CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **November 16, 2015**

ITEM: Resolution authorizing the Agreement for the assignment and transfer of permits from the City of West Des Moines to Microsoft Corporation

FINANCIAL IMPACT: None

BACKGROUND: In conjunction with the development of the Alluvion data center by Microsoft Corporation, the City obtained permits from various public and private entities necessary for the location, installation and operation of conduit and/or fiber optic. The attached resolution authorizes the assignment and transfer of all rights and obligations of the permits from the City to Microsoft and approves the Agreement setting forth the terms and conditions of the transfer.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Adopt the resolution authorizing the assignment and transfer of permits from the City of West Des Moines to Microsoft Corporation related to the installation of fiber optic conduit and approve the Agreement setting forth the terms and conditions of assignment and transfer.

Lead Staff Member: Richard J. Scieszinski, City Attorney

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney RJS
Appropriations/Finance	
Legal	
Agenda Acceptance	RTG

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation			

RESOLUTION NO._____

AUTHORIZING APPROVAL OF ASSIGNMENT AND TRANSFER OF PERMITS FROM THE CITY OF WEST DES MOINES TO MICROSOFT CORPORATION FOR THE INSTALLATION OF CONDUIT AND/OR FIBER OPTIC AND RELATED STRUCTURES

WHEREAS, the City of West Des Moines and Microsoft Corporation have executed a development agreement related to the construction of a data center by Microsoft Corporation in the City of West Des Moines; and

WHEREAS, a term of the development agreement provides that the City will obtain authorization from public and private entities for the installation of conduit and associated structures necessary for the placement of conduit and/or fiber optic related to the operation by Microsoft of the data center; and

WHEREAS, permits have been received by the City from various public and private entities for the installation of conduit and/or fiber optic that the City now desires to transfer to Microsoft Corporation for Microsoft's use related to the installation and operation of the conduit and/or fiber optic; and

WHEREAS, in consideration for the assignment and transfer of the permits by the City to Microsoft to allow for the installation of conduit and/or fiber optic on the routes designated Red, Blue and Yellow, Microsoft agrees to be subject to and comply with the requirements of each permit as well as the requirements set forth in the *Agreement for the Assignment and Transfer of Public and Private Permits from the City of West Des Moines, Iowa to Microsoft Corporation Related to the Installation of Fiber Optic.*

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The permits acquired in the name of the City of West Des Moines for the installation of conduit and related structures necessary for the development of the Microsoft Corporation Alluvion data center, all as shown on the attachment and identified as the Red Route, Blue Route and Yellow Route, are assigned and transferred from the City of West Des Moines to Microsoft Corporation, subject to compliance by Microsoft Corporation of all terms and conditions of each permit.

2. The *Agreement for the Assignment and Transfer of Public and Private Permits from the City of West Des Moines, Iowa to Microsoft Corporation Related to the Installation of Fiber Optic* setting forth the terms and conditions of the assignment and transfer is approved.

3. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor's signature.

PASSED AND ADOPTED this November 16, 2015.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

AGREEMENT FOR THE ASSIGNMENT AND TRANSFER OF PUBLIC AND PRIVATE PERMITS FROM THE CITY OF WEST DES MOINES, IOWA TO MICROSOFT CORPORATION RELATED TO THE INSTALLATION OF FIBER OPTIC

THIS AGREEMENT (hereinafter "Agreement"), is made on or as of the _____ day of November, 2015 ("Effective Date") by and between the CITY OF WEST DES MOINES, a municipal corporation organized under the laws of the state of Iowa (hereinafter "City") and MICROSOFT CORPORATION, a Washington corporation (hereinafter "Microsoft").

Pursuant to the Development Agreement entered between the parties on December 29, 2014, the City has obtained public and private permits for the installation of conduit and related structures to be used in conjunction with the development and operation of the Microsoft Corporation Alluvion data center, all as shown on the attachment and identified as the Red Route, Blue Route and Yellow Route.

Pursuant to the Development Agreement, the City agrees to assign and transfer all its right, title and interest in the permits obtained in the name of the City and as described on the attachment, and Microsoft agrees to accept from the City the assignment and transfer of all of the City's right, title and interest in the permits, subject to the following:

1. Microsoft Corporation agrees to comply with the terms and conditions of each and every permit.

2. Microsoft agrees to indemnify and hold harmless the City of West Des Moines, its officials, employees, agents and assigns from any and all cause of action, suit at law or in equity for losses, damages, claims or demands, and from any and all liability and expense whatsoever arising out of or in connection with Microsoft's use of the permits or use and occupancy of the area authorized by one or more of the permits.

3. Upon assignment and transfer of the permits to Microsoft by the City and acceptance of the assignment and transfer by Microsoft from the City as evidenced by execution of this Agreement, the City shall have no further right, title or interest, including any obligation or liability to the extent either accrue after the date of assignment and transfer, in any or all of the permits whatsoever.

MICROSOFT CORPORATION,
a Washington corporation

_____
Daniel McDermit, Project Manager

CITY OF WEST DES MOINES, IOWA
an Iowa municipality

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

COUNTY OF _____)
) ss
STATE OF _____)

This record was acknowledged before me on November ___, 2015 by Daniel McDermit, Project Manager for Microsoft Corporation, on behalf of whom the record was executed.

_____
Notary for the state of _____

COUNTY OF POLK)
) ss
STATE OF IOWA)

This record was acknowledged before me on November ___, 2015 by Steven K. Gaer and Ryan T. Jacobson, to me known to be the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, said record being signed by the Mayor and City Clerk on behalf of the City by authority of its City Council as contained in Resolution No. ___ approved on the 16th day of November, 2015.

_____
Notary for the state of Iowa

AUTHORIZING APPROVAL OF TRANSFER OF PERMITS FROM THE CITY OF WEST DES MOINES TO MICROSOFT CORPORATION FOR THE INSTALLATION OF FIBER OPTIC

RED ROUTE PERMITS:

1. Iowa Department of Transportation Permit Number 77U-2014-089 dated November 24, 2014.

2. Department of the Army Corps of Engineers Correspondence Number CEMVR-OD-P-2014-1603 dated October 29, 2014 (acknowledgment of no permit required).

3. Department of the Army Corps of Engineers Permit Number CEMVR-OD-P-2014-1839 dated December 18, 2014 (acknowledgment of coverage under Nationwide Permit No. 12).

4. Iowa Department of Natural Resources Section 401 Water Quality Certification for the 2012 Nationwide Permits dated April 18, 2012.

5. Iowa Interstate Railroad, LTD. Permit 14-0052-MP367 I-35 dated October 27, 2014.

6. Iowa Department of Natural Resources Sovereign Lands Construction Permit 14-194 dated December 19, 2014.

7. Iowa Department of Natural Resources FP Work Record Number 81146 dated November 5, 2014 (acknowledgment of no Flood Plain Development Permit required).

8. City of West Des Moines Floodplain Development Permit.

9. Buckeye Partners permit - L.P. BPL ER#2014-1420 dated January 19, 2015.

10. W&G McKinney Farms Fiber Optic Easement dated September 8, 2015. (City will retain interest in Easement but allow Microsoft to access area and install fiber).

BLUE ROUTE PERMITS:

1. Iowa Department of Transportation Permit Number 77U-2014-086 dated November 19, 2014.

2. Department of the Army Corps of Engineers Correspondence Number CEMVR-OD-P-2014-1700 dated November 25, 2014 (acknowledgment of no permit required).

3. Department of the Army Corps of Engineers Permit Number CEMVR-OD-P-2015-86 dated February 6, 2015 (acknowledgment of coverage under Nationwide Permit No. 12).

4. Iowa Department of Natural Resources Section 401 Water Quality Certification for the 2012 Nationwide Permits dated April 18, 2012.

5. Iowa Interstate Railroad, LTD. Permit 14-0059-MP369.5 South 88th dated December 20, 2014.

6. Iowa Department of Natural Resources Sovereign Lands Construction Permit 14-195 dated December 19, 2014.

7. Iowa Department of Natural Resources FP Work Record Number 81226 dated December 31, 2014 (acknowledgment of no Flood Plain Development Permit required).

8. City of West Des Moines Floodplain Development Permit.

9. Polk County, Iowa Flood Plain Permit Number FLOOD-2015-03790 dated February 2, 2015.

10. Buckeye Partners L.P. permit - BPL ER#2015-1508 dated January 19, 2015.

11. W&G McKinney Farms Fiber Optic Easement dated September 8, 2015. (City will retain interest in Easement but allow Microsoft to access area and install fiber).

YELLOW ROUTE PERMITS:

1. Iowa Department of Transportation Permit Number 77U-2015-015 dated March 11, 2015.

2. Iowa Department of Transportation Permit Number 77U-2015-016 dated March 11, 2015.

3. Department of the Army Corps of Engineers Permit Number CEMVR-OD-P-2015-0248 dated March 10, 2015 (acknowledgment of coverage under Nationwide Permit No. 12).

4. Iowa Department of Natural Resources Section 401 Water Quality Certification for the 2012 Nationwide Permits dated April 18, 2012.

5. Warren County, Iowa Utility Permit dated November 19, 2014.

6. Warren County, Iowa Flood Plain Development Permit dated May 12, 2015.

7. W&G McKinney Farms Fiber Optic Easement dated September 8, 2015. (City will retain interest in Easement but allow Microsoft to access area and install fiber).