CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: February 21, 2017

ITEM: Resolution - Approval of 28E Agreement for service to be provided between the Iowa Telecommunications and Technology Commission and the City of West Des Moines

FINANCIAL IMPACT: Unknown at this time. Contingent upon future project costs.

BACKGROUND: This 28E Agreement will establish a general partnership between the Iowa Telecommunications and Technology Commission, which operates the Iowa Communications Network (ICN), and the City of West Des Moines. The Agreement will allow the parties to share services and resources on future information technology projects. The specifics of each future project will be made part of the Agreement following approval by both the ICN and the City. Examples of future projects include:

Re-grooming existing fiber conduits along University Avenue to allow each party access;

Providing data center space by ICN at JFHQ in Johnston to allow relocation of the City's secondary data center, currently located on the second level of Public Safety Station 19;

Providing secondary internet service (1Gbps) by ICN through the West Des Moines Public Library for City use.

There is no financial impact to either party related to this Agreement. Any City cost related to specific future projects will be made known at the time the specific project is presented to the City Council for approval.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: Adopt Resolution approving the 28E Agreement for service to be provided between the Iowa Telecommunications and Technology Commission and the City of West Des Moines

Lead Staff Member: Richard J. Scieszinski, City Attorney JBW

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance & Administration		
Date Reviewed	February 8, 2017		
Recommendation	Yes	~~No~~	~~Split~~

RESOLUTION NO._____

APPROVAL OF 28E AGREEMENT FOR SERVICES TO BE PROVIDED BETWEEN THE IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION AND THE CITY OF WEST DES MOINES, IOWA

WHEREAS, representatives of the Iowa Telecommunications and Technology Commission, operating the Iowa Communications Network, and the City of West Des Moines have negotiated a 28E Agreement that will allow the parties to share services and resources on future information technology projects; and

WHEREAS, the specifics of each future project will be made part of the 28E Agreement and will require approval of both the ICN and the City; and

WHEREAS, full detail of each project will be provided to the parties at the time of approval; and

WHEREAS, approval of the 28E Agreement is in the best interest of the City of West Des Moines.

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

1. The 28E Agreement for services to be provided between the Iowa Telecommunications and Technology Commission and the City of West Des Moines, Iowa is approved.

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

3. The 28E Agreement shall be electronically filed with the Iowa Secretary of State.

PASSED AND ADOPTED this 21st day of February, 2017.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

28E AGREEMENT
FOR SERVICES TO BE PROVIDED BETWEEN
The Iowa Telecommunications and Technology Commission, Operating the Iowa Communications Network, And The City of West Des Moines, Iowa

SECTION 1. AGREEMENT

This AGREEMENT is established between the Iowa Telecommunications and Technology Commission, Operating the Iowa Communications Network ("ICN") and the City of West Des Moines ("City") for the mutual benefit of the parties relating to services which each party may provide to the other or which may be provided jointly for the benefit of either or both parties, all as to be set forth in the Scope of Work provided in Section 4.1.

SECTION 2. LEGAL STATUS

This AGREEMENT is a voluntary joint undertaking of the ICN and the City, both public agencies of the State, as authorized by Iowa Code chapter 28E. No separate legal entity is created by this AGREEMENT.

SECTION 3. DURATION AND COMMENCEMENT

3.1 Duration. The duration of this AGREEMENT is one (1) year from the effective date of _____ and remains in force and effect unless terminated as provided under Section 8. This AGREEMENT shall renew automatically for additional one (1) year terms unless the AGREEMENT is terminated as provided in Section 8.

3.2 Commencement. This AGREEMENT shall commence upon the execution of the AGREEMENT by both parties, and the filing of the AGREEMENT with the Secretary of State as required by Iowa Code section 28E.8.

SECTION 4. POWERS AND DUTIES

4.1 Scope of Work. The Scope of Work contemplated by this AGREEMENT shall be encompassed in one or more amendments to the AGREEMENT which shall include specifics of the services to be performed by and/or shared by the parties. If services involve access to fiber conduit within the city, the manner in which physical access to the fiber conduit will be undertaken shall also be included. No amendment shall be effective until approved by the parties as provided in Section 10.

4.2 Powers. The ICN and the City may do all things necessary to carry out the provisions of this AGREEMENT that are consistent with the authority granted to each party under applicable law.

4.3 Duties. The ICN and the City may adopt written procedures and other terms for the purpose of implementing this AGREEMENT. Such procedures and terms shall be approved by the applicable party and retained as a record as provided in Section 6.

SECTION 5. FINANCES

The ICN and the City may accept, individually or jointly, and expend funds from appropriate state or

local government sources, as well as from private or other public sources. Available funds are subject to approval processes otherwise required, and subject to the budget procedures of the State, ICN, and the City.

SECTION 6. AGREEMENT ADMINISTRATION

6.1 Amendments. This AGREEMENT may be amended in writing from time to time by mutual consent of the parties. All amendments to this AGREEMENT must be in writing and approved and fully executed by the parties as provided in Section 10, and recorded in the same manner as this AGREEMENT.

6.2. Records. The parties shall establish such rules, procedures and terms as may be necessary, and keep such records as are necessary, to provide the parties with appropriate information to carry out this AGREEMENT and to inform the public of the actions taken under the AGREEMENT.

6.3 Third Party Beneficiaries. There are no third party beneficiaries to this AGREEMENT.

6.4 Assignment and Delegation. This AGREEMENT may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party.

6.5 Integration. This AGREEMENT represents the entire AGREEMENT between the parties. The parties shall not rely on any representation that may have been made which is not included in this AGREEMENT.

6.6 Headings or Captions. The paragraph headings or captions used in this AGREEMENT are for identification purposes only and do not limit or construe the contents of the paragraphs.

6.7 Supersedes Former Agreements. This AGREEMENT supersedes all prior Agreements between the ICN and the City for the services provided in connection with this AGREEMENT, if any such AGREEMENT exists.

6.8 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the ICN and the City, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the AGREEMENT shall not be construed as affecting any subsequent right to require performance or to claim a breach.

SECTION 7. COMPLIANCE WITH APPLICABLE LAWS

The ICN and the City shall collaborate and act in concert to remain in compliance with all applicable State and Federal laws and regulations concerning the duties and responsibilities under this AGREEMENT.

SECTION 8. TERMINATION

This AGREEMENT may be terminated immediately upon the mutual written agreement of both parties. Either party may individually terminate the AGREEMENT upon written notice to the other party, which termination shall be effective no less than sixty (60) days from the date of delivery of the written notice to the other party. Notice shall be made as follows:

City of West Des Moines
Attention: West Des Moines Director of Information Technology
West Des Moines City Hall

4200 Mills Civic Parkway
West Des Moines, IA 50265

Iowa Telecommunications and Technology Commission
Attention: ICN Contracting
400 East 14th St.
Grimes State Office Building
Des Moines, IA 50319

SECTION 9. IOWA LAW

The parties acknowledge and agree that Iowa law sets forth the powers and duties of both agencies and agree that it is the intent of the parties that this AGREEMENT fully complies with those powers and duties. The parties further acknowledge and agree that if any term or condition of this AGREEMENT is inconsistent with Iowa law, Iowa law shall control.

SECTION 10. APPROVAL OF AGREEMENT.

This Agreement shall be of no force or effect unless and until approved by the governing bodies of the City of West Des Moines and the Iowa Telecommunications and Technology Commission.

CITY OF WEST DES MOINES, IOWA

Attest:

_____

Steven K. Gaer, Mayor

_____

Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) SS:
COUNTY OF POLK)

This record was acknowledged before me on the _____ day of _____, 2017 by Steven K. Gaer and Ryan T. Jacobson as the Mayor and City Clerk, respectively, of the CITY OF WEST DES MOINES, IOWA, an Iowa municipal corporation, by authority of its City Council as contained in Resolution ____ approved on the ____ day of _____, 2017 on behalf of whom the record was executed.

_____
Notary Public in and for the State of Iowa

IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION

_____

Ric Lumbard, Executive Director

Attest:

_____

Phil Groner, Chief Operating Officer

STATE OF IOWA)
) SS:
COUNTY OF POLK)

This record was acknowledged before me on the 27th day of January, 2017 by Ric Lumbard and Phil Groner as the Exec. Director and COO, respectively, of the IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, an Iowa Agency, by authority of its Board of Directors as contained in Resolution ____ approved on the 27th day of January, 2017 on behalf of whom the record was executed.

_____
Notary Public in and for the State of Iowa

JESSICA JENSEN
COMMISSION NO. 788455
MY COMMISSION EXPIRES
FEBRUARY 16, 2018