PUBLIC HEARING**

- Item 1: PUBLIC HEARING TRANSPORTATION IMPROVEMENT PLAN (2026-2045)

Staff Presentation by: City Engineer Tommy Owen

At 7:48 p.m. Mayor Traci Buxton opened the Public Hearing.

City Engineer Tommy Owen gave Council a PowerPoint Presentation on the Transportation Improvement Plan.

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

Mayor Traci Buxton asked Council if they had any questions.

At 8:03 p.m. Mayor Traci Buxton closed the Public Hearing.

**Direction/Action**

**Motion** made by Councilmember Matt Mahoney to approve Draft Resolution No. 25-069, adopting the 2026-2045 Transportation Improvement Plan; seconded by Councilmember Yoshiko Grace Matsui. Motion passed 7-0.

**NEW BUSINESS**

- Item 1: CITIZENS ADVISORY BOARD APPOINTMENTS

Regular Meeting Minutes  
June 26, 2025

- City Manager Katherine Caffrey gave a PowerPoint Presentation on the Citizens Advisory Board.

**Direction/Action**

**Motion** made by Deputy Mayor Harry Steinmetz to confirm the Mayoral appointments as shown on Exhibit A to the Citizens Advisory Board, effective immediately with an expiration date to be determined; seconded by Councilmember Yoshiko Grace Matsui.

Motion passed 6-1.

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

**Against:** Councilmember JC Harris.

**Direction/Action**

**Motion** made by Deputy Mayor Harry Steinmetz to confirm Lisa Franz to the Citizens Advisory Board as the Redondo Neighborhood representative, effective immediately with an expiration date to be determined; seconded by Councilmember Matt Mahoney.

Motion passed 6-1.

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

**Against:** Councilmember JC Harris.

**Direction/Action**

**Motion** made by Deputy Mayor Harry Steinmetz to confirm Susan White to the Citizens Advisory Board as an At-Large member, effective immediately with an expiration date to be determined; seconded by Councilmember Yoshiko Grace Matsui.

Motion passed 4-3.

**For:** Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Yoshiko Grace Matsui, and Councilmember Gene Achziger.

**Against:** Councilmember JC Harris; Councilmember Matt Mahoney; and Councilmember Jeremy Nutting

Item 2: NEW AGENDA ITEMS FOR CONSIDERATION

- No new agenda items were proposed.

**COUNCILMEMBER REPORTS**

**COUNCILMEMBER MATT MAHONEY**

- Farmers Market
- The Waterland Pride Festival
- Fourth of July
- Shark in the Park and Six Gill Shark

**COUNCILMEMBER YOSHIKO GRACE MATSUI**

- Pride Festival
- Farmers Market

**COUNCILMEMBER JEREMY NUTTING**

- Six Gill Shark
- Pride Month
- Men's Mental Health Month

**COUNCILMEMBER JC HARRIS**

- Citizens Advisory Board
- Port of Seattle Stakeholder Advisory Roundtable, StART Meeting
- Fairness and Tax-Exempt Properties

**COUNCILMEMBER GENE ACHZIGER**

- No Report

**DEPUTY MAYOR HARRY STEINMETZ**

- Pride Festival
- Yoga at Theater
- Second Love Coffee Roasters
- Farmers Market
- Delridge Manor Barbeque
- Citizens Advisory Board

**PRESIDING OFFICER'S REPORT**

- Partnership Opportunities with Sister City Mayors
- Sneaker Ball with Legacy Foundation
- Faith Community Gathering to Support Homelessness
- Maritime High School First Graduating Class
- Hero Day at Parkside Elementary

Regular Meeting Minutes  
June 26, 2025

- Farmers Market
- Men In Black
- Park Pop-Ups to Meet Staff

**COUNCILMEMBER YOSHIKO GRACE MATSUI**

**NEXT MEETING DATE**

July 10, 2025 City Council Regular Meeting

**ADJOURNMENT**

**Direction/Action**

**Motion** made by Councilmember Matt Mahoney to adjourn; seconded by Mayor Traci Buxton.  
Motion passed 7-0.

The meeting adjourned at 8:31 p.m.

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Anti-Cruising Ordinance

FOR AGENDA OF: July 24, 2025

ATTACHMENTS:

- 1. Draft Ordinance 25-065

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: July 14, 2025

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts *M. Patrick*
- Director of Marina Redevelopment \_\_\_\_\_
- Emergency Management \_\_\_\_\_
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal */s/TG*
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works *APS*

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

**Purpose and Recommendation**

The purpose of this agenda item is for Council to consider Draft Ordinance 25-065 which would define and set the penalty for automobile cruising on public streets and other City-owned vehicle facilities. This item will appear on the consent agenda.

**Suggested Motion**

**Motion:** "I move to approve Draft Ordinance 25-065 prohibiting cruising."

### **Background**

Cruising is a decades-old pastime in the United States. Groups of people gather to drive slowly and repeatedly over a stretch of road as a social activity with no set destination. The purpose is not to get somewhere – the purpose is to be seen and the act of cruising itself. By its nature, cruising can create problems for the police, nonparticipating motorists, some businesses, and the community at large. Among them are:

- Conflicts between cruisers
- Littering
- Noise (from vehicle engines, screeching tires, car stereos, and exuberant fans)
- Traffic congestion (including obstruction of emergency vehicles)
- Traffic crashes
- Vandalism and unintentional property damage.

At least sixteen Washington cities and two counties have enacted anti-cruising ordinances in an attempt to curb cruising and its negative effects: Auburn, Centralia, Covington, Everett, Federal Way, Kirkland, Lakewood, Longview, Marysville, Olympia, Puyallup, Renton, Seattle, Tacoma, Wenatchee, Yakima, Clark County, and Pierce County. Cruising can also be also a significant contributor to congestion problems and the resulting conflicts in Des Moines, particularly at Redondo.

The ordinances these cities and counties enacted generally follow the same form – set a process for designating areas where cruising is prohibited; define the offense as driving a motor vehicle past a set point a specified number of times in the same direction within a specific period of time; create exemptions for emergency vehicles, residents of the no cruising area, etc.; and set the penalty for violation.

There are basically three methods used by these jurisdictions for designating no cruising areas. In three of the ordinances, the council specifically named the area in the ordinance itself. In five of the ordinances, the council granted to itself the power to name no cruising areas by separate resolution. In eleven of the ordinances, the council delegated authority to the police chief, sheriff, or city manager the power to designate no cruising areas when certain specified conditions exist.

In ten of the cities and both counties, a driver will not be cited until they pass the enforcement point for a third time in the specified time period going the same direction. In the other six cities, the driver can be cited on the second pass. In fifteen of the eighteen jurisdictions, the relevant time period is two hours, with Covington set at one hour, Wenatchee at three hours, and Seattle at four. The offense is an infraction in ten of the jurisdictions and a misdemeanor in eight. In five of the misdemeanor jurisdictions, the offense appears to impose only a fine with no jail time.

At public comment at the July 10, 2025 regular City Council meeting, a community member reported that cruising was common at Redondo and that impacts on the neighborhood are severe. The community member recommended the Council adopt Draft Ordinance 25-065. After staff presentation and discussion of the draft ordinance, the Council passed the matter to the July 24, 2025 regular meeting calendar to be placed on the consent agenda.

### **Discussion**

Draft Ordinance 25-065 has been drafted using a similar formula to the ordinances adopted by other jurisdictions in the state, tailored to the needs of Des Moines. Should the Council determine that this anti-cruising ordinance is necessary to address the public safety, traffic, and environmental issues posed by cruising, the key elements of the draft ordinance are as follows:

The draft ordinance proposes to provide for designating no cruising areas using all three methods listed above. Areas that are known to be problem areas are specifically named in the ordinance, which will allow for enforcement upon the effective date of the ordinance and posting of signs – Redondo, Marine View Drive through downtown, and the Marina parking lots. If a new area becomes a problem and it appears that the issue will be chronic and ongoing, the Council may designate the new area for permanent designation through adoption of an ordinance or resolution as needed. If a new cruising area suddenly appears and needs to be immediately addressed for public safety, the Police Chief would be empowered to designate the area and post with temporary signs to address the issue.

In the proposed draft ordinance, a violation occurs when a driver passes a specified point chosen by DMPD two or more times in the same direction in a posted no cruising area within one hour. The short one-hour time period is an outlier among the surveyed jurisdictions, but Des Moines does not have the sometimes miles-long cruising strips as other cities like Yakima, Auburn, or Seattle. The areas used for cruising in Des Moines are short enough that cruising activity will become apparent pretty quickly. The short window will also help to prevent innocent drivers who have legitimate reasons for multiple passes through an area from being contacted by police. A resident of the area doing errands will likely not pass through multiple times in one hour, where they might in two or three. While the majority of jurisdictions surveyed in the state require a minimum of three passes to trigger a violation, they overwhelmingly opted to have a time period twice as long or more in which a violation to occur. By reducing the number of passes required, combined with the shorter time period in which the violation may occur, should not result in substantially more innocent conduct getting caught up in enforcement, but it will allow for DMPD to spend less time and labor to cite violators for bona fide cruising.

The penalty for cruising in the draft ordinance is a civil infraction rather than a criminal misdemeanor charge. Over half of the surveyed jurisdictions have found infractions sufficient for their purposes. The proposed penalty, including statutory assessments, can be up to \$553 dollars. Charging these offenses as an infraction allows any challenges to be adjudicated quickly, more efficiently, and with no cost to the City for public defense services. If this penalty proves not to have sufficient deterrent effect, the Council can reconsider imposing criminal penalties at a later date.

The draft ordinance also provides specific exceptions for categories of users likely to have legitimate alternative reasons for making multiple trips through an area that are not cruising: government vehicles, taxis and transit vehicles, emergency vehicles, vehicles driven by residents of the no cruising area, and vehicles driven for legitimate medical or commercial reasons.

An anti-cruising ordinance will be one more tool in DMPD's tool box to control traffic and disruptive behavior in the City, but it is not self-executing and not likely to be a complete solution. As with any other tool provided by Council, DMPD's ability to conduct enforcement of an anti-cruising ordinance will be constrained by available staffing and other public safety needs throughout the City at any given time. Enforcement of the ordinance will likely require that at least one (and likely more) officers remain at a set location for multiple hours, so there should not be an expectation that DMPD will be able to conduct enforcement on anything more than an occasional basis when circumstance allow. Federal Way

and Auburn report in response to City staff inquiry that few to no citations have been issued in their jurisdictions in the past few years.

**Alternatives**

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**

The City would be required to fabricate and install signs to warn drivers they entering a no-cruising area. Staff estimates that the cost of each sign would be approximately \$1,000.00. Prosecution of offenses under the draft ordinance would result in legal and court costs that cannot be reliably estimated, in addition to police costs, but may result in fine revenue in excess of those costs.

**Recommendation**

Staff recommends the Council enact the draft ordinance as presented.

**Prior Council History**

This item was introduced for consideration to the full City Council at the July 10, 2025 regular City Council meeting. Following a staff presentation, questions from the Council, and Council discussion, the Council voted 5-0 with one abstention to advance this item for a second reading on the July 24, 2025 regular meeting agenda.

**CITY COUNCIL'S FIRST DRAFT 07/14/2025**

**DRAFT ORDINANCE NO. 25-065**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** relating to public safety and traffic, defining and prescribing a penalty for vehicle cruising within the City, designating no cruising areas, creating exemptions, and enacting a new chapter in Title 10 DMMC entitled "Cruising".

**WHEREAS**, the City of Des Moines is a popular recreation destination for residents of Des Moines and nearby cities due to recreation opportunities and facilities near to and on the shores of Puget Sound, and

**WHEREAS**, this popularity can strain the limited access into and out of these areas during peak use that results from the City's unique geography, and

**WHEREAS**, certain areas of Des Moines, particularly Redondo, are prone to instances of "cruising", commonly understood to mean groups of people driving their automobiles over a particular stretch of roadway repeatedly and without any destination as social activity, and

**WHEREAS**, cruising has been found to be associated with public drug and alcohol abuse, assaults, and property damage, and

**WHEREAS**, the increased traffic causes congestion in areas where access is limited, delaying emergency response, residents from leaving or returning home, and customers from local businesses, and

**WHEREAS**, many of the areas where cruising commonly occurs are also directly adjacent to residential neighborhoods where peace and enjoyment of their private property is negatively impacted by excessive traffic, and

**WHEREAS**, part of the cruising culture is to attract attention to your vehicle, often through making excessive noise, and,

**WHEREAS**, police often have limited tools available to restrict the symptoms of cruising from impacting surrounding areas, and

**WHEREAS**, the City Council finds that enacting the provisions contained in this ordinance are necessary and proper

to protect public safety, welfare, and the environment; now therefore,

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

**Sec. 1. Definitions.**

(1) "Cruising" means the repeated passage of a motor vehicle on or across a public street or other City-owned property intended for motor vehicle traffic within the City.

(2) "No Cruising Area" means all or a portion of a street or other City-owned property intended for motor vehicle traffic designated as provided in section 2 of this ordinance and posted with "No Cruising" signs.

(3) "Traffic Control Point" means a point in a designated No Cruising Area, selected by the police department for the purpose of monitoring cruising.

**Sec. 2. Designation of no cruising area.**

(1) The City Council may by Ordinance or Resolution designate all or a portion of a street or other City-owned property intended for motor vehicle traffic a "No Cruising Area" when it finds the area to be susceptible to, or having a history of, traffic congestion; obstruction of streets; interference with the use of property or conduct of business in the area adjacent thereto; or that emergency vehicles cannot respond in that area within a reasonable period of time.

(2) The Chief of Police may designate all or a portion of a street or other City-owned property intended for motor vehicle traffic a "No Cruising Area" when they determine that traffic congestion has slowed average vehicle speed to less than one-half the posted speed limit; the congestion significantly interferes with passage of vehicles being driven to and from locations within the area; the congestion is likely to prevent or substantially delay emergency vehicles from responding to locations within the area, or from passing through the area; and the congestion is caused in whole or in substantial part by cruising.

(3) The City Council designates the following locations as "No Cruising Areas":

Ordinance No. \_\_\_\_  
Page 3 of 5

(a) Redondo Beach Drive South between South 280th Street and 1st Avenue South

(b) Marine View Drive South between South 216th Street and Kent-Des Moines Road

(c) Des Moines Marina parking lots

**Sec. 3. Cruising prohibited.**

No person shall drive or permit a motor vehicle under their care, custody, or control to be driven past a Traffic Control Point two or more times in the same direction of travel within a one-hour period in a posted No Cruising Area.

A violation of this section shall be a class 1 civil infraction.

**Sec. 4. Exemptions.**

This chapter shall not apply to:

(1) Any publicly owned vehicle of any city, county, public district, state, or federal agency.

(2) Any vehicle licensed for public transportation when in the course of business, including but not limited to buses and taxi cabs.

(3) Any in-service emergency vehicle.

(4) Any vehicle being driven by a resident of the No Cruising Area, or

(5) Any vehicle being driven within the No Cruising Area for necessary commercial or medical reasons.

**Sec. 5. Presumption.** It shall be presumed that the driver of a motor vehicle which passes a Traffic Control Point a second or subsequent time within one hour was the person who drove, or who had under his care, custody or control, the motor vehicle which passed the Traffic Control Point on the prior occasion(s) within the one-hour period.

Ordinance No. \_\_\_\_  
Page 4 of 5

**Sec. 6. Codification.** Sections 1 through 5 of this Ordinance shall be codified as a new chapter in Title 10 DMMC entitled "Cruising".

**Sec. 7. 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. 8. 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:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published:

Ordinance No. \_\_\_\_  
Page 5 of 5

Effective Date:

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Telecommunications Franchise Agreement with HyperFiber – 2<sup>nd</sup> Reading

FOR AGENDA OF: July 10, 2025

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: June 30, 2025

1. Draft Ordinance No. 25-038
2. Exhibit 1-A showing preliminary alignment for Fiber Optic installation

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Finance *MLB*
- Human Resources \_\_\_\_\_
- Legal */s/TG*
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works *APS*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *KC*

**Purpose and Recommendation**

The purpose of this agenda item is for the City Council to consider approval of a telecommunications Franchise Agreement with HyperFiber for the installation of fiber optic facilities in City right-of-way. A first reading of this draft ordinance was held on July 10, 2025. The following motion will appear on the Consent Calendar:

**Suggested Motion**

**Motion 1: “I move to adopt Draft Ordinance No. 25-038 approving a telecommunications Franchise Agreement with HyperFiber.”**

**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.

HyperFiber submitted a telecommunications franchise application in April of 2025 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 consistent with the 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. The term will extend another 10 years unless either party notifies the other in writing 180 days before the end of the Agreement.
2. **Relocation:** HyperFiber 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. HyperFiber 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 HyperFiber will indemnify the City for actions of the company or their agents. HyperFiber 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:** HyperFiber 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 HyperFiber 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 HyperFiber 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.
2. 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 conducted and any additional staffing time that is spent administering this Agreement can be billed to HyperFiber.

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

**Recommendation**

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

**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 HyperFiber, LLC d/b/a HyperFiber of Washington, 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**, HyperFiber, LLC d/b/a HyperFiber of Washington, LLC, a corporation organized and existing under the laws of the State of Missouri 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, HyperFiber, LLC, has represented to the City that it provides a telecommunications service business as defined herein, 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) "City Council" means the governing body of the City.

(5) "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.

(6) "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.

(7) "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.

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

(9) "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.

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

(11) "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.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "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.

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

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

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

(21) "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.

(22) "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.

(23) "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.

(24) "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.

(25) "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.

(26) "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.

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

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

(29) "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.

(30) "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

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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 defined in 47 U.S.C. § 522(6) or Open Video System services as defined in 47 U.S.C. § 573. 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) Unless either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise, this Franchise shall automatically renew on the tenth anniversary of the effective date for an additional ten (10) years, with the same terms and conditions as set forth in this Franchise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Whenever all existing telephone and electric utilities are located underground within public ways, the Grantee must also locate its facilities underground.

(iv) Whenever all new or existing telephone and electric utilities are located or relocated underground within public ways, the Grantee that currently occupies the same public ways shall concurrently relocate its Facilities underground at its own expense, except as otherwise provided in RCW Section 35.99.060.

(n) Display of right-of-way permit. The Grantee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or designee at all times when construction work is occurring.

(o) Construction schedule. The Grantee shall submit a written construction schedule to the City Manager or designee prior to commencing any work in or about the public ways in accordance with City regulations.

(p) Locator service compliance. The Grantee, before commencing any construction in the public ways, shall call for location in accordance with RCW 19.122.

(q) Placement. All facilities, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners. All facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as

are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way. Exact placement within the right-of-way shall be coordinated with the City and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The City reserves the reasonable right as to final placement.

(r) Completion of construction. The Grantee shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within public ways, including restoration, must be completed within 90 calendar days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

(s) Non-complying work. Upon order of the City Manager or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

(t) The City reserves the right to install, and permit to be installed, sewer, electric, phone, gas, water and other pipelines, cables, conduits and related appurtenances and to do, or permit to be done, any underground or overhead work in, across, along, over or under a public way or other public place occupied by Grantee. The City also reserves the right to construct new streets and public utilities and to alter the design of existing streets and public utilities. In performing such work, the City shall not be liable to Grantee for any damage, except in the event of the contributory negligence or willful misconduct of the City or its contractors, but nothing herein shall relieve any other person or entity from the responsibility for damages to Grantee's Facilities. The City will use its best efforts to provide Grantee with reasonable advance notice of plans by other persons to open the public ways.

**(3) Coordination of construction and installation activities.**

(a) Grantee shall coordinate its construction and installation activities and other work with the City and all other

users of the public ways, including utilities located within the franchise area.

(b) All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.

(c) At least forty-eight (48) hours prior to entering a public way to perform construction and installation activities or other work, Grantee shall give notice, at its cost, to owners and occupiers of property adjacent to such public ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger. Grantee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.

(d) The City shall give reasonable advance notice to Grantee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice, except in the event of the contributory negligence or willful misconduct of the City or its contractors. When such notice has been given, Grantee shall provide information requested by the City regarding Grantee's future plans for use of the public way to be opened. When notice has been given, Grantee may only construct or install facilities during such period that the City has opened the public way for construction or installation.

(4) **Relocation.** Grantee shall relocate its facilities as ordered by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060, when there is construction, alteration, repair or improvement of a public way. Grantee shall complete the relocation by the date specified by the City. Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change or relocation. Grantee shall relocate its facilities at its own expense except where the Grantee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Grantee's share of the cost of

relocation will be paid by the City if it requested the subsequent relocation or as otherwise provided in RCW Section 35.99.060.

**(5) Temporary removal, adjustment or alteration of facilities.**

(a) Grantee shall temporarily remove, adjust or alter the position of its facilities at its cost, except as otherwise provided in RCW Section 35.99.060, at the request of the City for public projects, events, or other public operations or purposes.

(b) Grantee shall locate the precise horizontal and vertical location of its underground facilities by excavating upon request of the City. If the City's request is in support of a City project, the Grantee shall complete this service within 14 days at no cost to the City, except as otherwise provided in RCW Section 35.99.060. If the City's request is in support of a third party's project, the Grantee shall be entitled to recover its cost from the project sponsor as set forth in RCW Section 35.99.060.

(c) If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Grantee for the temporary removal, adjustment or alteration of Grantee's facilities to accommodate the moving or removal of said building or other object. In such event, Grantee shall, at the cost of the person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:

(i) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Grantee's business, consistent with the maintenance of proper service to Grantee's customers;

(ii) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route

which causes the least interference with the operations of Grantee, in the sole discretion of the City;

(iii) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and save Grantee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence or willful misconduct of the person moving or removing such building or other object or the negligence or willful misconduct of the agents or employees of the person moving or removing such building or other object; and

(iv) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.

(d) The City may require Grantee to temporarily remove, adjust or alter the position of Grantee's facilities as the City may reasonably determine to be necessary at no cost to the City, except as otherwise provided in RCW Section 35.99.060, for work deemed needed by the City in the Rights-of-Way. The City shall not be liable to Grantee or any other party for any direct (except as a result of the negligence or willful misconduct of the City or its contractors), indirect, consequential, punitive, special or other damages suffered as a direct or indirect result of the City's actions.

(e) The temporary removal, adjustment or alteration of the position of Grantee's facilities shall not be considered relocation for any purpose whatsoever, except as otherwise provided in RCW Section 35.99.060.

(6) **Tree trimming.** The Grantee shall have the authority to trim trees or other natural growth on public property or which overhang streets, alleys, sidewalks and public ways of the City so as to prevent the branches of such trees from coming in contact with the Grantee's wires, cables or other equipment that may be damaged due to continued contact. Grantee takes full responsibility for removing debris when the work is complete. All

trimming is to be done at the sole expense and responsibility of Grantee.

Trimming of trees and shrubbery within or overhanging the public ways to prevent contact with Grantee's Facilities shall be done in such a manner to cause the minimum amount of damage to trees and shrubs. If in the City's determination, trees are excessively damaged as a result of the work undertaken by or on behalf of Grantee, Grantee shall pay the City, within 30 days of submission of a statement by the City, the reasonable cost of any treatment required to preserve a tree or shrub or the cost for removal and replacement of the tree or shrub with landscaping of equal value or the value of the tree or shrub prior to the damage or removal, as determined by the City Manager or designee.

Any trimming or removal of trees or shrubs shall be done in full compliance with the City's Ordinances and all other laws or regulations of the City.

**(7) Underground installation.**

(a) The parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities, provided such requirement is applied on a non-discriminatory basis as required under applicable state or federal law.

(b) Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Grantee shall underground the Grantee Facilities in the manner specified by the City Manager or designee at no expense or liability to the City, except as otherwise provided in RCW Section 35.99.060. Where other utilities are present and involved in the undergrounding project, Grantee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trench excavation, backfill, and restoration, and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

(c) Grantee will maintain membership in good standing with the Utility Coordinating Council One Call Center, or

other similar or successor organization designated to coordinate underground equipment locations and installations. Grantee shall abide by chapter 19.122 RCW (Washington State's "Underground Utilities" statutes) and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

(8) **Ducts and conduits.**

(a) If the Grantee is constructing underground conduit for its own use, the City may require the Grantee to construct excess conduit capacity in the public ways, provided that the City enters into a contract with the Grantee consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Grantee, (calculated as the difference between what the Grantee would have paid for the construction of its conduit and the additional cost only of construction of the excess conduit). If the City makes the additional conduit available to any other entity for the purposes of providing telecommunications service or cable service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the Grantee shall recover at least the fully allocated costs of the Grantee. The Grantee shall state both contract rates in the contract. The City shall inform the Grantee of the use, and any change in use, of the requested conduit and related access structures, if any, to determine the applicable rate to be paid by the City.

(b) The City shall not require that the additional conduit space be connected to the access structure and vaults of the Grantee.

(c) Except as expressly provided in this section, Grantee shall not charge the City for any costs, of any kind whatsoever, for facilities provided by Grantee in accordance with this section.

(d) The provisions of this section shall conform to the requirements of RCW 35.99.070.

(9) **Location of Grantee facilities.**

(a) From time to time, the City, or its representatives, may request identification of the specific location of Grantee System facilities. The Grantee agrees to respond to such request within forty-eight (48) hours of the receipt of the request, excluding delays due to weather or other conditions. In the event that Grantee cannot locate such information within forty-eight (48) hours, Grantee shall notify the City. If Grantee fails to notify the City of its facilities locations within forty eight (48) hours, and damage is caused to Grantee's facilities as a direct result, the Grantee shall hold the City harmless from all liability, damage, cost or expense resulting from the City's actions in this regard unless such damage was caused by the negligence or willful misconduct of the City or its agents.

(b) Report of underground facilities. From time to time the City may require to design or construct right-of-way improvements in a specific area, the City or its designee may require the Grantee to submit a report of existing underground system facilities for a specific area of the City that will be impacted as a result of a planned right-of-way improvement. Within thirty (30) days after receipt by the Grantee of a request from the City or its designee, the Grantee shall submit a report of underground system facilities that shall comply with the following provisions:

(i) Certification by an engineer licensed in the State of Washington employed by the Grantee that the report accurately depicts the location of all system facilities, including drop service lines to individual subscribers, if any. The accuracy of this report shall be noted based upon the capability of the locating equipment used.

(ii) The accurate depth of the underground facility, as may be available based upon the capability of the locating device used. The accuracy of this information shall be noted.

(iii) Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

(iv) The City and Grantee recognize the importance of making best efforts to communicate during the planning and construction phases of right-of-way improvement projects. To that end, the City and Grantee agree to work cooperatively and to be reasonable and timely in requesting and providing necessary information. In the event the City reasonably determines that more precise information is needed for a specific aspect of a right-of-way project, the Grantee agrees to take the necessary steps to provide such precise information within thirty (30) days of receipt of request. If it is necessary for the Grantee to pot-hole or excavate and restore portions of the right-of-way to respond to the City's information request, the Grantee agrees to take such steps at its expense, except as otherwise provided in RCW Section 35.99.060, and the City agrees to waive all permitting and inspection fees therefore.

(c) Within sixty (60) days of the effective date of this Franchise, Grantee shall provide the City with a current route map of the Telecommunication System located within the City. Upon City request, but no more often than once each year during the term of this Franchise, the Grantee shall provide the City with an updated route map showing the changes that have occurred in the Telecommunication System.

(d) Grantee agrees to obtain facilities location information from other users of the Public rights-of-way prior to Grantee's construction, reconstruction, maintenance, operations and repair of the Grantee's System facilities.

(10) **Removal and abandonment of facilities.** In the event that the use of any part of the Grantee's system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system equipment or facilities have been installed in any public ways or rights-of-way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired, upon receiving ten (10) business days prior written demand from the City, the Grantee shall promptly remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the public ways of rights-of-way. Said removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Grantee shall promptly restore the public ways

or rights-of-way from which such property has been removed to a condition satisfactory to the City. Any affected equipment or facilities of the Grantee remaining in place one-hundred eighty-one (181) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days with prior written request from the Grantee, and such request shall not be unreasonably withheld. Any equipment or facilities of the Grantee that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the equipment or facilities of the Grantee in place, the equipment or Facilities shall become that of the City, and the Grantee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such equipment or facilities. None of the foregoing affects or limits the Grantee's rights to compensation for an involuntary abandonment of its equipment or facilities under state or federal law.

(11) **Safety and maintenance requirements.**

(a) All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner.

(b) Grantee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Grantee, establish a reasonable time for Grantee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself at the cost of the Grantee or have them made at the cost of Grantee.

(c) If Grantee fails to commence, pursue or complete any work required by law, this Franchise or any applicable permit to be done in any public way within the time prescribed and

to the satisfaction of the City, the City may at its discretion cause the work to be done. Grantee shall pay to the City the reasonable costs of the work in an itemized report provided by the City to Grantee within 30 days after receipt of such report.

(d) Grantee, and any person acting on its behalf, shall provide a traffic control plan that conforms to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property. Grantee shall implement and comply with its approved traffic control plan during execution of its work. The traffic control plan shall be developed and kept on site in Grantee's possession for all work impacting vehicular and pedestrian traffic. Traffic control plans may be modified as necessary by the Grantee to achieve effective and safe traffic control. All road closures requested by Grantee require a detour plan submitted at least 48 hours in advance and prior City approval unless there is an emergency.

(e) Grantee shall maintain its facilities in proper working order. Grantee shall restore its facilities to proper working order upon receipt of notice from the City that facilities are not in proper working order. The City may, after discussions with Grantee, establish a reasonable time for Grantee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established time frame, the City may restore the facilities to proper working order or have them restored at the cost of Grantee.

(f) The City shall have the right to inspect all construction and installation work performed by Grantee pursuant to this Franchise to the extent necessary to ensure compliance by Grantee. On an ongoing basis, Grantee shall certify to the City that Grantee's work is being performed and completed in a satisfactory manner.

(g) On notice from the City that any work is being performed contrary to the provisions herein, or in an unsafe or dangerous manner or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the City may

issue a stop work order and Grantee shall stop the work immediately. The City shall issue a stop work order in writing, unless given verbally in the case of an emergency, and provide the order to the individual doing work or post it on the work site. A copy of the order shall be sent to Grantee, and the order must indicate the nature of the alleged violation or unsafe condition and the conditions under which Grantee may resume work.

(12) **Removal of unauthorized facilities.** Within thirty (30) days following written notice from the City, Grantee shall, at its expense, remove unauthorized facilities and restore public rights-of-way and other property to as good a condition as existed prior to construction or installation of its facilities. Any plan for removal of said facilities must be approved by the City prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

(a) Upon expiration, termination, or cancellation of this Franchise;

(b) Upon abandonment of the facilities. Facilities shall be deemed abandoned if they are unused by Grantee as described in Section 5(10);

(c) If the facilities were constructed or installed prior to the effective date of this Franchise; unless such facilities were constructed or installed upon the condition of subsequent approval of this Franchise with the consent of the City;

(d) If the facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits;

(e) If the facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Franchise; or

(f) If the facilities are unauthorized for any reason whatsoever.

(13) **Restoration of public ways and other property.**

(a) Whenever necessary, after construction or maintaining any of Grantee's Facilities within the Rights-of-Way, the Grantee shall, without delay, and at Grantee's sole expense, except as otherwise provided in RCW Section 35.99.060, remove all debris and restore the surface and subsurface disturbed by Grantee as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during Grantee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable. Grantee agrees to pay all costs and expenditures required on the rights-of-way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Grantee for necessary trench patch maintenance, for a period of ten years from the date such maintenance was performed, normal wear and tear excepted. Favorable weather conditions permitting, Grantee agrees to repair rights-of-way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by the Grantee upon forty-eight (48) hours' notice excluding weekends and holidays. If Grantee fails to undertake such repairs as herein provided, the City may perform the repairs at Grantee's expense.

(b) Landscape restoration. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of the Grantee's facilities, shall be replaced or restored, at the Grantee's expense to the condition existing prior to performance of the work, except as otherwise provided in RCW Section 35.99.06.

(14) **Poles, structures, and property owned by others.** If and when the Grantee is authorized to install communication facilities aerially in accordance with chapter 12.48 of the Des Moines Municipal Code (DMMC), Grantee must obtain written approval from the owners of utility poles, structures and property not owned by Grantee prior to attaching to or otherwise using such poles, structures or property, and provide proof of such approval to the City. The City makes no representation and assumes no responsibility for the availability of utility poles, structures, and property owned by third parties for the installation of

Grantee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by the City or third parties for any reason whatsoever. The installation of facilities by Grantee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, the authority of Grantee to construct, install, operate, maintain, and repair Grantee's facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

**Sec. 6. Indemnification and liability and assumption of risk.**

(1) Indemnification / Hold Harmless. The Grantee shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with activities or operations performed by the Grantee or on the Grantee's behalf under this Franchise agreement, except for injuries and damages caused by the contributory negligence or willful misconduct of the City.

(2) The City shall give the Grantee written notice of any claim or of the commencement of any action, suit or other proceeding covered by this section. If a claim or action arises, the City or any other indemnified party shall then tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. However, the failure of the City to provide such notice in writing to Grantee shall not relieve Grantee of its duties and obligations under this Section, provided that Grantee is given sufficient advance notice to perform its duties under this Section. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

(3) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

(4) **Damages and penalties.** By acceptance of this Franchise, Grantee specifically agrees that it will pay, all damages or penalties which the City, its officers, agents, employees, or contractors may legally be required to pay as a result of damages arising out of copyright infringements and all other damages arising out of Grantee's or Grantee's agents' installation, maintenance, or operation of the telecommunications System, except as specifically referenced elsewhere in this Franchise.

(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 Twenty-Five Thousand Dollars (\$25,000) 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) Transactions between affiliated entities and transactions involving a purchaser of all or substantially all of Grantee's assets 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. City approval shall not be required for mortgaging purposes or if said transfer is from Grantee to another person controlled by Grantee.

(6) All terms and conditions of this Franchise shall be binding upon all permitted successors and assigns of Grantee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

**Sec. 16. Violations, noncompliance, and other grounds for termination or cancellation.**

(1) This Franchise, and any right, privilege or authority of Grantee to enter, occupy or use public ways may be terminated or cancelled by the City for the following reasons:

(a) Violation of or noncompliance with any term or condition of this Franchise by Grantee;

(b) Violation of or noncompliance with the material terms of any use and/or development authorization or required permit by Grantee;

(c) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Grantee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;

(d) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;

(e) Misrepresentation or lack of candor by or on behalf of Grantee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Grantee;

(f) Abandonment of facilities;

(g) Failure of Grantee to pay taxes, fees, charges or costs when and as due, unless subject to a proper and timely legal protest; or

(h) Insolvency or bankruptcy of Grantee.

(2) In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Grantee to enter, occupy or use public ways, Grantee shall be given written notice and a reasonable period of time not exceeding thirty (30) days to furnish evidence:

(a) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;

(b) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or

(c) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.

(3) In the event that Grantee fails to provide evidence reasonably satisfactory to the City as provided in subsection (2) of this section, the City shall refer the apparent violation, noncompliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

(4) If the City Council determines that the violation, noncompliance, or other grounds above for termination or cancellation exist, then, Grantee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the foregoing and without any prejudice to any of its other legal rights and remedies, to pursue other remedies,

including obtaining an order compelling Grantee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Grantee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Grantee:

- (a) Whether the misconduct was egregious;
- (b) Whether substantial harm resulted;
- (c) Whether the violation was intentional;
- (d) Whether there is a history of prior violations of the same or other requirements;
- (e) Whether there is a history of overall compliance; and
- (f) Whether the violation was voluntarily disclosed, admitted or cured.

(5) The City Council's choice of remedy shall not excuse Grantee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit. Grantee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for termination or cancellation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, or the Grantee may have at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Grantee.

**Sec. 17. Notices.**

(1) Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY:

City Manager  
City of Des Moines

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21630 11<sup>th</sup> Ave. S., Ave A  
Des Moines, WA 98198

GRANTEE:

Attn: Lance van der Spuy, President  
6000 Fairview Rd., Suite 300, Charlotte, NC 28210,

with a copy (except for invoices) to:

Joshua Runyan, Esq.,  
822 Montgomery Ave., Suite 210, Narberth, PA 19072

(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.

(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

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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:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published:

DRAFT Ordinance No.  
Page 51 of 51

**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: \_\_\_\_\_

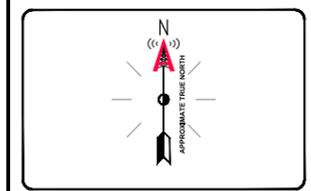
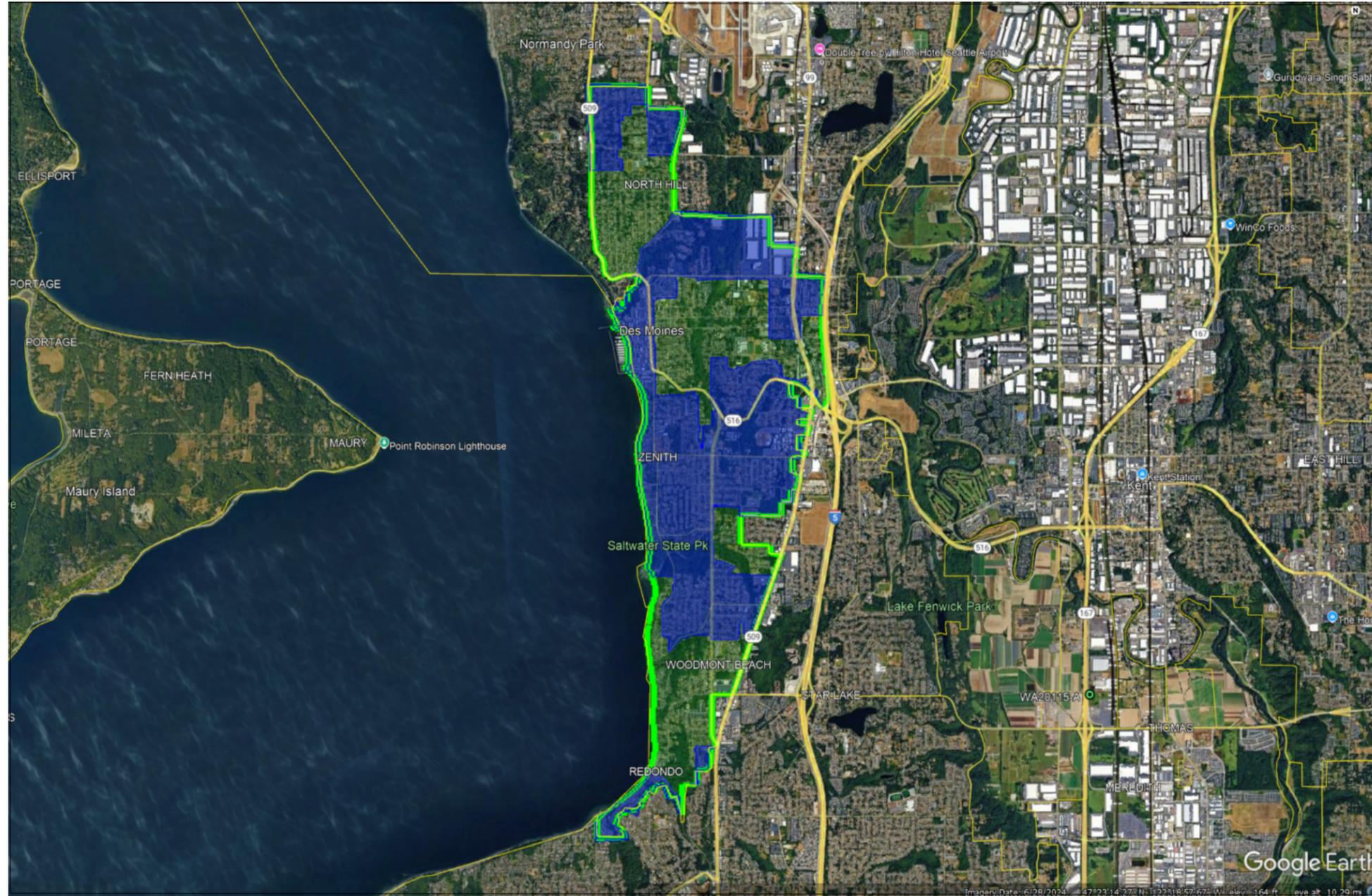
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

— City Limit  
— Project Area

Attachment #2



ENGINEERING FIRM:

OWNER / CLIENT:

**HyperFiber**

400 Chesterfield Center  
Chesterfield, MO 63017

REVISIONS:

REV	DATE	DESCRIPTION

PROJECT INFO:

**DES MOINES  
AREA MAP**

**KING COUNTY  
WASHINGTON**

SCALE IS FOR REFERENCE PURPOSES ONLY. THE CABLE CONTRACTOR IS RESPONSIBLE FOR CONTACTING THE APPROPRIATE PERMITTING MUNICIPALITY PRIOR TO BEGINNING CONSTRUCTION, IN ORDER TO VERIFY THAT THE CABLE IS BEING PLACED WITHIN THEIR RIGHT-OF-WAY.

DRAWN BY:

APPROVED BY:

SHEET TITLE:

**PROPOSED PROJECT AREA MAP**

DWG NAME:

Des\_Moines\_Proposed\_Area\_Map\_v1\_20250317.dwg

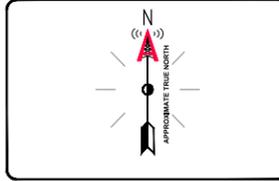
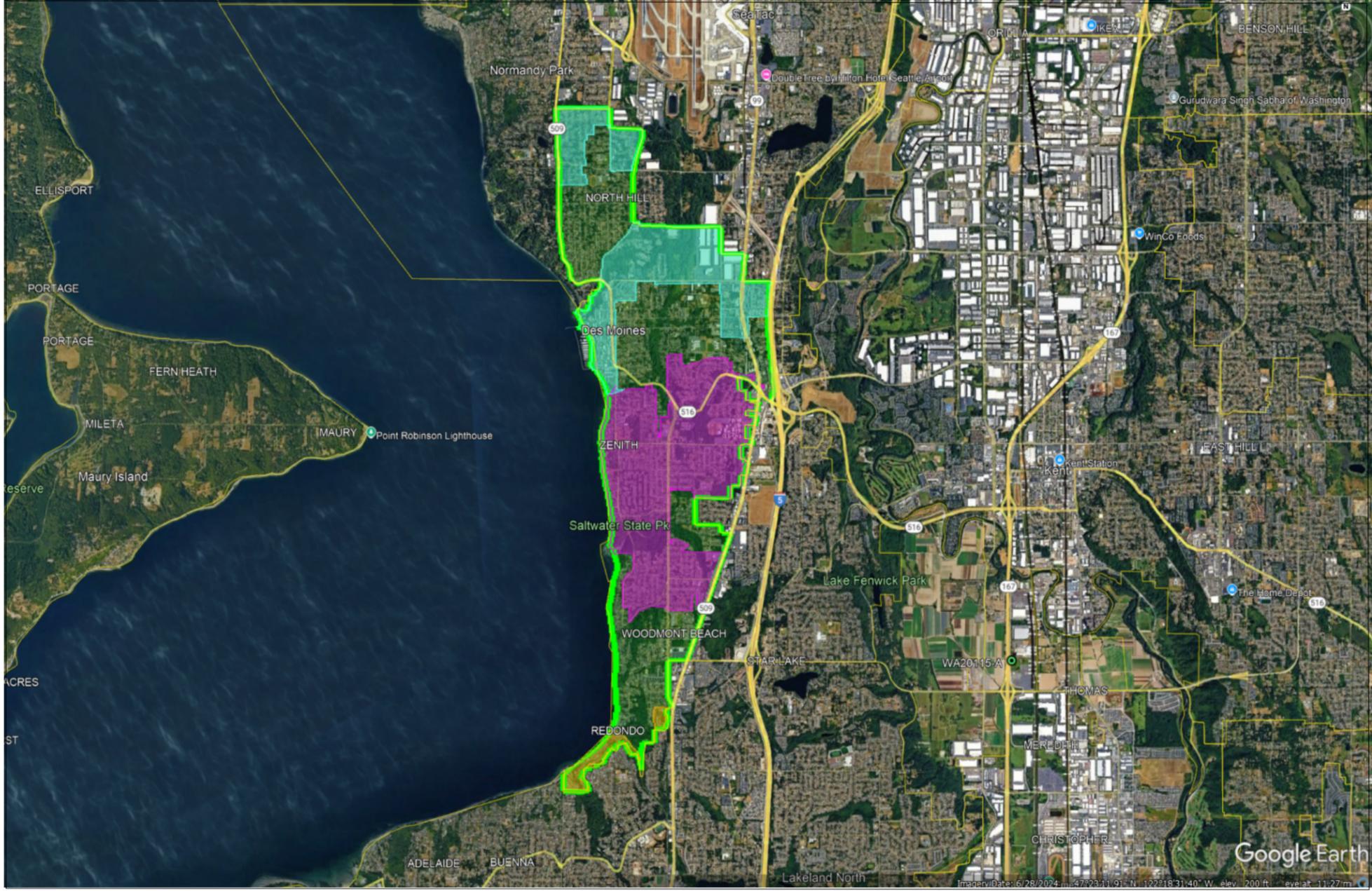
SCALE: NOT TO SCALE      SHEET #: C0

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	City Limit		Project Area 2
	Project Area 1		Project Area 3



ENGINEERING FIRM:

OWNER / CLIENT:

**HyperFiber**

400 Chesterfield Center  
Chesterfield, MO 63017

REVISIONS:

REV	DATE	DESCRIPTION

PROJECT INFO:

**DES MOINES  
AREA MAP**

**KING COUNTRY  
WASHINGTON**

SCALE IS FOR REFERENCE PURPOSES ONLY. THE CABLE CONTRACTOR IS RESPONSIBLE FOR CONTACTING THE APPROPRIATE PERMITTING MUNICIPALITY PRIOR TO BEGINNING CONSTRUCTION, IN ORDER TO VERIFY THAT THE CABLE IS BEING PLACED WITHIN THEIR RIGHT-OF-WAY.

DRAWN BY:

APPROVED BY:

SHEET TITLE:

**PROPOSED BUILD ORDER MAP**

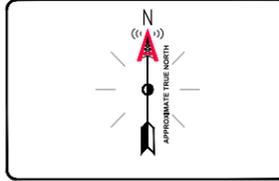
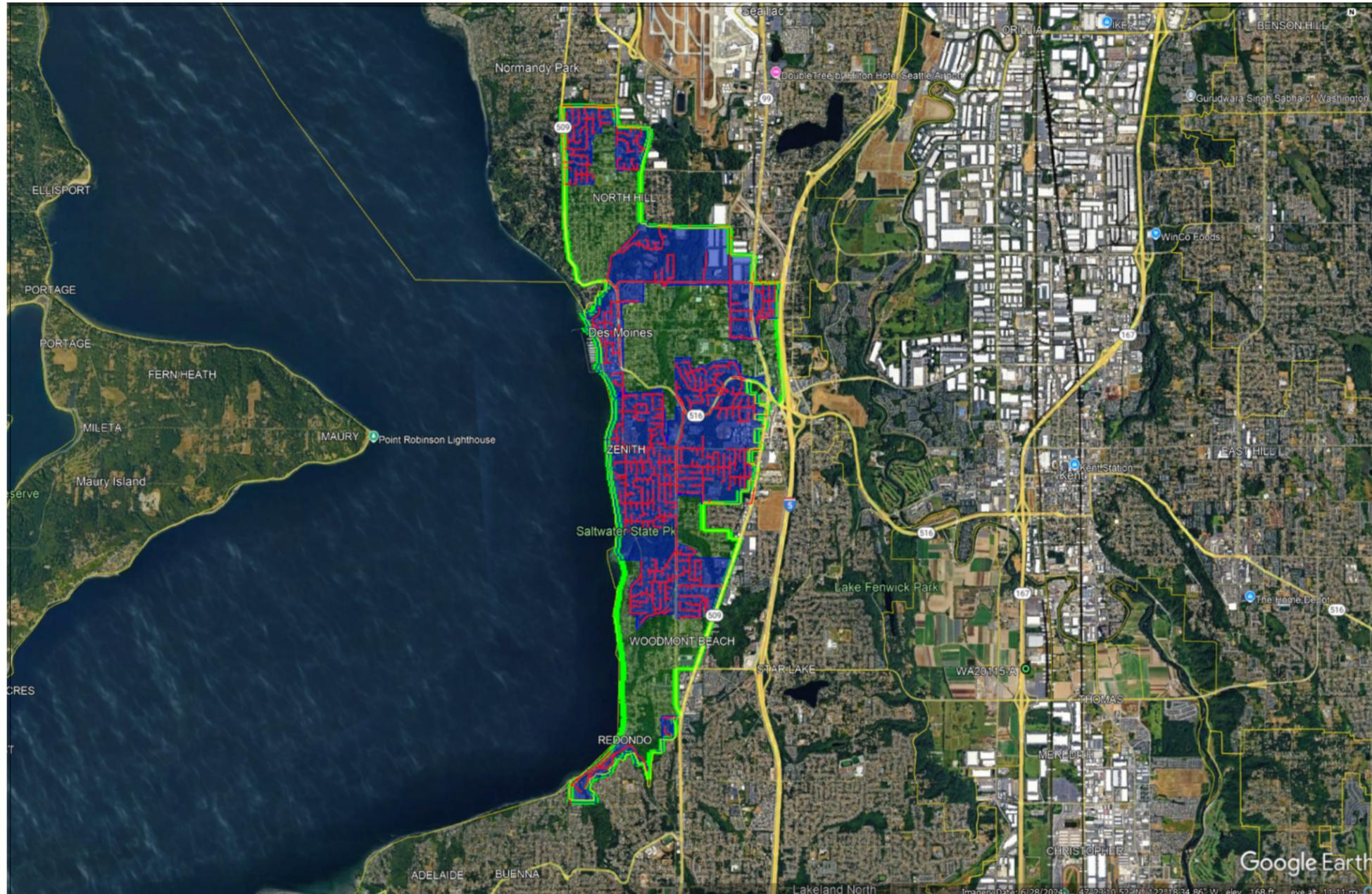
DWG NAME:  
Des\_Moines\_Proposed\_Area\_Map\_v1\_20250317.dwg

SCALE: <b>NOT TO SCALE</b>	SHEET #: <b>C1</b>
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- City Limit
- Project Area
- Proposed Routes



ENGINEERING FIRM:

OWNER / CLIENT:

**HyperFiber H**

400 Chesterfield Center  
Chesterfield, MO 63017

REVISIONS:

REV	DATE	DESCRIPTION

PROJECT INFO:

**DES MOINES  
AREA MAP**

**KING COUNTRY  
WASHINGTON**

SCALE IS FOR REFERENCE PURPOSES ONLY. THE CABLE CONTRACTOR IS RESPONSIBLE FOR CONTACTING THE APPROPRIATE PERMITTING MUNICIPALITY PRIOR TO BEGINNING CONSTRUCTION, IN ORDER TO VERIFY THAT THE CABLE IS BEING PLACED WITHIN THEIR RIGHT-OF-WAY.

DRAWN BY:

APPROVED BY:

SHEET TITLE:

**PROPOSED ROUTES**

DWG NAME:  
Des\_Moines\_Proposed\_Area\_Map\_v1\_20250317.dwg

SCALE: <b>NOT TO SCALE</b>	SHEET #: <b>C2</b>
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**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: 2025 DOE Local Solid Waste  
Financial Assistance Agreement

FOR AGENDA OF: July 24, 2025

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: July 15, 2025

ATTACHMENTS:

1. Washington State Department of Ecology  
Solid Waste Management Local Solid  
Waste Financial Assistance Agreement  
(LSWFA) 2025-2027 Agreement No.  
SWMLSWFA-2025-DeMDSD-00320

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 Council, enabling it to take action on the acceptance of a grant partially funding the City's Recycling Program for the service period of 2025-2027.

**Suggested Motion**

**Motion:** "I move to authorize the City Manager to sign the 2025-2027 Local Solid Waste Financial Assistance Grant agreement between the City of Des Moines and the Washington State Department of Ecology, substantially in the form as attached."

**Background**

Staff is requesting Council to authorize acceptance of one of three grants for the City’s recycling program. The grant is the 2025-2027 Washington State Department of Ecology’s Solid Waste Management Local Solid Waste Financial Assistance Agreement (LSWFA) (Attachment 1).

The subject grant will partially fund the City’s semi-annual Household Waste Collection and Recycling Events for 2025-2027.

**Discussion**

The City uses grant funds to sponsor recycling and collection events for Des Moines residents and promotes recycling or the use of recycled-content products. For the 2025-2027 Recycling Program, the City will sponsor two residential recycling collection events per year (i.e. the Fall and Spring events).

This agenda item seeks City Council approval of the LSWFA grant contract for 2025-2027 (retroactive to July 1, 2025 through June 30, 2027). The LSWFA grant will allocate a state grant share of \$13,707.09 to the City of Des Moines recycling program for household recycling events for the 2025-2027 timeframe.

If the City Council accepts the LSWFA grant for 2025-2027, 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.

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 will be able to recycle items including tires, lead acid and alkaline batteries, cardboard, propane tanks, appliances and scrap metal, bulky wood, electronic equipment, mattresses and box springs, and reusable household items. Additional 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 2025-2027 Agreement No. SWMLSWFA-2025-DeMDSD-00320 between the City of Des Moines and the Washington State Department of Ecology.
2. The City Council may decline the 2025-2027 Agreement No. SWMLSWFA-2025-DeMDSD-00320 between the City of Des Moines and the Washington State Department of Ecology and forego LSWFA grant funds.

**Financial Impact**

If the City Council accepts the LSWFA grant, there will be no fiscal impact to the City related to Contract Number SWMLSWFA-2025-DeMDSD-000320. However, if the City Council does not accept the LSWFA grant, then the City will need to use General Fund monies to maintain the City’s recycling program. The required matching funds for this grant are provided by the two other grants used to fund the recycling program: King County Health Department Local Hazardous Waste Management Program (LHWMP) Grant and the King County Solid Waste Division Waste Reduction and Recycling (WRR) Grant.

**Recommendation**

Staff recommends that the City Council accept the 2025-2027 Washington State Department of Ecology LSWFA Grant.



**Agreement No. SWMLSWFA-2025-DeMDS-00320**

**SOLID WASTE MANAGEMENT LOCAL SOLID WASTE FINANCIAL ASSISTANCE AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY**

**AND**

**CITY OF DES MOINES**

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and CITY OF DES MOINES, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

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**GENERAL INFORMATION**

Project Title:	P&I City of Des Moines
Total Cost:	\$96,560.36
Total Eligible Cost:	\$54,828.37
Ecology Share:	\$41,121.28
Recipient Share:	\$13,707.09
The Effective Date of this Agreement is:	07/01/2025
The Expiration Date of this Agreement is no later than:	06/30/2027
Project Type:	Planning & Implementation

Project Short Description:

The City of Des Moines will spend \$54,828.37 to support approximately 4 residential recycling collection events. This will help responsibly manage an estimated 3,000 pounds of household hazardous waste, 12,000 pounds of organics, and 98,000 pounds of recyclables.

Project Long Description:

See the Scope of Work section for more detailed information related to individual Tasks.

Overall Goal:

Provide regional solutions and intergovernmental cooperation; prevent or minimize environmental contamination through planning and project implementation; and comply with state and local solid and hazardous waste management plans and laws.

Agreement No: SWMLSWFA-2025-DeMDSD-00320

Project Title: P&I City of Des Moines

Recipient Name: CITY OF DES MOINES

**RECIPIENT INFORMATION**

Organization Name: CITY OF DES MOINES

Federal Tax ID: 91-6016496

UEI Number: NY7AZ9H2VK25

Mailing Address: 21630 11th Ave S, Ste D  
Des Moines, WA 98198-6398

Physical Address: 21630 11th Ave S, Ste D  
Des Moines, Washington 98198-6398

Organization Fax: (206) 870-6544

**Contacts**

Agreement No: SWMLSWFA-2025-DeMDSD-00320

Project Title: P&I City of Des Moines

Recipient Name: CITY OF DES MOINES

<b>Project Manager</b>	Laura Techico Planning & Development Services Manager  21630 11th Avenue South Suite D Des Moines, Washington 98198 Email: ltechico@desmoineswa.gov Phone: (206) 870-6595
<b>Billing Contact</b>	Paul Devine General Manager  4715 SW WALKER ST Seattle, Washington 98116 Email: pauldevine@msn.com Phone: (206) 938-8262
<b>Authorized Signatory</b>	Laura Techico Planning & Development Services Manager  21630 11th Avenue South Suite D Des Moines, Washington 98198 Email: ltechico@desmoineswa.gov Phone: (206) 870-6595

State of Washington Department of Ecology  
Agreement No: SWMLSWFA-2025-DeMDSD-00320  
Project Title: P&I City of Des Moines  
Recipient Name: CITY OF DES MOINES

**ECOLOGY INFORMATION**

Mailing Address: Department of Ecology  
Solid Waste Management  
PO BOX 47600  
Olympia, WA 98504-7600

Physical Address: Solid Waste Management  
300 Desmond Drive SE  
Lacey, WA 98503

**Contacts**

<b>Project Manager</b>	Audrey Taber  PO Box 330316 Shoreline, Washington 98133-9716 Email: atab461@ecy.wa.gov Phone: (425) 414-5267
<b>Financial Manager</b>	Audrey Taber  PO Box 330316 Shoreline, Washington 98133-9716 Email: atab461@ecy.wa.gov Phone: (425) 414-5267



Agreement No: SWMLSWFA-2025-DeMDS-00320

Project Title: P&I City of Des Moines

Recipient Name: CITY OF DES MOINES

Katherine Caffrey

---

City Manager

Date

## SCOPE OF WORK

Task Number: 1 **Task Cost: \$54,828.37**

Task Title: Recycling Operations

### Task Description:

RECIPIENT will host approximately 4 residential recycling collection events. Organics, household hazardous waste (HHW), and other large or hard-to-recycle items will be collected along with 'usual' recyclables at a convenient location. Educational materials, which describe how to compost, reduce waste, and recycle more using City-sponsored or private sector recycling programs, will also be distributed. Residents attending the event may participate in a composting demonstration to receive a subsidized compost bin.

See first Special Term and Condition in this agreement related to recycling/collection events.

### Work to be performed:

- Organize, stage, and staff the event, including scheduling and paying vendors.
- Advertisement of the event.
- Distribution of the outreach materials at the event.
- Responsible recycling, reusing, or disposing (such as for some hazardous waste) of the collected materials.
- Compost demonstration (RECIPIENT will credit the sales revenue back to the grant).
- Calculating and reporting outcomes of each event to ECOLOGY.

### Who will perform it:

- A contractor, in conjunction with any vendors hired or utilized by said contractor for final management of materials.
- RECIPIENT employee intends to be minimally involved, performing basic oversight.

Contractor costs are not reimbursable before Ecology grant managers review an executed copy of the contract. Ecology grant managers must review the contract, email the documentation to the recipient, and upload the email communication in EAGL:

- Date the contract was provided for Ecology review
- Contract period of performance
- Compensation (time/materials or deliverables)
- Contracted work eligible for reimbursement
- Description of the supporting documentation the recipient is required to submit for eligible costs approval

RECIPIENT may contract for assistance with this task. Reimbursement for costs incurred by contractors to perform work identified in this task are subject to the same eligibility and reimbursement requirements as the RECIPIENT and require ECOLOGY approval.

Costs, product and or materials covered by existing product stewardship organizations such as E-Cycle Washington, LightRecycle Washington, Call2Recycle, and PaintCare or by new product stewardship organizations that are fully implemented during this agreement period are not reimbursable by this grant program.

RECIPIENT expects to produce and or distribute materials and must coordinate with the Ecology grant manager prior to

State of Washington Department of Ecology  
Agreement No: SWMLSWFA-2025-DeMDS-00320  
Project Title: P&I City of Des Moines  
Recipient Name: CITY OF DES MOINES

incurring costs.

**Task Goal Statement:**

The goal of this task is to decrease resource use and pollution by recycling or responsibly managing discards by holding collection events in a convenient location.

**Task Expected Outcome:**

RECIPIENT anticipates the task budget will cover a portion of the total costs for the residential recycling events. RECIPIENT must track the total costs and total outcomes of the events. RECIPIENT must report only the outcomes achieved with LSWFA by calculating what percent of the task budget was used to pay for the costs to implement the task and then multiplying that percent by the total outcomes.

With the task budget, RECIPIENT estimates,

- 3,000 pounds of HHW collected and managed
- 12,000 pounds of organics collected
- 98,000 pounds of material collected for recycling

**Recipient Task Coordinator:** Paul Devine

**Recycling Operations**

**Deliverables**

<b>Number</b>	<b>Description</b>	<b>Due Date</b>
1.1	Task Expected Outcomes are the deliverables and achieved incrementally throughout the biennium.	



**Funding Distribution Summary**

**Recipient / Ecology Share**

<b>Funding Distribution Name</b>	<b>Recipient Match %</b>	<b>Recipient Share</b>	<b>Ecology Share</b>	<b>Total</b>
City of Des Moines	25.00 %	\$ 13,707.09	\$ 41,121.28	\$ 54,828.37
<b>Total</b>		<b>\$ 13,707.09</b>	<b>\$ 41,121.28</b>	<b>\$ 54,828.37</b>

**AGREEMENT SPECIFIC TERMS AND CONDITIONS**

N/A

**SPECIAL TERMS AND CONDITIONS**

If the scope of this Agreement includes recycling activity managed or performed by the RECIPIENT at a recycling center (such as a transfer station or drop box location) or other locations, ECOLOGY will not reimburse disposal costs for materials collected or advertised as collected for recycling/reuse or marketed for recycling/reuse under this Agreement, unless approved in writing by ECOLOGY. RECIPIENT must immediately notify ECOLOGY when the RECIPIENT becomes aware that disposal of materials occurred or may occur due to the market conditions for recycled/reused materials. ECOLOGY may deny new costs or require repayment of costs already reimbursed or remove the task from the Agreement or terminate the Agreement.

ECOLOGY’s Solid Waste Management (SWM) program will implement a reporting assessment for all RECIPIENTs of grants administered through the SWM program. The assessment determines the RECIPIENT reporting level required throughout the biennium. If RECIPIENT administrative performance or changes in project circumstances trigger a reassessment, RECIPIENT will be notified of any changes to administrative requirements.

RECIPIENT shall update the Spending Plan and Outcomes Data Collection form at least quarterly. The Spending Plan and Outcomes Data Collection form must be completed concurrent with the submittal of each payment Request/Progress Report. RECIPIENT shall report outcomes in a manner consistent with instructions in the Local Solid Waste Financial Assistance guidelines.

RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial (including payment requests), performance, and other reports required by this Agreement. ECOLOGY shall have the right to deny reimbursement of payment requests received after this date.

**GENERAL FEDERAL CONDITIONS**

**If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.**

**A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY**

**EXCLUSION:**

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1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

**B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:**

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$30,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required Unique Entity Identifier in [www.sam.gov](http://www.sam.gov) <http://www.sam.gov> within 30 days of agreement signature. The FFATA information will be available to the public at [www.usaspending.gov](http://www.usaspending.gov) <http://www.usaspending.gov>.

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For more details on FFATA requirements, see [www.fsr.gov](http://www.fsr.gov) <<http://www.fsr.gov>>.

**C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:**

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <<https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM) <<https://sam.gov/SAM>> exclusion list.

## GENERAL TERMS AND CONDITIONS

### Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

#### GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

07/01/2023 Version

#### 1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/2301002.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

#### 2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

#### 3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

#### 4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
    - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- \* For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
  - Make the IDP readily available to anyone working at the project site.
  - Discuss the IDP with staff, volunteers, and contractors working at the project site.
  - Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

#### 5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

#### 6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

#### 7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email [PayeeRegistration@ofm.wa.gov](mailto:PayeeRegistration@ofm.wa.gov).
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

#### 8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

#### 9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

#### 10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

#### 11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

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The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

## 12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

## 13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

## 14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

## 15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

#### 16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

#### 17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

#### 18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

#### 19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

#### 20. PROGRESS REPORTING

Template Version 12/10/2020

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- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

## 21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
  - 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
  - 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

## 22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
  - b) Be kept in a common file to facilitate audits and inspections.
  - c) Clearly indicate total receipts and expenditures related to this Agreement.
  - d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.
- RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

## 23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

## 24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

## 25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

## 26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

## 27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing, <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

## 28. TERMINATION

### a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Failure to Commence Work.** ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

**Non-Performance.** The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

### b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**Non-Allocation of Funds.** ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

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Project Title: P&I City of Des Moines  
Recipient Name: CITY OF DES MOINES

event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Citizen’s Advisory Board Ordinance

FOR AGENDA OF: July 24, 2025

ATTACHMENTS:

- 1. Draft Ordinance 25-062

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: July 14, 2025

CLEARANCES:

- City Clerk *JK*
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal /s/TG
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *pc*

**Purpose and Recommendation**

The purpose of this agenda item is for Council to consider Draft Ordinance 25-062 which would create the newly structured Citizen’s Advisory Board.

**Suggested Motion**

**Motion:** “I move to pass Draft Ordinance No. 25-062 to a second reading on September 11, 2025”

### **Background**

There are currently 7 appointive committees in the City, not including the newly created Airport Committee and a proposed Planning Commission.

At the March 6, 2025 study session, given the large number of appointive committees, lack of discussion topics/meetings, and limited staff resources, staff recommended combining the Arts Commission, Human Services Advisory Board, and the Senior Services Advisory Committee into a single board. Council provided feedback that they would like staff to gather input from current members of those committees and come up with other options.

At the May 8, 2025 study session the Council was presented with two other options for merging committees. Option A expanded the Citizen's Advisory Committee ("CAC") by creating Arts, Human Services, and Senior Services subcommittees within the CAC. Option B maintained the CAC, but added a Human Services subcommittee, and created a new committee titled Community Events and Services Committee which would address senior services, the arts, and parks and recreation. At that meeting the Council opted for Option A creating an expanded CAC.

At the May 22, 2025 Council meeting the Council discussed how they would like this new, expanded CAC to be structured. After being presented with staff recommended options, the Council decided to allow anyone currently sitting on the listed committees to be given priority to apply for the new CAC and that anyone of those members who applied would be granted a seat. Thus the new CAC would have 12 neighborhood seats and an unspecified number of At-Large seats.

The CAC met on May 28, 2025 to discuss this new structure approved by Council and voted to change the name of the committee to the Citizen's Advisory Board ("CAB"). At the June 25<sup>th</sup> CAB meeting, the members voted for a 3 person minimum and 9 person maximum for subcommittee members, and that they would prefer reports to City Council be made by a member of the CAB rather than an attending Council member. On June 26, 2025 the Council appointed the new members of the CAB.

### **Discussion**

Draft Ordinance 25-062 updates the City Code to reflect the creation of this new, expanded CAB and repeals the current code Chapters creating the Arts Commission, the Human Services Advisory Board, and the Senior Services Advisory Committee and creates subcommittees for these former committees within the CAB Ordinance by changing the language regarding composition and terms.

The proposed changes are:

1. Change the name of the committee by changing the word "Committee" to "Board" as requested by the members of the CAB.
2. Folds the Arts Commission, the Human Services Advisory Board, and the Senior Services Advisory Committee into the CAB as subcommittees and provide for a minimum and maximum number of subcommittee members. Staff concurs with the minimums and maximums voted on by the CAB members because 3 to 9 per subcommittee would be an appropriate number of subcommittee members to maintain efficiency while also accomplishing the goals/duties of the subcommittees.
3. Eliminate alternate neighborhood seats and set the maximum number of at large seats at eleven. This number will accommodate all of the current applicants that either did not wish to represent a neighborhood or who were placed in At-Large seats due to their neighborhood seat already being

filled. Staff feels that allowing more than 11 at large members would decrease the effectiveness and efficiency of the Board.

4. Set term limits at 4 years but with staggered 2 and 4 years terms initially. Staff recommend staggering the initial terms so that not all members of the CAB will need to be replaced every 4 years, reducing the impact to staff and ensuring continuity within the Board.
5. Amend this section to add the duties of the subcommittees. Further, staff is recommending to add language that the CAB will receive reports from the subcommittees and decide what information is relayed to Council which will create a clear chain of reporting from the subcommittees to the Council.

#### **Alternatives**

Council may:

1. Pass the Draft Ordinance to a second reading.
2. Do not pass the Draft Ordinance.

#### **Financial Impact**

Staff does not anticipate any financial impact.

#### **Recommendation**

Staff recommends the Council pass the Draft Ordinance to a second reading on September 11, 2025.

**CITY ATTORNEY'S FIRST DRAFT 07/14/2025**

**DRAFT ORDINANCE NO. 25-062**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** relating to the Citizens Advisory Committee, reorganizing the senior services, human services, and art committees as subcommittees of the newly renamed Citizens Advisory Board; amending and adding a new section to DMMC chapter 4.60; and repealing DMMC chapters 4.44, 4.48, and 4.56.

**WHEREAS**, there are currently seven appointive committees in the City with two additional committees slated to be created this year, and

**WHEREAS**, each appointive committee requires two City staff to attend, create agendas, and keep records, and

**WHEREAS**, the City has limited staffing due to budget constraints, and

**WHEREAS**, current members of the Citizen's Advisory Committee, the Human Services Advisory Committee, the Senior Services Advisory Board, and the Arts Commission have felt under utilized due to infrequent meetings and lack of topics to address, and

**WHEREAS**, the City Council desires to reduce the number of appointive committees and best utilize limited City staff and committee members by incorporating human services, senior services, and arts into a newly created Citizen's Advisory Board; now therefore,

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

**Sec. 1.** DMMC 4.60.010 and section 1 of Ordinance No. 1648 as amended by section 1 of Ordinance No. 1654 are each amended to read as follows:

**Title.**

A new chapter is added to Title 4 DMMC entitled "Citizens Advisory ~~Committee~~Board."

**Sec. 2.** DMMC 4.60.020 and section 2 of Ordinance No. 1648 as amended by section 2 of Ordinance No. 1654 are each amended to read as follows:

**Application.**

This chapter shall apply to the creation and the responsibilities and activities of the Citizens Advisory ~~Committee~~Board.

**Sec. 3.** DMMC 4.60.030 and section 3 of Ordinance No. 1648 as amended by section 3 of Ordinance No. 1654 are each amended to read as follows:

**Purpose.**

The purpose of this chapter is to establish a Citizens Advisory ~~Committee~~Board to encourage and promote citizen and neighborhood involvement in an advisory capacity to the City Council, to define the roles and responsibilities of the Citizens Advisory ~~Committee~~Board, to determine eligibility to serve on the Citizens Advisory ~~Committee~~Board, and to determine the number of members of the Citizens Advisory ~~Committee~~Board and the length of their terms.

**Sec. 4.** DMMC 4.60.050 and section 5 of Ordinance No. 1648 as amended by section 4 of Ordinance No. 1654 are each amended to read as follows:

**Citizens Advisory ~~Committee~~Board composition.**

(1) ~~There shall be 12 regular members of the Citizens Advisory Committee, one each from the City's nine neighborhood planning areas, two Des Moines business owners, and one marina tenant.~~The Citizens Advisory Board shall consist of one member from each of the City's nine neighborhoods, two members who are Des Moines business owners, one member who is a marina tenant, and no more than eleven additional at large members.

(2) ~~There shall be one alternate member from each of the City's neighborhood planning areas who will serve in the absence of his or her neighborhood planning area regular member, one alternate Des Moines business owner and one alternate marina tenant.~~

~~(3) Regular members and alternate members~~ Members representing neighborhood planning areas must be residents of Des Moines who own or rent property in Des Moines and have lived in their neighborhood planning area for at least one year; ~~a business owner member must have who has~~ owned and operated ~~said the~~ business in Des Moines for at least one year; ~~or a marina tenant must have been a tenant~~ for at least one year, ~~and at large members must have lived in Des Moines for at least one year.~~

~~(4)~~ All regular members ~~and alternate members~~ must be at least 21 years of age and eligible to live in the United States.

**Sec. 5.** DMMC 4.60.060 and section 6 of Ordinance No. 1648 as amended by section 5 of Ordinance No. 1654 are each amended to read as follows:

**Term.**

(1) Citizens Advisory Board

~~(a)~~ The regular term of office for members and alternates of the Citizens Advisory Board shall be ~~two~~ four years.

~~(2b)~~ The initial appointment term shall be ~~six members and six alternates for one year and six members and six alternates for two years~~ two years for half of the members and four years for the other half. The initial appointment terms shall expire on ~~December 31, 2017~~ June 30, 2027, and ~~December 31, 2018~~ June 30, 2029, respectively. It shall be the Mayor's discretion who he or she shall appoint to which length of initial term. The member representing a neighborhood planning area, business, or marina tenants and the alternate representing that same neighborhood planning area, businesses or marina tenants do not necessarily have to have the same length of initial term. The length of the initial terms shall be decided at random.

~~(c)~~ No person may serve more than two consecutive terms on the Citizens Advisory Board. Any member having served two consecutive terms must remain off the Board for at least two years before they may be allowed to reapply to serve on the Board.

(2) Subcommittees. Subcommittees shall not have a term limit.

**Sec. 6.** DMMC 4.60.070 and section 7 of Ordinance No. 1648 as amended by section 6 of Ordinance No. 1654 are each amended to read as follows:

**Scope of duties.**

(1) The duties of the Citizen's Advisory Board shall be:

(a) Review and provide input to the City Council on matters and issues as delegated by the City Council.

(2b) Support and promote citizen participation and neighborhood enhancement.

(3c) Promote and facilitate open communication between the City, residents, businesses, and other neighborhood organizations such as homeowner associations, block watches, etc.

(4d) Review the City's budget and provide input to the City Council.

(5e) Provide input to the City Council in advance of its annual planning/goal setting retreat.

(6f) Bring matters and issues to the City Council that the Citizens Advisory ~~Committee~~ Board believes require City Council attention.

(g) Receive reports and recommendations from the subcommittees and choose to either adopt the recommendations, or draft separate recommendations, to relay to the City Council.

(h) Perform such other tasks as are assigned by the City Council.

(2) The duties of the Senior Services subcommittee shall be:

(a) To identify and address the needs and interests of the senior population within the City.

(b) To advise the Citizen's Advisory Board on policies, programs, and services that promote independence, well-being, and active engagement in the community.

(c) To support public awareness efforts and encourage civic participation among seniors.

(d) Draft reports and recommendations to be given to the Citizen's Advisory Board.

(e) Perform such other tasks as are assigned by the City Council or the Citizen's Advisory Board.

(3) The duties of the Human Services subcommittee shall be:

(a) Evaluation and recommendation on funding human service requests submitted to the City.

(b) Evaluation and review of the performance of individual human service organizations and agencies.

(c) Draft reports and recommendations to be given to the Citizen's Advisory Board.

(d) Perform such other tasks as are assigned by the City Council or the Citizen's Advisory Board.

(4) The duties of the Arts subcommittee shall be:

(a) To promote the enrichment of the community through the support, development, and integration of the arts.

(b) Advise the Citizen's Advisory Board on public art projects and recommend policies and programs that foster a vibrant cultural environment.

(c) Encourage and aid programs for the cultural enrichment of the citizens of Des Moines and encourage more public visibility of the arts.

(d) Draft reports and recommendations to be given to the Citizen's Advisory Board.

(e) Perform such other tasks as are assigned by the City Council or the Citizen's Advisory Board.

**Sec. 7.** DMMC 4.60.080 and section 8 of Ordinance No. 1648 as amended by section 7 of Ordinance No. 1654 as amended by section 2 of Ordinance No. 1686 are each amended to read as follows:

**Meetings.**

The Citizens Advisory ~~Committee~~Board shall meet at least three times per year, including one meeting to discuss the City's budget and once to create input for the City Council to consider in advance of its annual planning/goal setting retreat. The Citizens Advisory ~~Committee~~Board shall also meet as needed to discuss issues and matters delegated to it by the City Council. All Citizens Advisory ~~Committee~~Board meetings will be meetings with a minimum of three members of the Des Moines City Council. The Mayor will act as the presiding officer of the meetings. In the Mayor's absence, the Deputy Mayor will be the presiding officer.

Meeting agendas shall be created by City staff for Citizen's Advisory Board meetings and shall be posted to the City website at least a week prior to meetings. Minutes shall be recorded and kept by City staff for every Citizen's Advisory Board meeting.

Subcommittees are expected to meet independently and are to utilize staff support only when necessary. After each subcommittee meeting, the subcommittee shall give a report at the next Citizen's Advisory Board meeting.

**NEW SECTION. Sec. 8.** A new section is added to chapter 16.04 DMMC to read as follows:

**Subcommittees.**

(1) The Citizen's Advisory Board shall include subcommittees on Human Services, Senior Services, and the Arts, along with any additional subcommittees as established by the City Council.

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(2) Subcommittees shall have a minimum of three and a maximum of nine members selected by the presiding officer from current Citizen's Advisory Board members.

(3) Members of the Citizen's Advisory Board may not serve on more than one subcommittee unless a subcommittee does not have the minimum number of members.

**Sec. 9. Repealer.** The previously codified provisions of chapter 4.44 DMMC and sections 1 through 7 of Ordinance No. 1161 are each repealed.

**Sec. 10. Repealer.** The previously codified provisions of chapter 4.48 DMMC and sections 1 through 3 of Ordinance No. 1047 are each repealed.

**Sec. 11. Repealer.** The previously codified provisions of chapter 4.56 DMMC and sections 1 through 6 of Ordinance No. 1393 are each repealed.

**Sec. 12. Codification.** Section 8 of this ordinance shall be codified as DMMC 4.60.055.

**Sec. 13. 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. 14. 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.

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\_\_\_\_\_  
M A Y O R

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

Published:

Effective Date: