CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: January 02, 2024

ITEM:

Resolution – Approval of First Amendment to Conduit License Agreement between City of West Des Moines and Iowa Network Services, Inc. (dba Aureon Network Services)

FINANCIAL IMPACT:

Approximately $3,997.00 in conduit lease revenue.

BACKGROUND:

In March 2022 the City and Iowa Network Services, Inc. (dba Aureon Network Services) executed a license agreement that allows Iowa Network Services, Inc. (dba Aureon Network Services) to access a segment of Local Access conduit that is not yet part of the Digital Enterprise Conduit Network. The 4,216 lineal feet of licensed conduit, which is located along the south side of Grand Avenue between South 88th St and South Jordan Creek Parkway, was installed with funds separate from the funds used for the Conduit Network. This conduit was installed with the 2019 Grand Avenue Improvements project.

Iowa Network Services, Inc. (dba Aureon Network Services) has requested to amend the Agreement to enable the licensing of 627 feet of additional conduit located in the South 11th Street right-of-way between Railroad Avenue and Lincoln Street. Per the terms of the Agreement, the per lineal-foot license fee is $7.00, with a lump sum payment for this segment of conduit to be $3,997.00. The term length of this amendment will be prorated to expire on the same date as the initial term. In addition, a proposed term of the First Amendment to the Agreement will also allow Iowa Network Services, Inc. (dba Aureon Network Services) to add additional conduit to the Agreement administratively if agreed upon by both the city and Iowa Network Services, Inc. (dba Aureon Network Services). All other terms of the original Agreement will remain the same. The term of the Agreement is twenty years, with the option for Iowa Network Services, Inc. (dba Aureon Network Services) to renew the Agreement for two successive five-year terms.

OUTSTANDING ISSUES: None

RECOMMENDATION:

- Approve the First Amendment to the Conduit License Agreement between the City of West Des Moines and Iowa Network Services, Inc. (dba Aureon Network Services)

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	Greta Truman, Assistant City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Services		
Date Reviewed	December 11, 2023		
Recommendation	**Yes**	No	Split

RESOLUTION NO._____

RESOLUTION APPROVING FIRST AMENDMENT TO CONDUIT LICENSE AGREEMENT BETWEEN THE CITY OF WEST DES MOINES, IOWA AND IOWA NETWORK SERVICES, INC. DBA AUREON NETWORK SERVICES

WHEREAS, on March 21, 2022 the City of West Des Moines approved a conduit license agreement between the City and Iowa Network Services, Inc. (dba Aureon Network Services) governing the terms and conditions in which the City will reserve space within the City's conduit system to accommodate the installation and maintenance of Iowa Network Services, Inc. (dba Aureon Network Services) fiber optic cable in connection with the provision of communication services by Iowa Network Services, Inc. (dba Aureon Network Services) in the city; and

WHEREAS, Iowa Network Services, Inc. (dba Aureon Network Services) has requested an amendment to the agreement to allow the reservation of additional City conduit for use by Iowa Network Services, Inc. (dba Aureon Network Services) upon mutual written agreement of the parties; and

WHEREAS, the attached First Amendment to the Conduit License Agreement between the City of West Des Moines, Iowa and Iowa Network Services, Inc. (dba Aureon Network Services) allows the reservation of City conduit for use by Iowa Network Services, Inc. (dba Aureon Network Services) to be added to the Agreement administratively upon mutual written agreement of the parties.

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

1. The First Amendment to the Conduit License Agreement between the City of West Des Moines, Iowa and Iowa Network Services, Inc. (dba Aureon Network Services) is approved.

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

PASSED AND ADOPTED on this **2nd** day of **January, 2024**.

_____
Greg Hudson, Presiding Officer

ATTEST:

_____
Ryan T. Jacobson, City Clerk

FIRST AMENDMENT TO CONDUIT LICENSE AGREEMENT BETWEEN THE CITY OF WEST DES MOINES, IOWA AND IOWA NETWORK SERVICES, INC. (DBA AUREON NETWORK SERVICES)

THIS FIRST AMENDMENT TO THE Conduit License Agreement between the City of West Des Moines, Iowa and Iowa Network Services, Inc. (dba Aureon Network Services) ("First Amendment") is entered and shall be effective as of January 2, 2024.

RECITALS

WHEREAS, on March 10, 2022 Iowa Network Services, Inc. (dba Aureon Network Services) executed the Conduit License Agreement between the City of West Des Moines, Iowa and Iowa Network Services, Inc. (dba Aureon Network Services) ("Agreement") and on March 21, 2022 the City Council of the City of West Des Moines approved the Agreement; and

WHEREAS, the Agreement provided for the reservation by Iowa Network Services, Inc. (dba Aureon Network Services) of City conduit, which was to be identified in subsequent amendments, by exhibit the specific areas of the City in which the conduit reserved by Iowa Network Services, Inc. (dba Aureon Network Services) is located; and

WHEREAS, the parties acknowledge the potential need by Iowa Network Services, Inc. (dba Aureon Network Services) to reserve additional conduit in as-of-yet to be identified areas of the City; and

WHEREAS, the parties desire the ability to administratively amend the Agreement to add conduit at such time as Iowa Network Services, Inc. (dba Aureon Network Services) identifies the specific area of the City in which the conduit is required; and

WHEREAS, the following provision authorize the parties to administratively amend the Agreement in order to add exhibits identifying specific areas of the City in which City conduit will be reserved for use by Iowa Network Services, Inc. (dba Aureon Network Services).

NOW, THEREFORE, in consideration of the mutual promises of the Parties the mutual covenants, conditions and consideration stated in the Agreement and this First Amendment to the Agreement, the Parties hereby agree as follows:

1. Section 1, subsection 1.1, paragraph (xii) of the Agreement is amended by deleting this subsection in its entirety and replacing it with the following:

   "Licensed Conduit" means all or a portion of City Conduit specifically identified in Exhibit A, Exhibit A-1 or in such other exhibits subsequently added administratively by mutual written agreement of the Parties, in which space shall be reserved and/or designated for Iowa Network Services, Inc. (dba Aureon Network Services) to "pull" or "run" and then maintain Fiber Optic Cable in accordance with and subject to the terms of this Agreement.

2. Section 10, subsection 10.2 or the Agreement is amended by deleting this subsection in its entirety and replacing it with the following:

Amendments. This Agreement may be administratively amended from time to time by mutual written agreement of the Parties.

3. Exhibit A is hereby amended by adding the following:

EXHIBIT A-1
Licensed Conduit

For purposes of this Agreement, Licensed Conduit shall also mean:

Approximately 627 linear feet of 1.5" conduit, beginning near the intersection of Railroad Avenue and S 11th Street, running along the west side of S 11th Street (see depiction below).

4. All other terms and conditions of the Agreement as originally written and not in conflict with the amendments made herein shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed by its duly authorized respective officers.

CITY OF WEST DES MOINES, IOWA
an Iowa municipal corporation

_____
Greg Hudson, Presiding Officer

ATTEST:

_____
Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) SS:
COUNTY OF POLK)

On this 2nd day of January, 2024, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **PRESIDING OFFICER and RYAN T. JACOBSON,** to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the **CITY OF WEST DES MOINES, IOWA,** an Iowa municipal corporation; that the record was signed on behalf of the corporation, by authority of its City Council as contained in Resolution 4(_) approved on the 2nd day of January, 2024 and that **PRESIDING OFFICER and RYAN T. JACOBSON** acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.

_____
Notary Public in and for the State of Iowa

IOWA NETWORK SERVICES, INC. (DBA AUREON NETWORK SERVICES)

_____

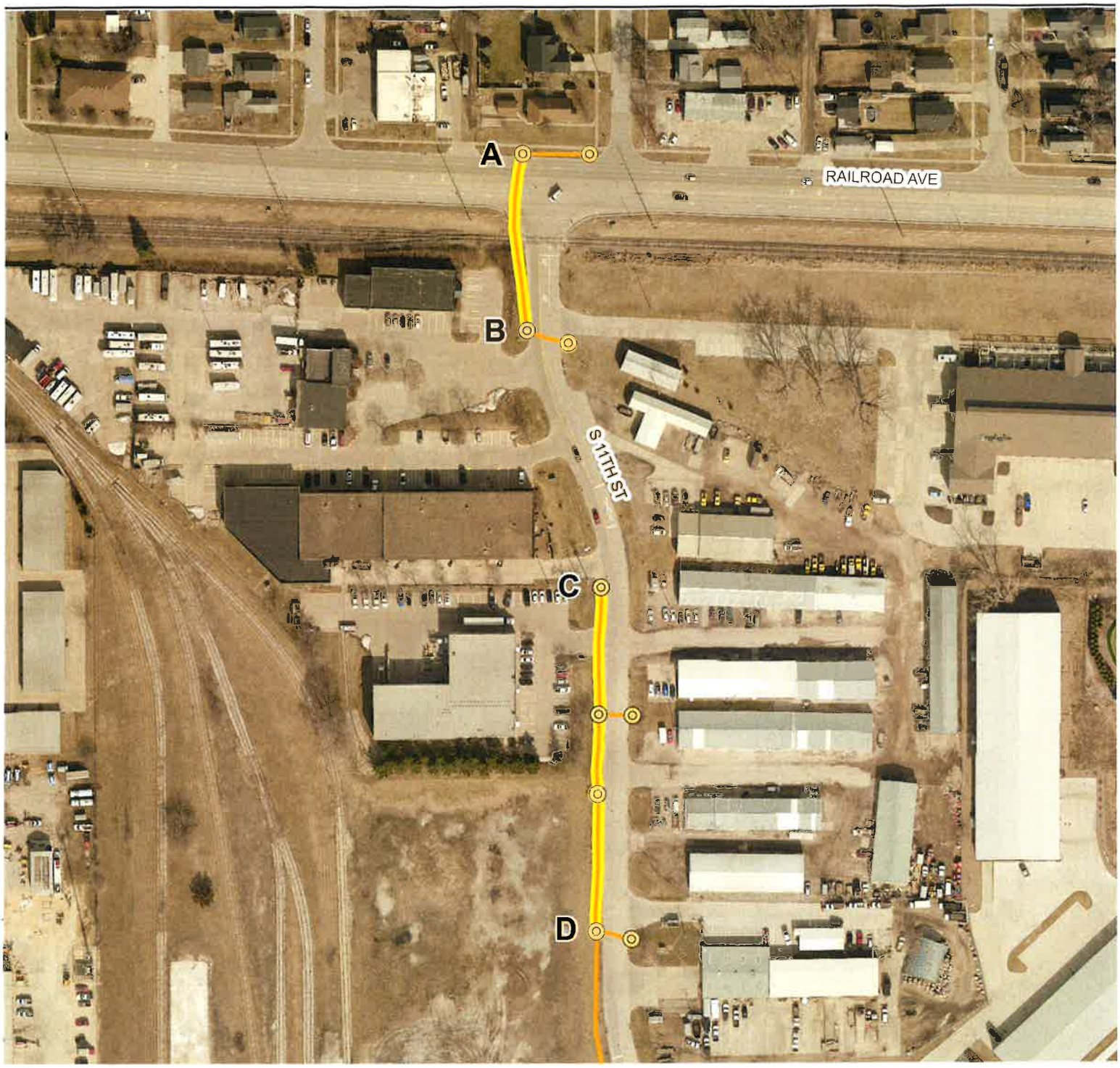
Scott Behn, CEO

STATE OF _____)
) SS:
COUNTY OF _____)

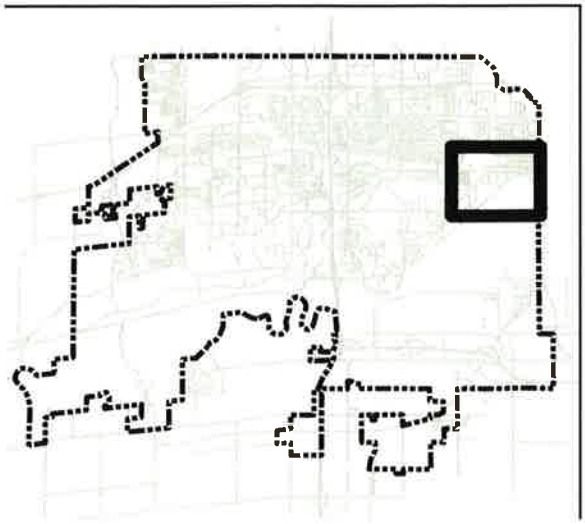
This record was acknowledged before me on this __ day of _____, 2023 by **SCOTT BEHN,** CEO of Iowa Network Services, Inc. (dba Aureon Network Services) on behalf of whom the record was executed.

_____

Notary Public in and for the State Iowa



VICINITY MAP



Length of 1.5" Orange conduit between points A and B is 214 feet and between points C and D is 413 feet.

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THE CITY OF WEST DES MOINES