

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

**MCC IOWA LLC d/b/a MEDIACOM,**

Plaintiff,

v.

**CITY OF WEST DES MOINES & WEST  
DES MOINES CITY COUNCIL,**

Defendants.

Case No. EQCE086347

**AMENDED PETITION FOR  
DECLARATORY JUDGMENT &  
INJUNCTION**

Plaintiff MCC Iowa LLC d/b/a Mediacom (“Mediacom”), by and through the undersigned counsel, states the following in support of its Amended Petition for Declaratory Judgment & Injunction:

**INTRODUCTION**

1. The City of West Des Moines (“City” or “West Des Moines”) is one of the most affluent, successful cities in Iowa. For many years, the City’s residents have had access to high-quality internet through several different internet service providers (“ISPs”), including Mediacom.

2. Last year, however, the City decided that it wanted a new internet network to be built throughout the City. Specifically, the City decided that it wanted a fiberoptic network, as opposed to the hybrid fiber coaxial networks that several existing ISPs use to provide internet service to residents, to be constructed.

3. The City knew that it could not afford to build and operate such a fiber-to-the-home network on its own. The City therefore entered a secret partnership with Google Fiber, an ISP founded by Google LLC as its corporate subsidiary in 2010, to provide fiberoptic internet services throughout the City.

4. As its contribution to the partnership, the City agreed to build and maintain a city-

wide underground Conduit Network (the “Conduit Network”) for Google Fiber’s exclusive use. The Conduit Network is essentially a series of underground pipes installed in the City’s right of way into which fiber could be installed to provide high-speed internet services to residents.

5. The City agreed to spend up to \$50 million in taxpayer money to build this Conduit Network and to maintain the Conduit Network at the City’s own expense. The City and Google Fiber entered an agreement (the “Google Agreement”), which gives Google Fiber the *exclusive right* to use the Conduit Network—excluding other ISPs—for years to come, if not forever. That is unfair, anticompetitive, and wrong.

6. The Google Agreement also gives Google Fiber other unfair advantages, including the exclusive right to custom design the Conduit Network to fit its own needs (and to inhibit other ISPs’ use of the Conduit Network); guarantees that Google Fiber will pay significantly lower costs than other ISPs will to access the Conduit Network (if those other ISPs can or are ever allowed to access it); and a streamlined permitting process that is not available to any other ISPs.

7. Compounding these problems, the Google Agreement provides for profit sharing between the City and Google Fiber, based on the number of residents who sign up for the Conduit Network. Because Google Fiber is the only provider allowed to use the Conduit Network, the City’s profit-sharing arrangement encourages the City to favor and promote Google Fiber in other ways.

8. The City apparently doubted that the voters would approve issuing \$50 million in taxpayer-backed bonds to build the Conduit Network for the exclusive use of one of the richest companies in the world. The City thus concocted a scheme to raise public funds while avoiding public accountability by characterizing the Conduit Network and its sweetheart deal with Google Fiber as part of an “urban renewal project.”

9. To issue tens of millions in dollars in bonds, Iowa law normally requires the City to submit the issue to the voters. Iowa Code § 384.26. Cities that want to undertake large capital investments (such as a new school or city hall) are required to provide citizens with full, accurate details about the projects and an opportunity to vote on whether to approve the project via a referendum or special election. This process is intended to be the rule for how municipalities obtain approval for large capital investments, not the exception. *Id.*

10. The City set out to deliberately evade Chapter 384 by invoking Iowa's Urban Renewal Law. Iowa Code § 403.1 *et seq.* (the "Urban Renewal Law"). The Urban Renewal Law is intended, as its name suggests, to provide cities with flexibility to raise and spend public money to combat urban blight and poverty.

11. To take advantage of the Urban Renewal Law, the City purported to designate the Conduit Network as an "urban renewal project" that would "expand" internet access and "promote competition" by enabling *multiple* ISPs to offer high-speed internet service by installing their fiber and cable in the Conduit Network.

12. These statements by the City were knowingly and intentionally false and misleading. The City's planned Conduit Network has nothing to do with urban renewal or promoting competition. Instead, the City is using taxpayer money to build a Conduit Network for Google Fiber's exclusive use.

13. Because the City intends to build the Conduit Network throughout the entire City, the City needed to designate the *entire city of West Des Moines* as an urban renewal area in order to use the Urban Renewal Law. This designation was arbitrary, capricious, and invalid. The entire City does not and cannot qualify as an urban renewal area. The Conduit Network is not a valid urban renewal project and the City's invocation of the Urban Renewal Law is invalid and unlawful.

14. Under Iowa law, the City can undertake urban renewal projects *only* in areas that are: (1) “blighted” or “slums;” (2) dedicated to “commercial and industrial enterprises;” or (3) deemed an area where safe, sanitary and affordable housing is to be *constructed* for specific reasons.

15. West Des Moines is a thriving, wealthy community, and vast swaths of the City fall well outside any of these categories, including without limitation areas that are now fully developed and by covenant or zoning cannot expand through further development of housing, commercial property, or economic activity.

16. The entire City cannot lawfully be deemed a single urban renewal area because factually and legally it does not qualify for such a designation. Iowa law precludes the City from misusing the Urban Renewal Law to circumvent the public-financing, disclosure, and voting requirements that the Iowa legislature put in place to protect the public.

17. This type of behavior has, unfortunately, become the norm for the City, which in the past five years alone has issued approximately \$180 million in bonds under the Urban Renewal Law, without voter approval. Many of the City’s so-called “urban renewal projects,” financed through these bonds, have nothing to do with urban renewal and were instead deliberately used to bypass Iowa’s referendum requirement.

18. At a July 6, 2020 meeting, the City approved the Google Agreement and the so-called urban renewal plan to build the Conduit Network (the “Plan”) and gave preliminary authorization to issue up to \$43 million in bonds to pay for it.

19. The City took a variety of steps to avoid public scrutiny and objections at this meeting. To start, the City published deficient notices of the actions it planned to take. The notices failed to inform the public of the true nature and purpose of the Conduit Network and the City’s

business partnership with Google Fiber.

20. The City also actively misled the public about the purpose of the Conduit Network and its agreement with Google Fiber. Most significantly, the City repeatedly and falsely claimed that the Conduit Network would be open to all ISPs and would promote competition. This is and has always been false.

21. Under the Google Agreement, Google Fiber will have eighteen months of exclusive access to each section of the Conduit Network that is finished. To be clear, there is no legitimate basis for this exclusivity period. Its only purpose is to benefit the City's partner, Google Fiber. Even worse, the City has publicly represented that the Conduit Network will house only "fiber networks," meaning that other ISPs in the City such as Mediacom that do not *exclusively* use fiber technology will never be able to use the Conduit Network.

22. The City also claimed that it would receive up to \$20 million per year in license payments from Google Fiber, a claim it has since admitted was entirely false. The City has since admitted that it will receive, at most, \$1 million per year in payments from Google Fiber, and potentially as little as \$240,000 per year.

23. Because the City failed to provide proper notice and actively misled the people of West Des Moines, the steps it took at the July 6, 2020 meeting are null and void.

24. Since the meeting, the City has also taken other improper steps to favor its partner Google Fiber over other ISPs. For example, the City has undertaken a massive, taxpayer-funded marketing campaign encouraging residents to connect to the Conduit Network and promoting that they can receive "faster" and "more reliable" internet (*i.e.*, Google Fiber's internet). The City lacked a reasonable basis for making these factual assertions and knew or reasonably could have determined they were untrue.

25. The City also continued to make misleading public statements about the background, purpose and effects of the project in the weeks following the July 6<sup>th</sup> meeting. One effect of this campaign of deception was to dissuade residents and taxpayers from objecting to the City's course of action.

26. In addition to denying existing ISPs such as Mediacom fair access to the Conduit Network, the City is impeding their ability to upgrade existing networks to compete with the network to be built by Google Fiber in partnership with the City. Specifically, the City is applying permitting ordinances to inhibit ISPs like Mediacom from upgrading existing aerial plant or expanding service to new parts of the City.

27. The City's permitting practices, when coupled with the City's decision to deny the existing ISPs access to the Conduit Network for the next several years—or ever, in the case of ISPs like Mediacom which use technology in addition to fiberoptics—give other ISPs two choices: (1) delay upgrading their existing networks or expanding their networks to reach new parts of the City, to the detriment of consumers; or (2) bury and maintain their own networks in separate underground conduits at their own significant expense. Either alternative puts incumbent ISPs such as Mediacom at a significant competitive disadvantage compared to Google Fiber.

28. The City has already issued \$13,565,000 in so-called “urban renewal” bonds to finance the Conduit Network project, and on information and belief, the City intends to issue more bonds and begin construction of the Conduit Network in the near future.

29. Although the City's negotiations with Google Fiber are shrouded in secrecy, and additional violations may be uncovered during discovery, Defendants violated Iowa law in at least five ways.

30. **First**, the City's Urban Renewal Plan, the Google Agreement, the City's bond

resolutions and its planned additional actions to issue bonds, the City's planned expenditures on an illegally approved Conduit Network, and the City's misleading and preferential promotion of Google Fiber's interests all violate the Urban Renewal Law and the Iowa Constitution and were unreasonable, arbitrary, and capricious acts.

31. **Second**, the City's agreement and course of conduct with Google Fiber creates a public private partnership to own, operate, or administer a de facto city utility, in violation of Iowa Code chapters 23A, 28E, and 388.

32. **Third**, the City violated Iowa Code Chapter 26 by secretly selecting Google Fiber to perform key phases of the construction of the Conduit Network, including developing the Conduit Network's specifications and testing its structural integrity, without going through an appropriate public-bidding process.

33. **Fourth**, the City violated Iowa Code Chapter 23A by unlawfully competing with the private sector, including by marketing and promoting Google Fiber's goods and services.

34. **Fifth**, the City is unlawfully denying Mediacom and other franchisees access to the Conduit Network and has failed to provide them with non-discriminatory and competitively neutral access to this public right of way, in violation of Iowa Code § 477A.9.

35. Mediacom brings this action to enjoin this wrongful conduct. Mediacom currently seeks equitable relief only. Thus, this Amended Petition does not presently raise a claim for damages for the City's violations of law that would ultimately be passed on to the people of West Des Moines, whom Mediacom has faithfully served for many years. Nevertheless, Mediacom reserves all rights to do so, whether by amendment of this Amended Petition or an amendment at trial to conform to the proof.

36. Mediacom also does not seek to invalidate bonds the City has already issued, which

would only harm innocent bondholders.

37. Mediacom respectfully requests that the Court declare that Defendants' conduct was unreasonable, arbitrary, capricious, non-compliant or unlawful. Mediacom further requests that the Court enjoin the Defendants' conduct so that the voters of West Des Moines can decide for themselves whether and how the City should be allowed to proceed with the Conduit Network.

**PARTIES, JURISDICTION, & VENUE**

38. Plaintiff Mediacom is a Delaware limited liability company and is a wholly owned subsidiary of Mediacom Communications Corporation, which is incorporated in Delaware and headquartered in New York.

39. Mediacom holds offices in the city of West Des Moines, transacts business in West Des Moines, and is a property owner and taxpayer in the City.

40. Mediacom and its affiliates employ approximately 400 employees who work in the City.

41. Mediacom has a substantial interest in the lawfulness, reasonableness, and appropriateness of Defendants' proposed urban renewal plan, their conferral of exclusive capital benefits on Google Fiber at the expense of residents and businesses, their use of taxpayer borrowing capacity and funds to finance projects such as the Conduit Network and to underwrite contracts such as the Google Agreement, and in the independent judicial review of the legality of Defendants' conduct.

42. Mediacom's rights, status, and/or other legal relations are individually affected directly and adversely by the City's conduct and violations of law, as well.

43. Defendant City of West Des Moines is and has at all relevant times been a municipality organized under the laws of the State of Iowa.

44. Defendant West Des Moines City Council (the “Council”) is and has at all relevant times been the governing board of the City.

45. This Court is the proper venue for the present Amended Petition pursuant to Iowa Code § 616.16.

### **BACKGROUND**

#### **A. In the Past, ISPs Competed on a Neutral Playing Field in West Des Moines.**

46. Mediacom has been providing broadband internet service in West Des Moines for over twenty years.

47. West Des Moines has historically been one of the most competitive broadband internet markets in which Mediacom competes.

48. There are currently nine wireline ISPs that provide high speed internet services in the West Des Moines market.

49. Before the events at issue here, ISPs in West Des Moines competed on a level playing field.

50. Pursuant to West Des Moines City Ordinance 7-14-1, the City requires ISPs to submit detailed plans and obtain permits in order to install, replace, or upgrade cables, wires, and fiber.

51. This permitting process is burdensome, expensive, and sometimes slow. But all ISPs have operated under the same regulations and requirements, so the effect of those regulations has been competitively neutral.

52. Internet technology is changing rapidly, and the City is growing quickly.

53. To address these developments, Mediacom has repeatedly upgraded its existing network and expanded it into new areas of the City. It fully intends to continue upgrading and

expanding its network in the future.

54. For example, Mediacom recently increased the internet download speeds for several of its most popular service tiers to 100, 300, and 1000 megabits-per-second.

55. In addition, Mediacom recently piloted a state-of-the-art 10G internet platform capable of delivering multi-gigabit download and upload speeds in Iowa and hopes to make that service available in the City, as well.

56. In order to make these upgrades, Mediacom often needs to place additional cable, wires, and/or fiber in existing neighborhoods and business districts.

57. In addition, the City currently has thousands of new residential and commercial addresses planned under construction permits.

58. Serving these new households and businesses will require Mediacom to invest in extending its network into new areas of the City as they are developed. Mediacom plans to do so.

59. These market developments are some of the driving forces behind the intense competition in the West Des Moines broadband market.

60. Mediacom relied on the City's competitively neutral regulation of its rights of way by investing tens of millions of dollars in developing, maintaining, and upgrading its internet infrastructure in West Des Moines so that it can offer high-speed internet services to the vast majority of homes and business throughout the City. As this substantial investment demonstrates, Mediacom is not afraid of fair competition.

61. Mediacom receives no credits or financial incentives from the City to offer city-wide internet access.

62. Upon information and belief, no other ISP that offers access to most (or all) of the City receives any such credits or financial incentives either.

63. Mediacom also holds a franchise with the City of West Des Moines to offer cable TV services. Since 2003, Mediacom has paid approximately \$275,000 per year in franchise fees to the City.

64. Mediacom receives no credits for its franchise fee payments.

65. Upon information and belief, no other current cable TV franchisee with the City receives credits for their franchise fees either.

66. Mediacom also offers digital telephone services to residents of West Des Moines.

67. Google Fiber has offered television service similar to cable in the handful of other markets in which it operates. However, Google Fiber recently publicly announced that it was ending that service in markets in which it operates.

68. Mediacom customers may purchase a bundle of broadband, TV and telephone services and realize savings and other benefits of having a single provider of all three services.

69. Similarly, Mediacom offers a variety of broadband service levels at different prices starting as low as \$9.95, while, upon information and belief, Google Fiber follows basically a one-size-fits-all model.

70. The City has been very vocal in touting the purported benefits of Google Fiber's service, but it has been silent regarding its disadvantages.

71. This is because the City's partnership with Google Fiber has transformed it from a neutral arbiter of competition into a competitor.

**B. The City Develops Plans to Provide Broadband Internet as a Utility.**

72. On September 20, 2010, the City adopted its most recent and currently operative Comprehensive Plan.

73. According to the City, the Comprehensive Plan is a general plan for the physical

development of the City as a whole.

74. On December 2, 2015, the City published a twenty-year vision plan developed in conjunction with public and private consultants, entitled “WDM 2036.”

75. The WDM 2036 described the City’s intention to offer high-speed internet as a city utility, either independently or in a public-private partnership with a private agency.

76. The WDM 2036 plan stated that “[h]igh speed internet is being seen as an essential public utility, like water and electricity.”

77. Under that framing of internet access as a public utility, the plan recommended the City explore building its own public-domain fiber network and public-private partnerships as possible avenues of establishing a city utility to provide broadband internet.

78. The plan also acknowledged that there might be legal considerations and limitations in developing the City’s internet connectivity plan, which included “legal issue[s]” implicated by “competition with the private sector.”

79. In 2020 the City hired a third-party institute to conduct a survey of West Des Moines residents.

80. West Des Moines residents were asked to identify areas of investment they wanted the City to make over the next two years. The highest-priority needs residents identified were improving the quality of City streets, improving traffic congestion, and improving the quality of police, fire, and emergency medical services.

81. Residents did not recommend or request that the City invest public funds in activities or infrastructure related to internet access.

82. The third-party institute that conducted the survey provided the City with recommendations for investment priorities over the next two years.

83. The institute recommended City investments in things like improving the City's street systems and the flow of traffic. The institute did not, however, recommend that the City invest in activities or infrastructure related to internet access.

**C. Google Redirects Its Iowa Lobbying Work to a City Council Member.**

84. Around this same time, Google LLC began to expand its efforts to obtain political influence in Iowa.

85. Upon information and belief, Google Fiber was an ISP founded by Google LLC as its corporate subsidiary in 2010, and the two companies presently remain corporate affiliates as subsidiaries of Alphabet Inc.

86. Between 2016 and 2017, Google LLC nearly doubled its spending on lobbying in Iowa and retained a new lobbyist, Matthew McKinney, who then sat and still sits on the Board of Directors of the West Des Moines Chamber of Commerce.

87. In November 2019, McKinney was elected to the West Des Moines City Council.

88. In 2019 and 2020, Google significantly increased the amount of lobbying work it sent to McKinney and McKinney's law firm.

**D. The City Secretly Negotiates the Google Agreement.**

89. Starting in or around January 2020—within weeks after Mr. McKinney took his seat on the Council—the City began closed-door negotiations with Google Fiber about the Conduit Network.

90. Upon information and belief, Mr. McKinney was directly or indirectly involved in those negotiations.

91. Upon information and belief, the City and Google Fiber agreed to keep their negotiations confidential until they reached agreement on material terms.

92. The City's negotiations with Google Fiber lasted approximately six months and culminated in an agreement titled the Conduit Network License Agreement (the "Google Agreement").

93. The City intended the Google Agreement and other written, oral or implied agreements discussed below to constitute a public-private partnership with Google Fiber to own, operate or administer broadband internet as a city telecommunications utility, consistent with the City's statements in its WDM 2036 Plan.

94. As summarized below, the terms of the Google Agreement and the City's and Google Fiber's subsequent conduct and course of dealings reflect their intent to own or operate a joint city telecommunications utility and to exclude other ISPs from using or having access to the Conduit Network.

**i. Google Fiber Receives Exclusive Use of the Conduit Network.**

95. The Google Agreement calls for the Conduit Network to be built in seven sections, which are to be completed in phases between July 2021 and September 2022.

96. The Google Agreement grants Google Fiber the *exclusive right* to use each section of the Conduit Network for eighteen months after that section is completed (the "Exclusivity Period").

97. Google Fiber will receive a standalone Exclusivity Period for each of the seven sections of the Conduit Network.

98. The only exception to Google Fiber's exclusivity rights is that the City reserved up to 10% of the total linear footage in sections that will be located in "congested" areas of the City's right of way for potential use by other ISPs.

99. But the City has imposed onerous restrictions on this "exception" that will

effectively prevent ISPs such as Mediacom from using any part of the Conduit Network during the Exclusivity Period. Moreover, upon information and belief, the Conduit Network has been designed to accommodate only the technology used by Google Fiber and so could not be used by Mediacom for placement of coaxial cable; thus, the Conduit Network will not be available for use by Mediacom even in congested areas.

100. In short, the City has granted Google Fiber a monopoly over the Conduit Network for years to come. Contrary to the City's claims before, during and after the July 6<sup>th</sup> meeting, the Conduit Network will not allow City residents to choose their preferred provider—unless that provider is Google Fiber.

101. The City granted Google Fiber a monopoly over the Conduit Network in furtherance of its plan to jointly establish, own, or operate a city utility with Google Fiber to provide fiber-based high-speed internet.

**ii. Google Fiber Receives Control of Design and Sequencing.**

102. The City granted Google Fiber extensive control over the development of the general specifications the Conduit Network must meet.

103. Google Fiber, with the City's consent and encouragement, is exercising these rights in a manner that will impede, if not outright prevent, other ISPs including Mediacom from using the Conduit Network, even after Google Fiber's Exclusivity Period ends.

104. First, the City has publicly represented that the Conduit Network is being designed to house exclusively "fiber" networks. This limitation would exclude hybrid coaxial networks that are used by many existing ISPs to provide high-speed internet throughout the City.

105. There is no legitimate technological or financial justification for designing the Conduit Network to house exclusively fiber networks. Instead, this design strategy is intended to

exclude Google Fiber's key competitors in the West Des Moines internet market, including but not limited to Mediacom, from ever having access to the Conduit Network.

106. Along the same lines, the City is soliciting unwitting property owners to sign Conduit Network "installation agreements" that the City misleads them into believing will allow them choice among various providers serving the City, but in fact, by their terms, these agreements only allow "fiber-to-home" connections via the Conduit Network. In essence, the City is saying "You may choose any provider you want, as long as it is Google Fiber."

107. These installation agreements will exclude ISPs like Mediacom that do not use exclusively fiber networks from ever offering services to residents and businesses through the Conduit Network.

108. Second, the City and Google Fiber privately agreed that the Conduit Network will be built along the front easements of properties.

109. Existing ISPs' networks were built (at the City's insistence) along the rear easements of properties. The City's and Google Fiber's placement of the Conduit Network along front easements will inhibit ISPs from connecting their existing networks to the Conduit Network. Further, it appears there will not be sufficient access points to allow existing ISPs to connect to the Conduit Network effectively.

110. Third, in large swaths of the City, the Conduit Network will not have enough duct space to accommodate the networks of ISPs other than Google Fiber.

111. Notably, although the City hired third-party engineering firms to design the Conduit Network, those engineering firms are required to report to and take direction from Google Fiber regarding the Conduit Network's design.

112. As these examples demonstrate, Google Fiber is exercising its rights to custom-

design the Conduit Network for its own purposes and to exclude other ISPs from ever having meaningful access to the Conduit Network.

113. The City has consented to these exclusionary tactics to ensure the success of its public-private partnership with Google Fiber to offer fiber-based high-speed internet as a city utility.

**iii. Google Fiber Receives Special Permitting Rights.**

114. The City committed to providing Google Fiber with a “streamlined permitting process” for the “efficient and rapid deployment” of Google Fiber’s network within the Conduit Network.

115. As explained above, other ISPs must follow a separate, slower, more expensive permitting process to upgrade or expand their networks.

116. Google Fiber’s exclusive permitting rights provide significant competitive advantages over its competitors.

**iv. Google Fiber and the City Share Profits and Other Benefits.**

117. The City and Google Fiber agreed to a “license payment” arrangement that amounts to profit sharing.

118. Under this arrangement, Google Fiber will provide the City a monthly payment ranging from \$0.50 to \$2.25 for every residence or business that connects to the Conduit Network.

119. The amount of the City’s payment is determined by how many residents and businesses connect to the Conduit Network.

120. The City thus has a financial incentive to encourage residents to sign up to connect to the Conduit Network.

121. And, for at least the duration of the Exclusivity Period, Google Fiber will be

residents' only option to access internet through the Conduit Network.

**v. Google Fiber Receives Guaranteed Low Pricing and Additional Credits.**

122. The Google Agreement guarantees that, if another ISP is eventually allowed to use the Conduit Network, that ISP's access fee cannot be lower than Google Fiber's license payment.

123. In addition, the Google Agreement provides that Google Fiber will receive a full credit for franchise fees it pays against its monthly license payments.

124. The Google Agreement allows Google Fiber to receive a citywide licensee credit if it uses at least 90% of the Conduit Network and certain other conditions are met.

125. As explained above, no other ISP has been provided similar rights and benefits, despite the fact that multiple ISPs, including Mediacom, offer high-speed internet services throughout the vast majority of the City.

**vi. The City agrees to Maintain the Conduit Network for Google Fiber.**

126. The Google Agreement imposes significant maintenance obligations on the City with respect to the Conduit Network (at the City's expense) and allows Google Fiber to recover additional credits if the City fails to meet certain maintenance benchmarks.

127. On information and belief, other non-public agreements between Google and the City exist, including but not limited to an agreement to jointly market and promote Google Fiber's internet in competition with other ISPs, as well as agreements pertaining to construction practices and procedures, sharing and/or allocation of profits and losses, and other matters.

**E. The City Misleads Mediacom About Its Secret Plans to Build the Conduit Network and Partner with Google Fiber.**

128. At the same time the City was secretly negotiating the Google Agreement, it was also negotiating an agreement allowing Mediacom limited rights to install its fiber in small portions of the City's currently existing conduit, which covers only limited, piecemeal parts of the

City (the “Existing Conduit”).

129. In recent years, the City has pressured ISPs to move their networks underground.

130. For example, if an ISP wants to upgrade or install fiber in excess of 300 feet, the City requires the ISP to install that portion of its network underground, even if that section of fiber had previously been aerial. *See* WDM City Ordinance 7-14-2(B)(4).

131. This restriction is unreasonable, arbitrary, and capricious.

132. The City has claimed the restriction is for beautification purposes.

133. But the City often does not require aerial electrical utilities or telephone lines to move underground. In addition, as long as power lines remain aerial, requiring ISPs to place their wires, cables and fibers underground would not make access significantly more reliable in bad weather because the aerial lines which power ISP networks would remain vulnerable.

134. Thus, requiring ISPs to remove their aerial plant from above-ground powerlines and telephone poles and place it in an underground conduit has no impact on aesthetics in the City.

135. Requiring ISPs to move portions of their networks underground does, however, significantly increase their costs for upgrading or expanding their networks.

136. Google Fiber—by design—will not have to bear these costs because the City is building a custom-designed Conduit Network for Google Fiber’s exclusive use.

137. Notwithstanding the arbitrary and capricious nature of the City’s restriction, Mediacom has tried to work with the City in good faith to move some upgraded and expanded portions of its network underground.

138. Mediacom did so with the understanding that all ISPs would be subject to the same requirements and would be provided with equivalent access to the City’s rights of way.

139. On or around June 4, 2020, Mediacom and the City executed the Master Conduit

License and Sharing Agreement (the “Mediacom Agreement”).

140. During the negotiations of the Mediacom Agreement, the City led Mediacom to believe that its only option to perform large-scale upgrades or expansions of its network in the significant areas of the City without Existing Conduit was to build its own underground conduit, at its own expense.

141. This process requires expensive construction of trenches for pipe and navigating the City’s burdensome permitting processes.

142. The City kept its negotiations with Google Fiber secret and never told Mediacom of the City’s plans to partner with Google Fiber or to build the city-wide Conduit Network.

143. The Council approved the Mediacom Agreement via resolution at the May 2, 2020 Council meeting.

144. Prior to the May 2, 2020 Council meeting, the City published an agenda item for approval of the Mediacom Agreement.

145. The Council’s agenda item stated that the City hoped to encourage existing ISPs to install portions of their networks in the City’s *Existing Conduit* and (future) small additions to it that would be financed solely by fees paid by existing ISPs.

146. The agenda item did not disclose the City’s plan to build or publicly finance the new, city-wide Conduit Network for Google Fiber’s exclusive use.

147. The City failed to disclose this information to the public or Mediacom because it was secretly finalizing the Google Agreement, which is intended to—and will—give Google Fiber the dominant position in the West Des Moines broadband internet market.

148. Under the Mediacom Agreement, Mediacom’s costs to use the Existing Conduit are significantly greater than what Google Fiber will pay the City for its exclusive use of an

equivalent amount of space in the custom-built Conduit Network.

149. Mediacom also received no rights with respect to the design of the Existing Conduit or any low-price guarantees or credits.

150. Mediacom's rights under the Mediacom Agreement are materially inferior to Google Fiber's rights under the Google Agreement with respect to permitting, maintenance, and other terms and conditions as well.

151. The City has since represented to Mediacom that it did not tell Mediacom about its plans to construct the Conduit Network because the City never intended to grant Mediacom any rights with respect to the Conduit Network for years to come.

**F. The City Uses a Misleading and Inadequate Process to Approve Its Urban Renewal Plan, the Google Agreement, and Its Preliminary Authorization to Issue Bonds.**

152. In late June 2020, the City finally publicly disclosed its plans to build the new Conduit Network throughout West Des Moines.

153. Over the next two weeks, the City Council rushed through actions to: (1) approve the Plan; (2) preliminarily authorize up to \$42.8 million of bonds to cover construction and other costs; and (3) execute the Google Agreement.

154. During this abbreviated approval process, Defendants deliberately misled and failed to appropriately inform the public about the nature and purpose of the City's plans.

155. On June 19, 2020, the City published a notice in the Des Moines Register about the Council's plans to consider preliminarily authorizing the issuance of \$42.8 million in bonds related to an "urban renewal project."

156. This notice was misleading, defective, and failed to provide adequate notice of the purposes of the bonds.

157. For example, the notice failed to explain that bonds would be used to finance a

custom-designed Conduit Network for Google Fiber’s exclusive use, that the City intended to partner with Google Fiber to provide high-speed internet as a city utility, that other ISPs would be excluded from using the Conduit Network, or that Google Fiber’s primary registered lobbyist in Iowa was a member of the City Council.

158. The City also failed to disclose that only “fiber” networks could be installed in the Conduit Network and that ISPs that did not exclusively use fiber technology would not be allowed to use the Conduit Network.

159. Three days later, on June 22, 2020, the City’s Planning and Zoning Commission convened and voted on a proposed Economic Development Digital Enterprise Urban Renewal Plan for the Economic Development Digital Enterprise Urban Renewal Area.

160. The City did not conduct or consider any economic feasibility, technical, or other studies or analysis to determine or create any factual record demonstrating whether the Plan is necessary, was preferable to alternative uses of the funds required (such as building affordable housing), was in the best interest of the City, or would or could further the purposes of the Urban Renewal Law.

161. The Plan purported to designate a new Urban Renewal Area pursuant to Iowa Code chapter 403.

162. The Plan’s description and annotated map of the Urban Renewal Area encompassed the *entire City of West Des Moines* (excepting agricultural parcels).

163. The Plan’s stated purpose was to construct a city-wide Conduit Network “to be leased or licensed by [multiple] third-party providers.”

164. The Plan stated that allowing multiple ISPs to use the Conduit Network would promote competition and innovation for high speed internet, which would in turn “increase the

availability of opportunities for commercial, industrial and residential development” in the City.

165. The Plan included no findings or information regarding any specific parts of the City that were being designated as appropriate for commercial and industrial enterprises.

166. It also did not provide findings or information demonstrating that the services of the nine existing wireline ISPs were inadequate to support the “commercial, industrial and residential development” of the City.

167. The governing body of West Des Moines never made any such findings or conducted any analysis or studies to support such findings.

168. The Plan included no findings or information regarding any specific parts of the City where there was an inadequate supply of affordable, decent, sanitary housing or that constructing such housing was important to meeting any specific objective of the City.

169. The governing body of West Des Moines never made any such findings or conducted any analysis or studies to support such findings.

170. The Plan included no findings or information regarding any specific areas of the City that were being designated as appropriate for construction of housing and residential development for low- and moderate-income families.

171. The governing body of West Des Moines never made any such findings or conducted any analysis or studies to support such findings.

172. In fact, vast swaths of the City are zoned as residential areas, are well developed, and have an ample supply of safe, sanitary, and affordable housing.

173. Thus, vast swaths of the City cannot be lawfully deemed part of an Urban Renewal Area.

174. The Plan also failed to disclose the City’s intention to build the Conduit Network

in order to jointly operate a city utility with Google Fiber to provide high speed internet.

175. The Plan's estimated cost to the City was \$50 million.

176. The Planning and Zoning Commission arbitrarily, capriciously, and unreasonably recommended to approve the Plan.

177. Four days later, on June 26, 2020, the City published a notice in the Des Moines Register that the City Council was holding a meeting on July 6, 2020, to vote on a resolution to approve the Plan.

178. The June 26, 2020 notice was legally insufficient and did not substantially comply with the applicable notice requirements of Iowa law.

179. For example, the notice failed to provide detailed, definite, and certain disclosures to the public regarding (a) the nature, purposes, or cost of the Plan, (b) the specific projects the City intended to undertake, (c) the City's intention to construct a Conduit Network custom designed for Google Fiber's exclusive use, (d) the City's intention to partner with Google Fiber to provide high-speed internet as a city utility, (e) that ISPs other than Google Fiber would be prohibited from using the Conduit Network for years to come, (f) that ISPs that did not exclusively use fiber technology would be barred from using the Conduit Network, or (g) the existence or nature of Mr. McKinney's conflict of interest.

180. On July 1, 2020, just *five days* before the City Council meeting, the City published a notice in the Des Moines Register that the City Council would take up a resolution to enter a "Conduit Network License Agreement" at the July 6, 2020 meeting.

181. The notice deliberately failed to identify the nature of the agreement or with whom the City was executing it, *i.e.*, Google Fiber.

182. The July 1, 2020 notice stated that it was being "given by order of the City Council

of the City of West Des Moines, State of Iowa, as provided by Section 364.5 of the City Code of Iowa.”

183. Iowa Code § 364.5 pertains to the authority of a city that is “administer[ing] a city utility” to “act jointly with any . . . private agency as provided in chapter 28E.”

184. The July 1, 2020 notice was legally insufficient and did not substantially comply with the applicable notice standards under Iowa law.

185. For example, the notice failed to provide detailed, definite, and certain disclosures to the public regarding the terms of the agreement, the agreement’s financial impact to the City, the identity of the contracting party, or the City’s intention to enter into a public-private partnership with Google Fiber to offer high speed internet as a city utility.

186. The notice also misleadingly indicated that the City would contract with *multiple* ISPs who would “contribute to construction costs” for the Conduit Network, but did not disclose that, in fact, the agreement (a) barred all ISPs other than Google Fiber from using the Conduit Network for years to come, and (b) provided that ISPs that did not exclusively use fiber networks would never be allowed to use the Conduit Network. It also failed to disclose that the only “contribution” by ISPs to the cost of the project would be a maximum of \$1 million per year (and potentially as little as \$240,000), which was a relative drop in the bucket compared to the City’s total costs, or that Google Fiber’s so-called “lease payment” was fixed throughout the entire twenty-year term of the Google Agreement.

187. The notice also misleadingly claimed that the agreement and the urban renewal plan were intended to “encourage competition” and “enhance fiber connectivity” by providing multiple “third-party services providers” access to the Conduit Network.

188. On or around the date of the July 6, 2020 hearing, the City published an agenda

item stating the City Council would take up a resolution to approve a “Development Agreement” with Google Fiber related to the Conduit Network.

189. Upon information and belief, this agenda item was the *first disclosure* from the City to the public of the proposed contract between the City and Google Fiber.

190. The July 6, 2020 agenda was legally insufficient because it failed to provide detailed, definite, and certain disclosures to the public regarding the true nature and extent of the Google Agreement and the real purpose of the proposed Conduit Network, namely the City’s intention to partner with Google Fiber to provide high-speed internet as a city utility.

191. Not only was the July 6, 2020 agenda item legally insufficient for purposes of public notice, the agenda also affirmatively *misled* the public.

192. The only details the agenda item provided about the Google Agreement were that “Google Fiber will provide annual conduit lease payments up to \$20 million” and that other ISPs would be able to “lease space in the City’s conduit network.”

193. The City has since acknowledged that both statements in the agenda item were false.

194. Those statements were also materially misleading in that they falsely communicated that (a) the City’s “lease payments” from Google Fiber would finance all of the construction costs for the Conduit Network in a few years, (b) ISPs that wanted to use the Conduit Network would be provided immediate access, and (c) ISPs that did not use exclusively fiber networks would be allowed to offer internet services through the Conduit Network.

195. The City did not disclose that it would actually take at least fifty years (and potentially much longer) for the City to recover its investment, interest and maintenance costs and instead affirmatively misrepresented that the City would earn \$20 million a year—a gross

exaggeration.

196. Upon information and belief, the City either deliberately or mistakenly misrepresented the revenue the City would derive from the Google Agreement and deliberately misrepresented the exclusive nature of the Google Agreement to the public.

197. These misrepresentations were material. Any citizen who would question or otherwise object to the project would likely decide to forego pursuing his or her statutory right to object based on a misunderstanding that the City was building a Conduit Network that any ISP could use and that the City's costs would be recovered in a little more than two years.

198. On July 6, 2020, the City Council convened to take up and vote on three items relating to the Plan.

199. First, the Council voted to approve the Plan.

200. This action was arbitrary, capricious, and unreasonable.

201. Second, the Council voted to approve the Google Agreement.

202. This action was arbitrary, capricious, and unreasonable.

203. Third, the Council voted to provide preliminary approval for future issuance of \$42.8 million of falsely labeled "urban renewal" bonds to fund the construction of the Conduit Network.

204. This action was arbitrary, capricious, and unreasonable.

205. The third vote authorized the Council's staff and advisers to move forward with actions required to consider a public bond issuance, including obtaining proposed financial and other terms for bond issuances in specific amounts.

206. Typically, municipal bonds used to support a specific project are issued in tranches as the need to make expenditures arises at various times, and the material terms of each tranche

are set just before issuance.

207. Neither the notice of the meeting nor the resolution adopted by the Council contained any specifics about the financial terms of the bonds, such as interest rate, maturity, redemption premium or events of default.

208. None of these details were known by the Council or communicated to the public at the time of the July 6<sup>th</sup> vote.

209. It would be arbitrary and capricious for the Council to approve the issuance of bonds when these key terms are unknown, because those terms are highly material to any decision about whether to issue bonds. Consider just two of those terms, maturity date and interest rate. The impact upon City finances and taxpayers could be significantly different if the bonds matured in 5 years versus 20 or if the interest rate were 10% instead of 3%.

210. Because the determination of material financial terms was unknown as of the date of the July 6<sup>th</sup> issuance, the proper and legal course is for the City to duly call separate meetings on proper notice to City residents for approving each tranche of bonds with specific financial and other material terms. Only by doing so can the Council make fully informed decisions and give citizens a meaningful opportunity to determine whether they wish to exercise their statutory right to object to the bond issuance.

211. The City failed to provide such notice and opportunity to object to material terms for the bond issuances at the July 6<sup>th</sup> meeting.

212. Rather, the City Council will have to take additional actions to address these issues and ultimately issue bonds in the future.

213. The City's defective, cursory and misleading disclosures prevented members of the public from having adequate knowledge to understand and object to the City's planned actions and

caused significant confusion at the July 6, 2020 Council meeting.

214. For example, during the hearing, a member of the public objected to the Google Agreement on the grounds that the City did not issue a request for proposals (“RFP”) for the project and asked the City Council to table consideration of the Google Agreement so further discussions could be had as to whether the Google Agreement was appropriate and lawful.

215. The Council then received feedback from the Deputy City Manager, Jamie Letzring, who represented that issuing an RFP would have been “outside the guidelines of what is currently permitted by Iowa law.”

216. This statement was false and misleading and misstated the law.

217. Iowa law did not preclude public bidding related to the Google Agreement.

218. To the contrary, the City was *required* to publicly bid for some or all of the services required of Google Fiber in the Google Agreement.

219. The Council also heard from the City’s consultant, Dave Lyons, on the request for public bidding.

220. Upon information and belief, at all relevant times Mr. Lyons served as a consultant for the City and/or Google Fiber with regard to the negotiation and execution of the Google Agreement and with respect to the design, financing, and construction of the Conduit Network as well as the marketing of the Conduit Network and Google Fiber’s products and services that would be available to residents through the Conduit Network. Although the City has not chosen to publicly disclose the full terms of Mr. Lyons’ retention, his credentials and experience or whether he has conflicts of interest, upon information and belief, Plaintiff believes that Mr. Lyons will realize greater financial and reputational benefits if the alliance between the City and Google Fiber moves forward, and in some circumstances incentives of that nature may bias the advice given by

a consultant.

221. Mr. Lyons advised the Council that it should not table the Google Agreement because the contract was the product of six months of behind-the-scenes negotiations with Google Fiber.

222. Notwithstanding the City's rushed, deficient, and highly misleading public notice about the Google Agreement, Mr. Lyons advised that further delay was not warranted and that allowing other providers to participate in negotiations and/or respond to RFPs would complicate and delay the project.

223. Mr. Lyons also assured the Council and the audience that "the proposed agreement being considered tonight would not preclude the City from engaging in further public-private collaborations" on the Conduit Network.

224. This statement was false and misleading.

225. In addition, Mr. Lyons represented that "the City is not interested in setting up a system that would compete with the private sector, as that would not comply with the Iowa code."

226. This statement was false and misleading as to the City's intentions to set up a competing system.

227. Mr. Lyons's statement was correct, however, in that Iowa law forbids the City from setting up a system that would compete with the private sector without following established procedures and requirements, including obtaining voter approval. Those procedures and requirements were not followed in this case.

228. Another member of the public asked for clarification regarding whether other ISPs would be able to use the Conduit Network freely.

229. Mayor Gaer confirmed that other ISPs would be able to use the Conduit Network

freely.

230. This statement was false and misleading.

231. Council member Hudson further claimed that he supported the Conduit Network because “it will provide city-owned fiber conduit for any [ISP] to use.”

232. This statement was false and misleading in that the City intended to and has prohibited ISPs other than Google Fiber from accessing or using the Conduit Network for years to come, and had, in fact, designed the Conduit Network so that it was usable only by ISPs relying on optical fiber systems, effectively precluding ISPs that do not exclusively use fiber technology from ever utilizing the Conduit Network.

233. Further, the City intends to preclude ISPs that do not exclusively use fiber technology from ever utilizing the Conduit Network.

234. Mr. Hudson’s statement was accurate, however, in that the City is partnering with Google Fiber to provide internet via “city-owned fiber conduit.”

235. Upon information and belief, Ms. Letzring’s, Mr. Lyons’s, Mayor Gaer’s, and Mr. Hudson’s statements materially misled the public regarding the nature and legality of the Plan and the Google Agreement, as well as the City’s intention to ensure that other ISPs could not use any segment of the Conduit Network to compete with the Internet access service to be conducted jointly by the City and Google Fiber for at least 18 months and, in the case of providers like Mediacom, forever.

236. Prior to the vote on the bonds, at least one member of the public objected based on concerns that “the City is taking on a great deal of risk by funding this project with \$42.8 million in bonds.”

237. The City did not provide lawful, adequate notice and hearing prior to its approvals

of the Plan, the Google Agreement, or its approval related to the bonds.

238. Rather, the City's notices and public hearings were deficient, unlawful, and predicated on materially misleading misstatements, representations, and omissions of fact and law. Critically important is the fact that the City's effort to avoid disclosing the true facts continued throughout the 15-day period following the meeting during which Iowa law would have allowed citizens to dispute the proposed bond issuance if the City had followed proper procedures.

239. The City and Council members continued to mislead the public regarding the nature and purposes of the Plan and the Google Agreement in the weeks following the July 6, 2020 hearing.

240. For example, in July 2020, the City published statements by Mayor Gaer claiming the Conduit Network would be an "open access conduit network" that "will help increase competition and further the goal that all residents and businesses across the City have access to world class internet."

241. Similarly, Council member Renee Hardman claimed that "the pandemic highlighted the differences in access to broadband among various segments of the population," and suggested the Conduit Network would resolve those differences.

242. These statements were false, misleading, and lacked any sufficient factual basis.

243. The City further publicly claimed that once a business or resident had "conduit to your home, you will have access to any internet service provider who uses our 'open access' conduit network."

244. The City did not disclose that Google Fiber would be the only ISP allowed to use the Conduit Network for years to come or the severe limitations the City would place on other ISPs' access to the Conduit Network, if and when they are allowed to use it. Indeed, the exclusivity,

design and other rights and advantages given by the City to Google Fiber would not only greatly inhibit the ability and incentive of incumbent ISPs to use the Conduit Network, it would dissuade new entrants from entering the West Des Moines market because the competition was so severely skewed in Google Fiber's direction. The City's omission of these material facts was highly misleading to the public.

245. The City engaged in these misleading tactics to discourage the public from investigating or objecting to the Plan, the Google Agreement, or the preliminary bond authorization.

246. On July 20, 2020, the City Council convened for a meeting at which it voted to take additional action for issuing the first tranche of Urban Renewal bonds to finance the Conduit Network in the amount of \$13,565,000.

247. The Council voted to begin advertising the sale of the bonds, to approve electronic bidding procedures for the sale of the bonds, and to approve the preliminary official statement to accompany the bonds.

248. During the July 20, 2020 Council meeting, a representative of Mediacom asked the City to clarify whether the City had inaccurately represented that Google Fiber would pay up to \$20 million per year in license payments.

249. A representative of the City initially claimed that the City's prior statement that Google Fiber would pay the City up to \$20 million per year was accurate. However, when pressed on this issue the City's representatives admitted that the City's prior statements were wrong and that Google Fiber's maximum annual payment would be \$1 million (and potentially as little as \$240,000).

250. Mediacom's representative also asked whether Mediacom or other ISPs would be

allowed to use the Conduit Network when it was completed.

251. Ms. Letzring responded that “the City would be excited to partner with Mediacom Communications to offer their services via the [Conduit Network].”

252. This statement was false and was intended to deliberately mislead Mediacom and the public regarding the City’s intention to build a custom-designed Conduit Network for Google Fiber’s exclusive use and to exclude ISPs that do not exclusively use fiber technology from utilizing the Conduit Network. This effort to trick Mediacom into believing that it would be able to use the Conduit Network at some point in the future continued throughout discussions between the City and Mediacom regarding Mediacom’s concerns about the City’s conduct. City representatives were clearly told that Mediacom wished to use the Conduit Network as soon as possible and the only possible roadblock identified by the City was Google Fiber’s 18-month Exclusivity Period. The City did not disclose its intention that the Conduit Network would be designed, and the connections to residents’ homes and businesses would be subject to legal terms, to prevent Mediacom from ever using it.

253. Defendants knowingly and intentionally misrepresented the purpose, nature, and scope of the Plan and the Google Agreement in order to deprive residents and taxpayers of a meaningful opportunity to question or object to the City’s plans.

254. Defendants’ material misrepresentations and omissions continued during Defendants’ efforts to take additional action to issue the first tranche of bonds.

255. On July 24, 2020, the City published a “Notice of Note Sale” in the Des Moines Register for the first tranche of the bonds.

256. This notice was legally insufficient and did not substantially comply with the applicable notice requirements of Iowa law.

257. For example, the notice failed to provide detailed, definite, and certain disclosures to the public regarding (a) the purpose of the bonds, (b) the nature of the City's public-private partnership with Google Fiber that the bonds would be used to finance, (c) the City's intention to prohibit ISPs other than Google Fiber from using the Conduit Network, or (d) the existence and nature of Mr. McKinney's conflict of interest. In addition, the notice did not correct any of the material deficiencies in the notices given and disclosures made regarding the July 6<sup>th</sup> meeting and so the public still lacked material information needed to make an informed judgment about the proposed bond issuance.

258. On August 3, 2020, the City Council convened for a meeting at which it voted to take additional action for approving the issuance of the first tranche of bonds.

259. These actions included preliminary authorizations to sell the bonds if the City obtained acceptable terms, including final par amounts, purchase prices, and interest rates.

260. The Council's agenda item further noted, however, that ultimate debt services amounts and additional action to levy taxes required for the issuance of the bonds would occur after the final terms were set.

261. Despite his conflict of interest, Mr. McKinney did not recuse himself from this vote. Though he was aware of the conflict of interest, Mr. McKinney voted to approve the additional action for issuance of the first tranche of bonds on August 3, 2020.

262. On August 17, 2020, the City Council convened for a meeting at which it voted to take yet other additional actions for the issuance of the first tranche of bonds.

263. These additional actions included approving a loan agreement containing the final terms; appointing a register, paying agent, and transfer agent; and approving the issuance of the bonds and levying of a tax to pay for them.

264. Once again, despite his conflict of interest, Mr. McKinney did not recuse himself from this vote. Though he was aware of the conflict of interest, McKinney voted to approve the action items for issuance of the bonds on August 17, 2020.

265. The City issued the first tranche of \$13,565,000 in bonds on September 3, 2020.

266. Those bonds were issued unlawfully and without lawful and adequate notice, public hearing, and approval.

267. But to be clear, Mediacom does not seek to invalidate these bonds, which would only harm innocent bondholders.

268. Instead, Mediacom seeks to enjoin the City's expenditures of funds derived from these bonds on unlawful activities related to the Plan, the Conduit Network, and/or the Google Agreement and further illegal issuances of bonds in the future.

269. The remainder of the \$42.8 million preliminary bond allowance remains unissued, but the City plans to take additional action imminently for the issuance of those bonds.

270. Any future additional actions and bond issuances by Defendants related to the Plan, the Conduit Network, and the Google Agreement would be invalid and unlawful, as would be the City's expenditures of any funds derived from such future bond issuances.

**G. The City Denies Other ISPs Any Rights to the Conduit Network.**

271. Following the July 6, 2020 Council meeting, Mediacom met with the City multiple times to discuss its concerns with the Plan and the City's favorable treatment of Google Fiber and its discriminatory treatment of Mediacom.

272. Mediacom expressed its concern and frustration that the City did not disclose its plans to build the city-wide Conduit Network while Mediacom and City were negotiating the Mediacom Agreement.

273. The City responded that such disclosure was unnecessary because the City never intended to grant Mediacom any rights to the city-wide Conduit Network during Google Fiber's years' long Exclusivity Period. Once again, the City failed to disclose that even after the Exclusivity Period ended, Mediacom would not be able to use the Conduit Network because of the way in which it was to be designed and operated.

274. Mediacom also expressed its concern that giving Google Fiber a monopoly over the Conduit Network for at least the next several years was anticompetitive, violated federal, state and local law, and, fundamentally, made no sense.

275. The City offered only one explanation—that the Exclusivity Period was intended to “test” the structural integrity of the Conduit Network to determine whether it would “survive a long, cold Iowa winter.”

276. This explanation is pretextual and false.

277. Iowa winters do not last eighteen months.

278. In addition, this is not the first time an underground conduit has been built. It is not hard to build an underground conduit that will survive during the winter, and the City does not need 18 months (or anything remotely approaching that length of time) to test the structural integrity of the Conduit Network.

279. Nor does the City's explanation shed light on why Google Fiber will have successive eighteen-month Exclusivity Periods for each section of the Conduit Network, as each section is completed.

280. Further, because the “testing” of the Conduit Network is inevitably part of the construction process, the City was required to publicly bid this phase of the construction process.

281. The City failed to solicit public bids for this construction process, in violation of

Iowa law.

282. Mediacom also shared its concerns that Google Fiber was designing or could design the Conduit Network in a manner that would impede, if not outright prevent, other ISPs from being able to feasibly use the Conduit Network, if and when the City allows them access to it.

283. As an example, Mediacom noted that the specifications for the Conduit Network required the network to be built along the front easement of properties.

284. Over the past decades, Mediacom and other incumbent ISPs in many instances built their networks along the rear easements of properties because that is where the power lines are located.

285. Mediacom expressed concern that the specifications for the Conduit Network failed to include sufficient access points for the other ISPs to access a Conduit Network that would be built on the opposite side of property lines.

286. The City agreed that this could become an issue and that the City should seek input from other ISPs on the design of the Conduit Network while the City's engineering firm, HDR, Inc. was completing its initial design plans for the Conduit Network.

287. The City did not disclose that HDR was contractually required to take direction from Google Fiber regarding HDR's design plans for the Conduit Network.

288. To date the City has refused to commit to giving Mediacom or, on information and belief, any other ISP, any right to input on the design of the Conduit Network.

289. Mediacom voiced its concerns that the City's profit-sharing agreement with Google Fiber would incentivize the City to promote Google Fiber's interests and impede other providers' ability to compete on equal footing with Google Fiber.

290. The City has refused to change its profit-sharing agreement.

291. Mediacom expressed concern that the City's contractual arrangement with Google Fiber exposed the City to considerable losses if Google Fiber's services were not widely utilized in West Des Moines or if Google Fiber pulled out of the West Des Moines market, as it has done in other markets in the past.

292. The City acknowledged that Google Fiber had abruptly exited at least one market in which it had provided broadband internet and had reduced services in other markets.

293. According to news reports, Google Fiber has "paused" upgrades and/or expansions into new markets on at least one occasion, apparently due to concerns that Google Fiber could not profitably provide service in markets if it had to develop and maintain its own infrastructure—like other ISPs are required to do—or if it faced effective competition from incumbents.

294. Of course, the Google Agreement guarantees that Google Fiber will not have to make those investments in West Des Moines and grants Google Fiber major advantages over incumbent and potential new competitors, which explains why Google Fiber is willing to enter the internet market in the City. At the same time as the City was eliminating these impediments to Google Fiber's entry into the market, it was creating them for incumbent ISPs and potential new entrants, who have to both (a) bear their own costs of installing their wires, cables and fibers during the first 18 months after each Conduit Network segment is ready or longer while Google Fiber's costs were paid by the City and (b) compete on an unlevel playing field because of all the benefits and preferences conferred upon Google Fiber by the City.

295. The City has not disputed it will incur significant financial loss if Google Fiber is not successful in the West Des Moines market.

296. Mediacom also voiced its concerns that the City's restrictive overlapping ordinances with respect to Mediacom's aerial plant would impede Mediacom from upgrading or

expanding its above-ground network.

297. Mediacom also shared its concerns that, if the City followed its overreaching ordinances and prohibited Mediacom from accessing the Conduit Network during Google Fiber's Exclusivity Period, Mediacom's only options would be to: (a) not upgrade or expand its network for several years; or (b) build its own underground conduit, which would likely be cost-prohibitive and would, in any event, create a significant competitive advantage for Google Fiber, which would not have to bear its own costs of building the conduit in which its fiber will reside. In addition, Google Fiber would enjoy access to the so-called "drop conduit" being built by the City to connect homes and businesses to the Conduit Network while Mediacom would be unable to use those connections and would have to convince homeowners to allow Mediacom to dig up their yards a second time if they wanted Mediacom service instead of Google Fiber service.

298. The City has refused to commit to any plan to remedy these problems but has emphatically informed Mediacom that it will not, under any circumstances, do anything that would compromise Google Fiber's right to exclusive use of the Conduit Network during the Exclusivity Period.

299. The City has also expressly told Mediacom, on multiple occasions, that the City will offer Mediacom access to the Conduit Network when Google Fiber's Exclusivity Period ends.

300. These statements were deliberately false and misleading.

301. Mediacom's network is not exclusively fiber based. The City's arbitrary and capricious limitation that only fiber-based networks will be allowed into the Conduit Network, coupled with its "fiber-to-home" installation agreements with property owners, will effectively prohibit Mediacom from ever using the Conduit Network.

302. The City has publicly acknowledged that ISPs will soon have no financially feasible

options to install or upgrade their networks, except in the Conduit Network.

303. The City's decision to ban all ISPs other than Google Fiber from utilizing the Conduit Network for years to come and to completely prohibit ISPs that do not use exclusively fiber networks from utilizing the Conduit Network is unreasonable, arbitrary, capricious, and unlawful; will severely harm existing ISPs; and severely threatens their ability to continue offering services in the City.

304. The grant by the City of Google Fiber's successive eighteen-month Exclusivity Period for each section of the Conduit Network and the City's limitation of the use of the Conduit Network and drop conduit to providers using optical fiber technology is decidedly not in the interests of City residents because it limits their choices and deprives the City of revenues that ISPs who are not exclusively fiber-based would generate through payment of fees to use the Conduit Network. Since this gift to Google Fiber makes no sense from the perspective of City homeowners and businesses, it is reasonable to conclude that its purpose and intent is to confer competitive advantages on Google Fiber by ensuring that it will be the *only* ISP to provide internet access via the Conduit Network to residents and businesses throughout the City for those eighteen-month periods.

305. These exclusivity rights will ensure the success of the City's public-private partnership with Google Fiber to provide high-speed internet as a city utility.

**H. The City Markets the Conduit Network as a Partnership with Google Fiber to Provide High-Speed Internet.**

306. The City and Google Fiber are also jointly marketing the Conduit Network.

307. Upon information and belief, these marketing activities are being conducted pursuant to one or more written or oral agreements between the City and Google Fiber that have not been publicly disclosed.

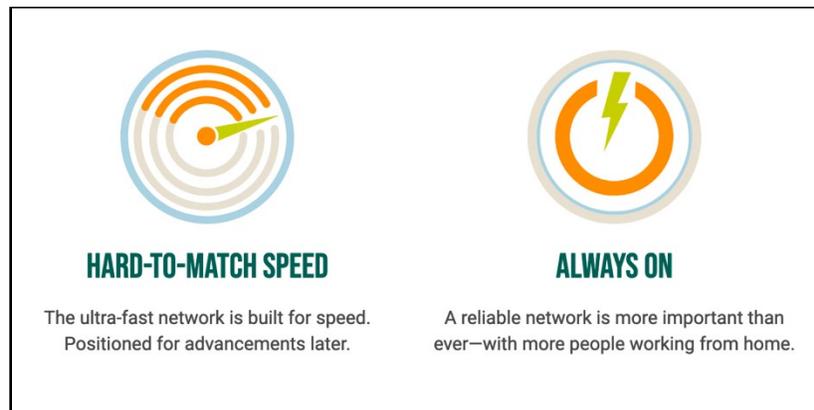
308. The City’s marketing and promotion of Google Fiber—and only Google Fiber—further establishes their intent to enter into a public-private partnership to provide high-speed internet as a city utility.

309. In the Fall of 2020, the City began an aggressive “Plant the Speed” marketing campaign.

310. This campaign consists of mailings, newsletters, and a City-operated website.

311. The City’s marketing campaign is continuing as of the date of this filing.

312. The City’s marketing campaign presented the publicly owned Conduit Network and the privately owned Google Fiber network as one and the same. The marketing boasts that the Conduit Network will provide “hard-to-match speeds” and that it will be “always on.”

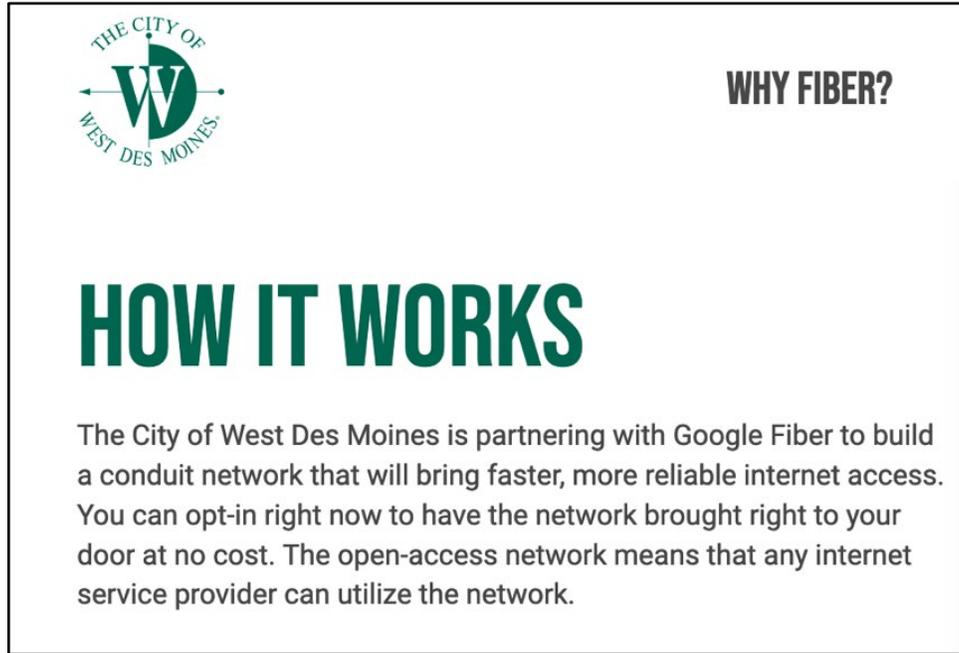


These representations can refer only to the provision of actual internet services via the Conduit Network. They cannot refer merely to the physical Conduit Network itself because the Conduit Network is simply a series of pipes. It has no “speed” and cannot be “always on.”

313. Further, the representations can only refer to Google Fiber’s internet, since Google Fiber is the only ISP that will be allowed to use the Conduit Network during the Exclusivity Period.

314. In the same vein, the City’s marketing materials also represented that the City and Google Fiber are “partnering” to build and deliver the system that “will bring faster, more reliable

internet access” to West Des Moines residents.



315. The City is marketing Google Fiber’s fiber technology as superior to the technology and services provided by ISPs, such as Mediacom, that do not use exclusively fiber networks.

316. The City lacks any reasonable basis for making these statements, which are false. Moreover, although the City has granted Google Fiber major rights, benefits and privileges, it has not secured any binding commitment from Google Fiber about the speed, price, quality, or other material services that it will provide in the City. The Google Fiber Agreement contains not a single word regarding these matters. Thus, the City’s statements extolling Google Fiber’s service to be provided in the future through a network not yet built have no foundation.

317. Upon information and belief, the City conducted no rigorous testing or analysis to determine whether Google Fiber’s internet services were equal, superior to, or “faster” than internet that is available or will be available through other ISPs.

318. The City’s statements are also false in that Google Fiber intends to offer internet

speeds that are already available in the City.

319. The City's statements are also false in that internet provided through the Conduit Network will not be more "reliable" than internet provided through other ISPs' aerial and underground networks, in part, because fiber networks installed in the Conduit Network will draw power from electrical utilities that are primarily installed above-ground and which will not be relocated to the Conduit Network.

320. The City is promoting Google Fiber's service as "faster," "more reliable," and "always" on even though the service has never been used in West Des Moines and the City did not bother, before granting Google Fiber a \$43 million gift, to secure even a single commitment from Google Fiber as to speed, quality, price, geographic coverage or other parameters of the services to be offered in the City.

321. The City is marketing goods and services provided by the public sector, in violation of Iowa Code § 23A.2.

322. The City's marketing materials are misleading in other respects as well.

323. For example, the City's marketing campaign gave the false impression that residents who connect to the Conduit Network will receive free internet access, encouraging residents and business to "[g]et the best and fastest internet in Iowa" and recommending "fiber" because "it's free":

City of West Des Moines - City Manager's Office  
Sponsored · 🌐

Opt-in right now to have the network brought right to your door at no cost. The open-access network means that any internet service provider can utilize it.

**WHY FIBER?**

Plant the Speed

- ALWAYS ON
- HARD-TO-MATCH SPEED
- EVERYONE'S CONNECTED
- FAIR COMPETITION
- IT'S FREE

WIREDWDM.ORG  
Get the best and fastest internet in Iowa . [LEARN MORE](#)

324. In addition, some of the City’s marketing materials perpetuated the false impression that the City is letting other ISPs use the Conduit Network:

**FAIR COMPETITION**

The network will invite multiple carriers and encourage competition—bringing better rates and customer service to West Des Moines.

– **WHAT IF I DON'T WANT GOOGLE FIBER? I LIKE MY CURRENT PROVIDER.**

- You are free to stay with your current internet provider! No need to change, upgrade or switch.
- You may still want to link into the City's conduit network now; it's free to do so and it will allow your current provider to bring you better internet choices sometime in the future, should the company choose to license space in the conduit.

These materials failed to disclose to residents and businesses that they will have to pay for Google Fiber's internet and that in fact Google Fiber is the only "choice" residents will have through the Conduit Network.

325. The City's marketing materials also failed to disclose that other ISPs must wait until "sometime in the future" to provide services through the Conduit Network because of the City's decision to grant Google Fiber lengthy Exclusivity Periods.

326. The City's marketing materials also fail to disclose that the City is prohibiting ISPs that do not exclusively use fiber networks offering services via the Conduit Network.

327. Due to the nature of the terms of the agreement or agreements between the City and Google Fiber, the City's marketing efforts are advertisements in Google Fiber's favor.

328. The City's marketing efforts are materially misleading, provide an anti-competitive benefit to Google Fiber, and cause competitive harm to ISPs like Mediacom.

329. The City is actively asking residents and businesses to "opt in" to the Conduit Network, the primary function of which is to facilitate the City's partnership with Google Fiber to offer high-speed internet as a city utility.

330. Thus, the City is not only conferring *direct* benefits upon Google Fiber—*e.g.*, exclusive infrastructure access and fee waivers—based solely on Google's brand recognition, market status, and economic and political benefits Google Fiber may provide to the City and its leadership. The City is also actively advertising and marketing Google's products and services, in

violation of Iowa law.

331. On November 13, 2020, Mediacom sent the City a letter detailing the false, misleading, and defamatory nature of the City's advertising campaign on Google Fiber's behalf.

332. Mediacom demanded that the City cease publishing its false, misleading, and defamatory statements and desist from repeating the offending statements in the future.

333. The City failed to respond to Mediacom's letter.

334. As of the date that Mediacom filed this lawsuit, the City had made no material changes to its advertising and continues to knowingly and intentionally publish false, misleading, and defamatory statements about Mediacom and other ISPs.

335. After the lawsuit was filed, the City made some changes to its website. But the City's website continues to improperly promote Google Fiber's services and disparage other ISPs, including Mediacom.

336. For example, the website contains a video describing Google Fiber's services as "the highest quality internet."

337. The video goes on to describe the fiber-based technology Google Fiber uses as "the future" and indicates Google Fiber's internet will be "faster" than other options.

338. The video claims that, for residents who connect to the Conduit Network: "no more being furious, because your internet is too slow."

339. Elsewhere, the website claims that services provided through the Conduit Network (*i.e.*, Google Fiber's services) will be "world class" and will be "better, faster and more reliable" than options currently available in the City.

340. The website also indicates the City is working on "programs" to subsidize internet-access payments for residents who use Google Fiber's internet, including via use of "federal grant

programs.”

341. The website also continues to misrepresent that the Conduit Network is “open access” and that other ISPs will be allowed to provide services through it.

342. The website does not disclose the restrictions the City is placing on other ISPs’ use of the Conduit Network.

343. In addition to making the material misrepresentations and omissions discussed above, the City is actively using its “Plant the Speed” campaign to lock residents and business owners into twenty-five year “fiber-to-home” installation agreements that will preclude the installation of any technology from the Conduit Network to the property other than exclusively fiber technology (*i.e.*, Google Fiber’s technology).

344. Put simply, the City is luring unwitting residents and business owners into executing long-term installation agreements that will preclude many ISPs from offering internet services to them via the Conduit Network.

345. The City does not and has never promoted Mediacom’s services to any degree even close to its promotion of Google Fiber service, despite the fact that Mediacom has been the primary reason that West Des Moines homes and businesses enjoy broadband services comparable to some of the biggest cities in the country.

**COUNT I – VIOLATION OF IOWA CODE CH. 403 AND IOWA CONSTITUTION**

346. Mediacom reincorporates the allegations in the foregoing paragraphs as if fully set forth herein.

347. Defendants’ conduct, as demonstrated by the facts alleged herein and additional facts to be identified in discovery, violated the Urban Renewal Law.

348. Defendants asserted that the Plan and the Google Agreement and its approvals

related to the bonds were approved pursuant to the Urban Renewal Law.

349. The Plan, the Google Agreement, and the approvals related to the bonds are contrary to Iowa law and are invalid.

350. Defendants improperly used the Urban Renewal Law to rush through approval of its secret partnership with Google Fiber without the required transparency and voter approval and oversight.

351. The City's conduct violates the Urban Renewal Law in several ways:

352. *First*, the City's Plan unlawfully, arbitrarily, capriciously, and unreasonably classifies the entire city as a single monolithic "economic development area."<sup>1</sup>

353. The plain language of the statute grants municipalities certain powers over only "slum and blighted areas" and "economic development areas."

354. An entire City cannot be classified wholesale as an "economic development area," without regard to the variety of residential and business locales. If it could, the limitation on the scope of the Urban Renewal Law would be illusory and the powers granted therein would be plenary. This is contrary to the plain language of the statute and its express legislative intent, which is to combat *slums, blight, conditions of unemployment, and insufficient housing for middle- and low-income residents*. See Iowa Code § 403.2.

355. Further, vast swaths of the City cannot be classified as economic development areas.

356. West Des Moines is a wealthy and vibrant city.

357. The entire City does not and cannot qualify as an "economic development area."

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<sup>1</sup> The only excepted portions of the municipality are agricultural parcels, which are automatically excluded from urban renewal areas by statute. See Iowa Code § 403.17(3), (5), (10), (22).

358. The City's and the Council's attempt to designate the entire municipality as an "economic development area" is arbitrary, capricious, and unreasonable and violates chapter 403 of the Iowa Code.

359. Because Defendants did not properly designate a lawful urban renewal area, they had no authority to undertake any activities pursuant to the Urban Renewal Law. *Id.* § 403.4.

360. This includes, but is not limited to, the Defendants' actions in approving the Plan, the Google Agreement, and the City's past and planned issuances and expenditures of bonds. *Id.*

361. These actions by Defendants were unlawful.

362. ***Second***, the Defendants' approval of the Plan and the approval of the Google Agreement pursuant to the Plan, was unreasonable, arbitrary, and capricious for other reasons.

363. The Plan contained material misrepresentations and omissions concerning the true nature and purpose of the Plan—which is to construct a Conduit Network custom-designed for Google Fiber's exclusive use in order to establish a city utility that the City will operate in partnership with Google Fiber, in violation of Iowa Code § 403.5.

364. Defendants made material misrepresentations and omissions to the Planning and Zoning Commission in order to induce it to arbitrarily and capriciously recommend approving the Plan, in violation of Iowa Code § 403.5.

365. The City failed to provide a lawful notice and hearing process prior to approving the Plan and the Google Agreement, in violation of Iowa Code § 403.5.

366. Rather, during the notice-and-hearing process the City made numerous material misrepresentations and omissions that misled the public regarding the nature and purposes of the Plan and the Google Agreement, which deprived the public of information needed to timely raise objections to the City's planned conduct.

367. In the weeks and months following its July 6, 2020 approval of the Plan and the Google Agreement, Defendants continued to make material misrepresentations and omissions regarding the nature and purposes of the Plan and the Google Agreement in order to prevent members of the public from understanding and objecting to the Defendants' plans.

368. Defendants' failure to provide lawful, sufficient notice and public hearing prior to its approval of the Plan renders the Plan invalid and void. *Id.* § 403.5.

369. Defendants' approval of the Plan and the Google Agreement were arbitrary and capricious in other ways as well.

370. Defendants neither completed nor considered any studies and analysis or issued any findings to support the proposition that the entire City is "appropriate for commercial and industrial enterprises, public improvements related to housing and residential development, or construction of housing and residential development for low and moderate income families." *Id.* § 403.17(10).

371. Defendants knew or should have known that vast swaths of the City cannot lawfully be classified as urban renewal areas.

372. Defendants neither completed nor considered any studies or analysis to support the proposition that building the Conduit Network would further the purposes of the Urban Renewal Law.

373. Defendants knew or should have known that their approval of the Plan was unreasonable, arbitrary and capricious because: (a) the stated purpose of the Plan was to promote economic growth by allowing multiple ISPs to use the Conduit Network, thereby increasing competition and improving internet access; **but** (b) Defendants knew and intended that the Conduit Network would be custom-designed for Google Fiber's exclusive use, thereby decreasing competition and reducing choices for residents and businesses.

374. The construction of a Conduit Network custom-designed for Google Fiber's exclusive use is outside the scope of a proper "urban renewal project" and the type of "public improvement" authorized under chapter 403. *See id.* §§ 403.6, 403.12(1); *accord id.* § 384.37 (defining the term "public improvement").

375. The statute contemplates changes to troubled real property or the development of specific kinds of residential housing in discrete portions of the municipality, which is consistent with the statute's primary purpose of combatting slum, blight, conditions of unemployment and housing shortages. *Id.* §§ 403.7, 403.8.

376. Defendants knew or should have known that building the Conduit Network and executing the Google Agreement would not further urban renewal. Rather, Defendants knew and understood that the purpose of building the Conduit Network and the Google Agreement was to give Google Fiber the dominant position in the West Des Moines broadband internet market and ensure the success of the City's partnership with Google Fiber.

377. The Urban Renewal Law's limitations are bolstered by two important constitutional safeguards: (a) "[N]o public money or property shall be appropriated for . . . private purposes," Iowa Const. art. III, § 31; and (b) equal protection demands that, after litigants have the opportunity to develop a factual record, the City must demonstrate "the asserted purposes of the" City's action, "in light of the record developed, are [1] realistically conceivable and [2] have a basis in fact, and . . . [3] the means chosen are rationally related to that legitimate purpose." *Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 548 (Iowa 2019).

378. Defendants knew or should have known that building a Conduit Network custom-designed for Google Fiber's exclusive use irrationally and fatally undermined the stated purposes of the Plan and the aims of the Urban Renewal Law.

379. In spite of the Iowa Constitution's prohibition on use of public funds for private purposes, Defendants have agreed to spend tens of millions of dollars of public money to build an expensive Conduit Network solely for Google Fiber's "private purposes." Iowa Const. art. III, § 31.

380. The City cannot demonstrate that it is "realistically conceivable" that spending \$50 million to build a Conduit Network custom designed for Google Fiber and excluding other ISPs from using it will promote competition or increase residents' and business's choices with respect to broadband internet. *Behm*, 922 N.W.2d at 548. The City's subsidization of its favored partner's entry into the market is not a legitimate use of the Urban Renewal Law and has no logical or rational connection to urban renewal or the stated purposes of the Plan. *Id.*

381. Rather, the intent and effect of the Plan and the Google Agreement is to unlawfully appropriate public money for Google Fiber's private purposes.

382. **Third**, the Plan, including, but not limited to, the Google Agreement, is also unlawful and invalid because it violates Mediacom's rights under Iowa law, including, but not limited to Iowa Code chapters 23A, 26, 28E, 388, 477A and the Iowa Constitution.

383. Further, the Plan and the Google Agreement violate the City's own ordinances which expressly prohibit the City from entering exclusive contracts for use of its right of way. *See, e.g.,* WDM City Ordinance 7-2-2.

384. Carrying out an illegal urban renewal plan is not an essential corporate purpose of the City or a lawful exercise of municipal authority.

385. **Fourth**, Defendants' approvals related to the bonds and expenditures of proceeds derived from the September 2020 bond issuance are also unlawful and invalid.

386. Defendants lacked authority to approve the issuance of bonds or expend proceeds

from those bonds because they failed to designate a lawful urban renewal area and failed to approve a lawful urban renewal plan.

387. Defendants failed to provide a lawful notice-and-hearing process prior to their approvals related to the bonds. Defendants' notices and public hearings related to the bonds were highly misleading and included material misrepresentations and omissions concerning, for example, the purposes for which the bonds would be used, the City's intent to custom-design the Conduit Network for Google Fiber's exclusive use and the financial risk that created for the City, and the City's plans to enter into a public-private partnership to jointly operate a city utility with Google Fiber.

388. The City is not empowered by statute or any other law to approve or issue bonds for a Plan that exceeds the scope of its municipal authority under the Urban Renewal Law or that violates other rights that Iowa law provides to residents, taxpayers, and businesses.

389. The bonds also cannot be lawfully issued under Iowa Code chapter 384 because the City's Plan is unlawful, and chapter 384 does not otherwise authorize the City to approve or issue General Obligation Bonds to construct the Conduit Network.

390. Defendants' acts and omissions with respect to their approval of the bonds related to the Plan or activities undertaken in furtherance of the Plan are unreasonable, arbitrary, and capricious as a matter of fact and law.

391. Defendants' expenditures of funds derived from the approval and issuance of the bonds related to the Plan or activities undertaken in furtherance of the Plan are unlawful, arbitrary, and capricious as a matter of fact and law and are invalid.

392. The City has publicly represented that it imminently plans to issue additional tranches of bonds in furtherance of the unlawful Plan. Each subsequent issuance of bonds will

require additional action by Defendants for the issuance of the bonds. Defendants lack authority to issue future tranches of bonds and any additional actions by Defendants to do so are invalid and unlawful.

393. *Fifth*, the Plan, the Google Agreement, and the Council's approvals related to the issuance of the bonds are tainted by other impropriety.

394. There is an apparent conflict of interest in awarding a municipal monopoly to a Google affiliate.

395. Google retains Mr. McKinney, a member of the City Council and a board member of the West Des Moines Chamber of Commerce, for his lobbying services in Iowa.

396. Google's access to Defendants was therefore significantly greater than its competitors' access. Mr. McKinney recused himself from the relevant Council votes at the July 6, 2020 meeting; however, the conflict extends beyond the simple vote. The City's negotiations with Google Fiber had been ongoing for approximately six months prior to the vote, and Mr. McKinney's relationship with Google extends even farther back than that.

397. Mr. McKinney also participated in and voted to approve additional actions for the issuance of the first tranche of bonds, despite his admitted conflict of interest.

398. The City Council failed to adopt measures to ensure that the member in question was not involved in and did not influence the negotiations with Google Fiber or the City's recommendation that the Council approve the Google Agreement.

399. Upon information and belief, Mr. McKinney has also been involved in decision-making and approvals related to the City's joint marketing activities on behalf of Google Fiber and the City's expenditures of public funds on construction projects related to the Conduit Network.

400. Under these circumstances, Defendants' award of the Google Agreement to Google

Fiber—following lengthy closed-door negotiations and a refusal to seek bids from other service providers—is beyond the scope of the municipality’s authority under Iowa Code chapter 403.

401. Upon information and belief, other conflicts of interest involving other Council members or City leadership related to the Plan and the Google Agreement exist and have not been disclosed to the public.

402. Defendants’ many failures to comply with Iowa Code chapter 403 reveal that they are misusing the Urban Renewal Law to evade their finance and transparency obligations under Iowa law. *See generally, e.g.*, Iowa Code ch. 403.

403. Defendants’ failures to comply with the Urban Renewal Law further demonstrate failures to comply with the Iowa Constitution.

404. Defendants’ decisions to designate the entire City of West Des Moines as an urban renewal area, approve the Plan, provide approvals related to the bonds, and enter into the Google Agreement were unlawful, arbitrary, capricious, and an abuse of discretion and violated the requirements of Iowa Code chapter 403 and the Iowa Constitution.

405. Any expenditures of City funds in furtherance of the Plan and/or the Google Agreement—or any other as-yet unknown agreements with Google Fiber—violate Iowa Law, as well.

**COUNT II – VIOLATION OF IOWA CODE CHS. 28E AND 388**

406. Mediacom incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

407. Assuming for the sake of argument that the City had the legal authority to create the Conduit Network—although, to be clear, it did not—the City was also required to comply with the provisions of the Iowa Code controlling the ownership, operation, and establishment of a city

utility. *Id.* § 388.2.

408. The City approved the Plan and executed the Google Agreement for the purpose of jointly establishing and operating a city utility to provide fiber-based broadband internet to residents and businesses, consistent with the City's WDM 2036 plan.

409. The City's July 1, 2020 public notice confirms this by representing that the City was executing the Google Agreement under its authority to act jointly with a private entity to administer a city utility. Iowa Code § 364.5.

410. The Iowa Code defines a "city utility" to include, *inter alia*, any part of a "cable communication" or "telecommunications" system that is "owned by a city, including all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the utility." *Id.* § 362.2.

411. The City's marketing communications regarding its "Plant the Speed" initiative presents its conduit build-out as coextensive with the provision of high-speed fiber internet service.

412. The City's marketing communications publicly proclaim that "[t]he City of West Des Moines is **partnering with Google Fiber to build** a conduit network . . ." (Emphasis Added).

413. The City and Google Fiber have, on multiple occasions, described their business relationship as a "public-private partnership" in which the City contributes its expertise in developing and maintaining infrastructure, garnering public support, and its access to public financing, while Google Fiber contributes its expertise in installing and operating a fiber network and providing customer service.

414. The Google Agreement, the City and Google Fiber's course of conduct, and other written, oral or implied agreements between the City and Google Fiber demonstrate that the City and Google Fiber are jointly establishing a city utility.

415. Pursuant to the City's Plan, the Google Agreement, and other written or oral agreements between the City and Google Fiber, the City is jointly designing, testing, maintaining, operating and marketing a joint telecommunications system with Google Fiber through the Conduit Network.

416. Both the City and Google Fiber will contribute capital, resources, labor, and their respective skill to this joint undertaking.

417. For example, the City is contributing a publicly financed Conduit Network custom-designed for Google Fiber's exclusive use, signing up residents to connect to the network, marketing and promoting Google Fiber's services, and is responsible for maintenance of the network's physical infrastructure.

418. Google Fiber will supply its expertise in operating the telecommunications network and providing customer service.

419. The City and Google Fiber will exercise joint control of key aspects of their partnership.

420. This joint control will include, for example, (a) developing specifications, (b) supervising and directing the engineering firms that are designing the Conduit Network, companies involved in the construction and testing of the Conduit Network, and one or more third-party agencies involved in the City's various marketing and promotional activities related to the Conduit Network, (c) signing residents up to connect to the Conduit Network for purposes of receiving Google Fiber's services, and (d) the operation and maintenance of the Conduit Network.

421. The terms of the Google Agreement—and, upon information and belief, other written, oral, or implied agreements, including, but not limited to those agreements described above—also establish profit and loss sharing between the City and Google Fiber related to their

planned city utility.

422. Further, the City has publicly represented that it will seek and use federal grant monies to pay for residents' costs of connecting the Conduit Network and paying for Google Fiber's internet, which in turn increases the City's profits and reduces its risk of losses related to its joint undertaking with Google Fiber.

423. Both Google Fiber and the City have significant upside and downside stakes in terms of prospective profits and risk of losses that are directly tied to the success or failure of the joint undertaking.

424. The City has also taken numerous affirmative steps to increase its profits and reduce its risk of losses.

425. For example, the City has effectively barred any other ISPs from using the publicly owned Conduit Network.

426. During the Exclusivity Period, Google Fiber will be the only ISP the City allows to provide internet services through the Conduit Network.

427. Further, due to the City's prohibitions on what technology can be installed in the Conduit Network, the City has all but guaranteed that Google Fiber will be the only ISP able to use the vast majority of the Conduit Network even after the Exclusivity Period ends.

428. The City also launched a massive marketing campaign encouraging residents to connect to the Conduit Network so that they can access the "better," "faster," and "more reliable" internet that Google Fiber purportedly offers.

429. The City has also undertaken a massive campaign to induce unwitting residents to sign "fiber-to-home" installation agreements that preclude ISPs like Mediacom from offering them non-fiber services via the Conduit Network for decades.

430. The City has undertaken these activities to the detriment of Mediacom and other ISPs and for the purposes of ensuring that its partnership with Google Fiber is successful.

431. The City and Google Fiber are partnering to establish, own, and/or operate a city utility to provide a telecommunications service.

432. On information and belief, there are other non-public agreements between the City and Google Fiber which allocate additional rights, duties, and obligations related to their city utility. This includes activities related to marketing, advertising, promotion, construction, supervising and directing the activities of the engineering design service firms hired to design the Conduit Network, and profit and loss sharing.

433. The Urban Renewal Law provides no authority for a municipality to construct or operate a city utility or to use bonds issued pursuant to the Urban Development Law or Iowa Code chapter 384 for this purpose.

434. Under Iowa law, the City can establish a city utility only with “the approval of the voters of the city” at a general or special election. Iowa Code § 388.2(1)(a)–(b). It cannot do so unilaterally through closed-door negotiations with a Silicon Valley tech giant like Google.

435. The voters of West Des Moines were deprived of their right to give or withhold their approval of the City’s plan to jointly construct, establish, undertake, and operate a city utility to provide telecommunications services in partnership with Google Fiber and to establish an unlawful and anticompetitive monopoly over the Conduit Network.

436. Therefore, Defendants violated Iowa Code Chapter 388 in approving the Plan and the Google Agreement and through the marketing activities and other activities they have taken on behalf of and for the benefit of Google Fiber.

437. In addition, Iowa Code § 388.10 prohibits municipalities from directly or indirectly

using general fund moneys to support or subsidize a telecommunications system.

438. Upon information and belief, the City has and intends to directly and indirectly use general obligation bonds to support the construction and/or subsidize the operation of the City's joint telecommunications utility with Google Fiber, in violation of Iowa Code §§ 384.24, 384.25, & 388.10.

439. The City's de facto city utility is unlawful and invalid.

440. In addition, the City's and Google Fiber's agreements and concerted action related to the Conduit Network and the internet services to be provided through it constitute "joint or cooperative action" within the meaning of Iowa Code chapter 28E.4, including, but not limited to joint or cooperative action to develop, construct, own and/or operate a city utility or telecommunications service.

441. The City is a "public agency" within the meaning of Iowa Code § 28E.2(2).

442. Google Fiber is a "private agency" within the meaning of Iowa Code § 28E.2(1).

443. The City and Google Fiber failed to enter a lawful written contract that satisfies the requirements of ch. 28E, including, but not limited to, the requirements of Iowa Code §§ 28E.5 and 28E.6.

444. The City failed to take appropriate action by ordinance, resolution or vote to approve their agreement to jointly exercise governmental powers with Google Fiber.

445. The City failed to provide adequate public notice related to the nature and purposes of the Google Agreement.

446. The City has not filed the Google Agreement or, upon information and belief, any other written agreements with Google Fiber with the Iowa Secretary of State and has not filed the initial report required by law.

447. The City has not identified or created a joint board for administering the joint undertaking with Google Fiber or published summaries of meeting or schedules of bills allowed by the board.

448. Although the full details of the City's written, oral, and implied agreements with Google Fiber remain hidden, the publicly available information establishes the City's and Google Fiber's intent to enter into an agreement for joint or cooperative action, including, but not limited to, establishing a city telecommunications utility to provide broadband internet in competition with other ISPs, including Mediacom.

449. Defendants' failure to follow the requirements of Iowa Code chapters 28E and/or 388 renders unlawful Defendants' agreements with Google Fiber, as well as the city utility that the City and Google Fiber are developing or will jointly develop, construct, finance, manage, own, operate, or maintain.

**COUNT III – VIOLATION OF IOWA CODE CH. 26**

450. Mediacom incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

451. Iowa law requires that contracts for certain public improvements funded in whole or in part by a government entity be submitted for competitive bidding. *Id.* § 26.3.

452. The Plan characterizes the Conduit Network as a "public improvement" pursuant to Iowa Code chapter 26, and the City has publicly characterized its Agreement with Google Fiber to collaborate on the Conduit Network for the provision of Google Fiber's services as a contract for a public improvement. This includes, but is not limited to, the services Google Fiber is providing to the City under the Google Agreement with respect to developing the specifications of the Conduit Network and testing the structural integrity of its construction, which are essential

parts of the City's construction process.

453. "If the estimated total cost of a public improvement exceeds the competitive bid threshold of one hundred thousand dollars, or the adjusted competitive bid threshold established in section 314.1B," then the government entity must follow the statutory public-bidding process set forth in Iowa Code chapter 26.

454. If the estimated total cost of a public improvement exceeds the statutory threshold, then Iowa law also prohibits a government entity from "divid[ing] the public improvement project into separate parts, regardless of intent, if a resulting part of the public improvement project is not let in accordance with section 26.3."

455. Assuming for the sake of argument that the Conduit Network is a "public improvement," which to be clear it is not, then the City's estimated cost of \$50 million to design and construct the Conduit Network far exceeds the statutory threshold for public bidding.

456. The Google Agreement provides that Google Fiber will complete essential parts of the City's "public improvement" construction process.

457. Defendants did not publicly bid the components of their "public improvement" project that were assigned to Google Fiber.

458. Regardless of intent, Defendants' decision to assign Google Fiber responsibility for tasks critical to the construction of the Conduit Network had the effect of improperly removing those aspects of the project from the public bidding process, in violation of Iowa Code § 26.5.

459. At the City Council meeting, the Council heard public comments objecting to the City's failure to publicly bid the Google Agreement and asking the Council to table the relevant resolutions until competitive bidding could be completed.

460. The Deputy City Manager—who was the City employee responsible for

recommending that the Council pass the resolution approving the Google Agreement—inaccurately told the Council and the public that publicly bidding the Google Agreement would violate Iowa law.

461. Upon information and belief, in reliance on the Deputy City Manager's advice, the Council proceeded to vote and approve the resolutions without submitting the public improvement project for competitive bids.

462. Whether in reliance on the Deputy City Manager's statements or not, the Council proceeded to vote and approve the resolutions without submitting the public improvement project for competitive bids.

463. Defendants violated Iowa Code chapter 26 in approving the Google Agreement and the Plan.

464. Under Iowa law, municipal contracts and resolutions made in violation of a mandatory statute are void or voidable by a court exercising its judicial powers as an independent branch of government.

465. Construction-related tasks the City has assigned to Google Fiber, including developing the Conduit Network's specifications—and upon information and belief, other construction-related tasks—are not exempted from public bidding under Iowa Code § 26.4.

466. Google Fiber is not providing engineering design services to the City.

467. To the contrary, the City has publicly represented that it has hired several local Iowa companies to provide engineering design services related to the Conduit Network.

468. The Agreement and the Plan are in violation of the mandatory provisions of Iowa Code sections 26.3 and 26.5 and must therefore be declared void or should be voided or subjected to other limiting equitable relief.

469. In the alternative, the parts of the Google Agreement that were improperly divided from the “public improvement” project, including, but not limited to, Google Fiber’s obligations and responsibilities to participate in the design of the Conduit Network, as well as the “Exclusivity Period” in which Google Fiber will “test” the Conduit Network should be declared unlawful and severed from the Google Agreement.

**COUNT IV – VIOLATION OF IOWA CODE CH. 23A**

470. Mediacom incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

471. Chapter 23A of the Iowa Code prohibits political subdivisions, including the City, from, among other things, engaging in the sale, offering for sale or advertising goods or services to the public which are also offered to the public by private enterprise. *Id.* § 23A.2.

472. The City is violating the statute by advertising Google Fiber’s internet services through its Plant the Speed marketing campaign and by purporting to register residents and businesses to be connected to the Conduit Network to receive internet services from Google Fiber.

473. Upon information and belief, these joint marketing activities are being undertaken pursuant to one or more written or oral agreements between the City and Google Fiber that have not been publicly disclosed.

474. The Plan does not identify advertising the availability of Google Fiber’s internet services as part of the installation of the Conduit Network, nor is it necessary or essential to the installation of the Conduit Network.

475. The City has not separately authorized its advertisements for Google Fiber’s internet services, either independently or as part of an initiative to promote economic development.

476. Furthermore, the City’s advertising campaign makes false and misleading

statements impugning the quality and reliability of internet services provided in West Des Moines by Mediacom and other ISPs.

477. These sales and advertising activities of Defendants are funded solely by taxpayer dollars and are directed toward the public.

478. In addition, the City intends to offer internet services to private residents and businesses pursuant to its de facto city utility and/or its joint undertaking with Google Fiber, as alleged above.

479. Internet services such as those being advertised by the City are also provided by multiple private enterprise ISPs in the City, including Mediacom, but without the municipal underwriting, public benefits, and support Defendants are providing or will provide to Google Fiber under the Google Agreement, if it is allowed to stand.

480. These internet services are used by private residents and businesses. They are not used solely by the City.

481. Mediacom, as an ISP operating in West Des Moines, is one of many businesses in the City that are subject to unlawful, unfair competition due to the City's unlawful advertising of Google Fiber's internet services.

482. Mediacom—along with all other ISPs operating in West Des Moines—is aggrieved and harmed by the City's conduct.

483. The City's marketing and sales efforts regarding the Conduit Network and fiber internet services violate Iowa Code chapter 23A.

**COUNT V – VIOLATION OF IOWA CODE CH. 477A**

484. Mediacom incorporates the allegations in the foregoing paragraphs as if fully set forth herein.

485. Iowa Code § 477A.9 requires a municipality to allow the holder of a certificate of franchise authority to install, construct, and maintain a communications network within a public right of way.

486. Iowa Code § 477A.9 also requires a municipality to provide the holder of a certificate of franchise authority with open, comparable, nondiscriminatory, and competitively neutral access to the public right of way. *Id.* § 477A.9(1).

487. Mediacom is a holder of a certificate of franchise authority within the City.

488. Upon information and belief, Google Fiber has applied for, or will imminently apply for, a certificate of franchise authority, but did not previously hold a certificate of authority to operate in the City of West Des Moines.

489. The City is developing and constructing a taxpayer-funded public right of way for Google Fiber and has granted Google Fiber a monopoly over the Conduit Network for years to come, including a right of way in areas where Google lacked a certificate of franchise authority when it gained those contract rights and benefits to the exclusion of others, such as Mediacom.

490. The City has also granted Google Fiber a franchise fee credit, through which Google Fiber's license payments for using the Conduit Network will be offset by franchise fees that Google Fiber pays.

491. The City has imposed onerous permitting restrictions on Mediacom's ability to overlash aerial plant in excess of 300 feet, which significantly impedes Mediacom's ability to install, construct or maintain its above ground communications network within the City's right of way.

492. In many parts of the City, Mediacom will be unable to install, construct or maintain its communications network unless that network is placed in an underground conduit because the

distances that it must run its pole-mounted cabling and other aerial plant to facilitate service delivery are greater than 300 feet.

493. The City violated Iowa Code § 477A.9 by refusing to allow Mediacom to install a communications network in the Conduit Network during and after Google Fiber's Exclusivity Period.

494. The City also violated Iowa Code § 477A.9. by unlawfully refusing to provide Mediacom with open, comparable, non-discriminatory, and competitively neutral access to the City's public right of way.

**REQUEST FOR RELIEF**

495. WHEREFORE, Plaintiff requests that this Court issue a judgment declaring:

- a. Defendants' designation of the entire City of West Des Moines as an urban renewal area is unlawful;
- b. The Plan violates Iowa Code chapter 403 and the Iowa Constitution and cannot be further implemented by Defendants;
- c. It is unlawful for Defendants to expend any of the \$13,565,000 raised by issuing bonds related to the Plan;
- d. The Conduit Network is unlawful;
- e. Defendants' joint undertaking with Google Fiber is unlawful.
- f. Any future actions by Defendants for the issuance of bonds to finance the Plan, the Conduit Network, and/or the City's joint undertaking with Google Fiber are unlawful and invalid;
- g. The Google Agreement—and any other written or oral arguments between Defendants and Google Fiber related to the Conduit Network—violate Iowa Code

chapter 403 and the Iowa Constitution, are invalid, and therefore are terminable and/or unenforceable;

- h. Defendants established a de facto city utility in violation of Iowa Code chapter 388 which cannot be further implemented by Defendants without approval of the voters of the city and compliance with the requirements of chapters 388 and 28E;
- i. The Google Agreement violates Iowa Code chapter 26 and is therefore invalid and void;
- j. Defendants' Plant the Speed advertising and sales campaign violates Iowa Code chapter 23A, and Defendants' marketing and other promotional activities are unlawful; and
- k. Defendants' refusal to allow Mediacom to install its communications network in the Conduit Network and to provide open, comparable, competitively neutral and non-discriminatory terms of access violates Iowa Code § 447A.

Plaintiff also requests the Court grant an injunction to enjoin Defendants from:

- l. Future or further violations of these provisions of Iowa law;
- m. Issuing any further bonds or expending any funds in connection with or in furtherance of the Conduit Network or the Google Agreement; and
- n. Using any general appropriations for payment of future installments of principal and interest on any bonds already issued that relate to the Conduit Network or the Google Agreement and any satisfaction or retirement of bonds issued through the unreasonable, arbitrary, capricious, or non-complaint acts or omissions of Defendants that relate to the Conduit Network or the Google Agreement.

Plaintiff further requests a judgment for costs, for reasonable attorney fees pursuant to Iowa Code

§ 23A.4, and for any and all other relief that the Court deems just and equitable.

Dated: January 25, 2021

Respectfully submitted,

**FAEGRE DRINKER BIDDLE & REATH LLP**

*/s/ Jacob D. Bylund*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 25, 2021, a true copy of the foregoing document was filed electronically with the Clerk of Court using the Court's EDMS system, which shall send electronic notice to all counsel of record.

*/s/ Martin J. Demoret* \_\_\_\_\_