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CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: March 16, 2020

ITEM:

Resolution – Approving First Amendment to Fiber Agreement
Project Osmium Fiber Optic Conduit

FINANCIAL IMPACT:

The City is acting as the coordinating agency for the fiber conduit projects; Microsoft is providing all funding and will reimburse the City as invoiced.

BACKGROUND:

On June 3, 2019 the City Council approved the Fiber Agreement with Microsoft Corporation for the Project Osmium Fiber Optic Conduit. To date, the City has completed design and construction of two of the original three fiber conduit routes. Following award of the construction contracts Microsoft determined changes to the route alignments were necessary and added a fourth connection between the Osmium and Alluvion sites. This amendment adds these Microsoft requested changes to the original agreement and enables the City to invoice Microsoft for the design and construction costs associated with the additional requested work.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

OUTSTANDING ISSUES: None.

RECOMMENDATION:

City Council Adopt:

- Resolution Approving Amendment No. 1 to the Fiber Agreement for Project Osmium Fiber Optic Conduit.

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION APPROVING FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND MICROSOFT CORPORATION FOR THE DESIGN AND INSTALLATION OF FIBER OPTIC CONDUIT RELATED TO PROJECT OSMIUM

WHEREAS, on November 14, 2016 the City Council of the City of West Des Moines approved a Development Agreement between the City and Microsoft Corporation for the financing and construction of Project Osmium; and

WHEREAS, on June 3, 2019 the City of West Des Moines and Microsoft Corporation entered into an agreement for the design and installation of fiber optic conduit related to Project Osmium ("Fiber Agreement"); and

WHEREAS, the City of West Des Moines has received a proposal from Microsoft Corporation in the form of the First Amendment to the Fiber Agreement, pursuant to which the City of West Des Moines and Microsoft Corporation agree to amend the Fiber Agreement; and

WHEREAS, the City of West Des Moines is agreeable to the proposal under the terms and conditions of the First Amendment to the Fiber Agreement; and

WHEREAS, the Fiber Agreement provides that it may only be amended by a written amendment signed by the parties

therefore;

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, the First Amendment to the Agreement between the City of West Des Moines and Microsoft Corporation for the Design and Installation of Fiber Optic Conduit related to Project Osmium is approved.

BE IT FURTHER RESOLVED the Mayor is authorized to sign the First Amendment to the Fiber Agreement and the City Clerk is authorized to attest to the Mayor's signature.

BE IT FURTHER RESOLVED City staff is directed to take all steps necessary to facilitate completion of the amended agreement.

PASSED AND ADOPTED this 16th day of March, 2020.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

First Amendment to
Fiber Agreement

This First Amendment (the "*First Amendment*") is to the Fiber Agreement dated 20 June 2019 (the "*Agreement*"), by and between the City of West Des Moines, Iowa (the "*City*"), a municipal corporation, with its principal offices located at 4200 Mills Civic Parkway, West Des Moines, Iowa 50265, and Microsoft Corporation ("Microsoft"), a Washington corporation, with its principal offices located at One Microsoft Way, Redmond, Washington 98052. This First Amendment will be effective on the date noted below (the "*First Amendment Effective Date*").

This First Amendment consists of:

- The terms and conditions below;
- The terms and conditions set forth in the Agreement, which is incorporated by reference; and
- Any other exhibits and attachments to the Agreement.

Addresses and contact details for notices

Microsoft	City
Address:	Address:
Attention:	Attention:
Phone:	Phone:
E-Mail Address:	E-Mail Address:

Term

First Amendment Effective Date:	The last signature date set forth below
First Amendment Expiration Date:	Co-terminous with the Agreement

Agreed and accepted

Microsoft	City
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

Microsoft and City desire to amend the Agreement on the terms and conditions provided herein. This First Amendment modifies the Agreement. In the event of a conflict between the provisions in this First Amendment and those in the Agreement, this First Amendment will govern. This First Amendment will be attached to and incorporated into the Agreement.

SECTION 1 Definitions

Capitalized terms used and not defined have the meaning given in the Agreement.

SECTION 2 Amendment

As of the First Amendment Effective Date, the Parties agree to amend the Agreement as follows:

(a) The definition of "*Construction Constracts*" is deleted in its entirety and replaced with the following new definition:

Construction Contracts mean the third-party construction contracts between the City and third-party contractors to facilitate construction of the Fiber Conduit Project. The Construction Contracts will be in the City's then standard form of construction contract for a guaranteed maximum price contract, which costs and expenses will be determined upon completion of design and contract bidding for the Fiber Conduit Project but in no event will exceed $8,000,000, and shall be entered into by the City pursuant to all applicable bidding, bonding and other requirements for a city project.

(b) The definition of "*Design and Construction Schedule*" is deleted in its entirety and replaced with the following new definition:

Design and Construction Schedule means the design and construction schedule with respect to the Fiber Conduit Project approved by Microsoft, which includes the following milestones:

Final Plans for the Fiber Conduit Project shall be prepared no later than:

- June 15, 2019 for the Green Route;
- July 15, 2019 for the Purple Route;
- April 1, 2020 for the realignment of the Final Plans for the Purple Route;
- June 12, 2020 for the Light Purple Route; and
- July 3, 2020 for the Teal Green Route.

Construction of the Fiber Conduit Project shall be completed on or prior to:

- December 13, 2019 for the Green Route;
- April 30, 2020 for the Purple Route;
- May 31, 2020 for the realignment of the Purple Route. June 30, 2020 if public bidding of the realignment is required;
- November 25, 2020 for the Light Purple Route; and
- December 31, 2020 for the Teal Green Route.

(c) The definition of "*Engineering Contract*" is deleted in its entirety and replaced with the following new definition:

Engineering Contract means the contract between CDA and the City pursuant to which CDA will provide engineering design and related services as necessary to complete the Fiber Conduit Project in conformity with the specifications identified by Microsoft and will bill the City for the Engineering Services on an hourly basis up to a total amount not to exceed $737,000.00 (i.e., CDA's fees are capped and guaranteed to not exceed $737,000.00).

(d) The definition of "*Routes*" is deleted in its entirety and replaced with the following new definition:

Routes means the location of Microsoft Conduit for the Fiber Conduit Project in four paths – Green, Purple, Teal Green and Light Purple – as depicted in Exhibit A attached hereto.

(e) The first sentence of Section 3.1 is deleted in its entirety and replaced with the following new sentences:

"On or before December 31, 2018, but in no event before the City is recognized in Microsoft's internal system as an approved vendor to facilitate payment, Microsoft shall pay to the City $440,000.00 for use in paying for a portion of the Engineering Expenses. On or before April 1, 2020, Microsoft shall pay to the City no more than $297,000.00 for use in paying for the remaining Engineering Expenses."

(f) The reference in Section 5.2 to the maximum amount payable under the Engineering Contract will be updated to $737,000.00.

(g) All references in the Agreement to the three original conduit Routes (Green, Purple and Orange) will mean the four updated conduit Routes (Green, Purple, Teal Green and Light Purple) as depicted in Exhibit A.

(h) The original Exhibit A is deleted in its entirety and replaced with the attached Exhibit A.

(i) The original Exhibit E is deleted in its entirety and replaced with the attached Exhibit E.

SECTION 3 Miscellaneous

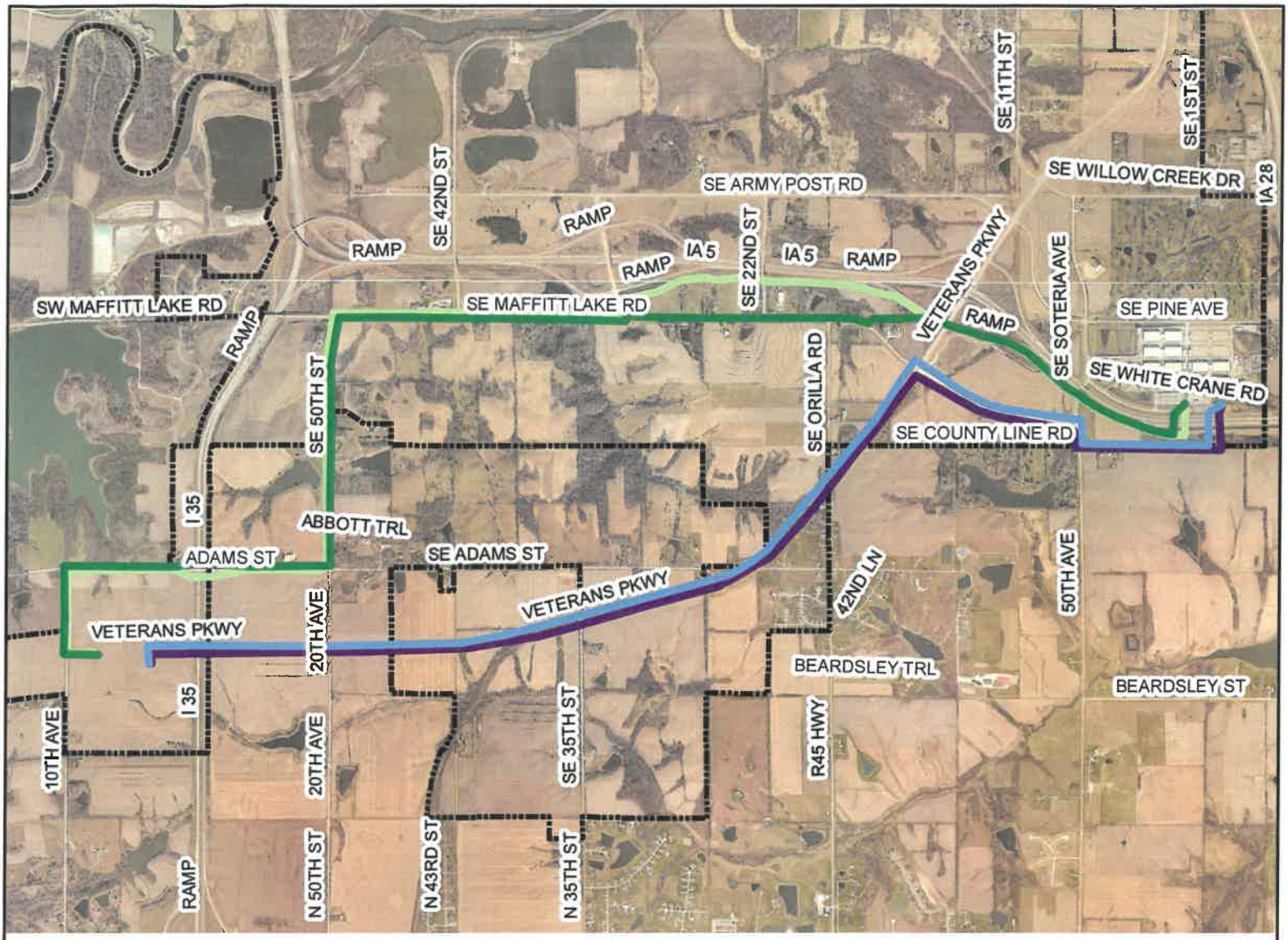
(a) **Counterparts.** The parties may execute this First Amendment in any number of counterparts. Each counterpart will be deemed an original and all counterparts will constitute one agreement binding on both parties. Facsimile and electronic signature will be considered binding for all purposes.

(b) **Entire agreement.** This First Amendment is the entire agreement between the parties regarding its subject matter. It replaces all prior agreements, communications and representations between the parties regarding its subject matter.

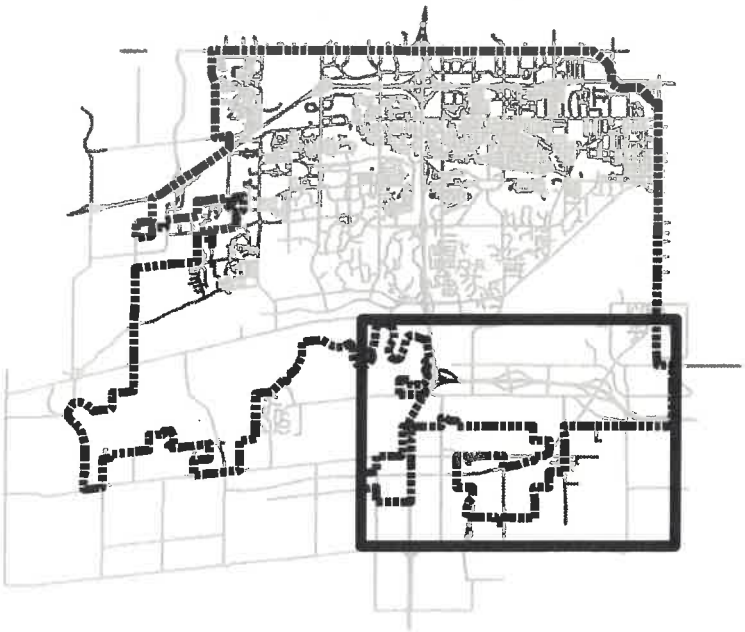
(c) **No further amendment.** Except as expressly modified by this First Amendment, the Agreement shall remain unmodified and in full force and effect. Microsoft and Company hereby ratify their respective obligations thereunder.

Exhibit A

ROUTES



VICINITY MAP



Legend

- Purple Route
- Light Purple Route
- Green Route
- Teal Route

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THE CITY OF WEST DES MOINES

PROJECT:

Exhibit A - Project Osmium Fiber Routes

LOCATION: **First Amendment**

DRAWN BY: BJM	DATE: 3/12/2020	PROJECT NUMBER/NAME: 0510-017-2017	SHT. 1 of 1

Exhibit E

SCOPE OF WORK

The WDM Fiber Conduit Inter-connect project (Light Purple Route) includes installation of conduit, structures and surface restoration along Veterans Parkway, Maffitt Lake Road, and County Line Road corridors in the City of West Des Moines, Iowa. Improvements include installation of a conduit along approximately 27,000 lineal feet route. One mulit-duct conduit will be dedicated solely for Microsoft's use and will include installation of independent pull boxes and vaults, and tracer wire. Microsoft conduit will not interconnect with other conduits in the bundle. Work includes installation of racking systems, clearing and grubbing, erosion control, traffic control, and other associated improvements necessary to complete the project.

The WDM Fiber Conduit Inter-connect project (Teal Route) includes installation of conduit, structures and surface restoration along SW 60th Street, Adams Street, SE 50th Street, Maffitt Lake Road, and Iowa Highway 5 corridors in the City of West Des Moines, Iowa. Improvements include installation of a conduit along approximately 32,700 lineal feet route. One mulit-duct conduit will be dedicated solely for Microsoft's use and will include installation of independent pull boxes and vaults, and tracer wire. Microsoft conduit will not interconnect with other conduits in the bundle. Work includes installation of racking systems, clearing and grubbing, erosion control, traffic control, and other associated improvements necessary to complete the project.