

ITEM # 39a  
DATE: 04/23/19

## **COUNCIL ACTION FORM**

### **SUBJECT: ADDENDUM NO. 1 TO STORYCOMM 28E RADIO AGREEMENT**

#### **BACKGROUND:**

In December 2018 the City, Story County, Iowa State University and the Story County 911 Board entered into a 28E Intergovernmental Agreement for 10 years to establish a process for designing and bidding for a new radio system. A copy of the original 28E Agreement is attached.

Mission Critical Partners, a radio consulting firm, was then retained for a second phase to assist with this process. ISU's Procurement Services agreed to conduct the selection and purchase process. That process has led to extensive negotiations and an intent to award a radio system purchase contract to RACOM.

The proposal from RACOM is based on a 15 year purchase and support package for the radio infrastructure and subscriber unit support. MCP has indicated that 15 years is a reasonable life expectancy for the system and, therefore, for the purchase agreement.

In order for StoryComm to take full advantage of the contract discounts, the City's agreement with StoryComm should reflect this same 15 year contract term. In order to do so, the length of the 28E agreement should be extended from 10 to 15 years.

A second issue addressed in the amendment relates to the ownership of devices purchased through StoryComm. It is the intent of the parties that radios purchased by the City should be the property of the City, irrespective of whether they are purchased directly from the vendor or through StoryComm.

#### **ALTERNATIVES:**

1. Authorize the 28E Addendum Number 1 thereby extending the 28E agreement to 15 years and assigning ownership of radios to the participating entity making the purchase.
2. Do not authorize the 28E Addendum Number 1, thereby not extending the 28E agreement to 15 years or assigning ownership of radios to the participating entity making the purchase.

#### **CITY MANAGER'S RECOMMENDED ACTION:**

The City will greatly benefit in this joint effort with other agencies to acquire and operate a new interoperable communications system. The proposed contract terms appear to be

beneficial to the City. Extending the 28E agreement to 15 years will allow the city to capture the full benefit of contract discounts and support for the life of the system. The addendum to the 28E Agreement will also ensure that ownership of radios is determined in a clear and unambiguous manner.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving Amendment Number 1 to extend the 28E agreement to 15 years and assign ownership of radios to the participating entity making the purchase.

**AMENDMENT NO. 1**  
**To**  
**28E Agreement**  
**For**

**AN INTERGOVERNMENTAL AGREEMENT BY THE CITY OF AMES IOWA,  
STORY COUNTY IOWA, THE STORY COUNTY 911 SERVICE BOARD, AND IOWA  
STATE UNIVERSITY FOR THE OWNERSHIP AND OPERATION OF AN  
INTEROPERABLE COMMUNICATIONS SYSTEM**

**Dated December 11, 2018**  
**Iowa Code Section 28E.12**

This AMENDMENT No. 1 is by and among the City of Ames, Iowa, the County of Story, Iowa, the Story County 911 Service Board, and Iowa State University of Science and Technology, (collectively, “the Parties”) and amends the Intergovernmental Agreement by the City of Ames Iowa, Story County Iowa, The Story County 911 Service Board, and Iowa State University For The Ownership And Operation Of An Interoperable Communications System entered into by the Parties on December 11, 2018 (“28E Agreement”). In consideration of the mutual covenants herein made, the Parties agree as follows:

**SECTION 1. PURPOSE OF AMENDMENT**

1. Parties agree that an amendment should be made to the Termination section of the 28E Agreement in order to extend the minimum ten year operating duration to fifteen years.
  - a. The Termination section of the 28E Agreement is amended to replace “for a period of ten years after its effective date” with the following: “until fifteen years after final acceptance of the permanent interoperable communications system”.
2. Parties also agree that the 28E Agreement should clarify ownership of certain items being purchased in connection with the interoperable communications system
  - a. Subsection B of the Financing section of the 28E Agreement is amendment by adding the following after the last sentence: Non-infrastructure items (including but not limited to mobile and portable radios, consoles, related accessories, and the BeOn application) purchased through StoryComm will not be considered to be property acquired and held by StoryComm unless the non-infrastructure items were purchased for use by StoryComm. An entity which provides its own funding for the purchase of non-infrastructure items for its own end-users will acquire ownership to said non-infrastructure items at the time of delivery to the entity. An entity may also fund the purchase of non-infrastructure items on behalf of another entity and its end-user; the entity funding the purchase may elect to own the purchased non-

infrastructure items in its name or allow the other entity to own the items in the other entity's name.

**SECTION 2. AMENDMENT ALLOWED.** The 28E Agreement provides for this Amendment with an affirmative, unanimous vote of the voting members of the Board of Directors. All other terms and conditions of the 28 Agreement shall remain in full force and effect except as specifically modified by this Amendment.

*Remainder of page intentionally left blank*

IN WITNESS WHEREOF, THE CITY OF AMES, IOWA EXECUTES THE  
INTERGOVERNMENTAL AGREEMENT AMENDMENT, EFFECTIVE \_\_\_\_\_,  
2019.

BY: \_\_\_\_\_  
(print name)  
\_\_\_\_\_ Mayor

ATTEST: \_\_\_\_\_  
(print name)  
\_\_\_\_\_ City Clerk

**ACKNOWLEDGEMENT BY NOTARY**

STATE OF IOWA    )  
                      )ss.  
STORY COUNTY    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being sworn, did say that they are the Mayor of Ames, Iowa and City Clerk of Ames, Iowa respectively; that the seal affixed hereto is the seal of said City of Ames, Iowa; that said instrument was signed and sealed on behalf of the said City of Ames, Iowa by authority of its City Council and that said \_\_\_\_\_ and \_\_\_\_\_ as such officers, acknowledge the execution of said instrument to be the voluntary act and deed of said City, it and by them voluntarily executed.

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Notary Public in and for Story County  
And State of Iowa

**AN INTERGOVERNMENTAL AGREEMENT BY THE CITY OF AMES IOWA, STORY COUNTY IOWA, THE STORY COUNTY 911 SERVICE BOARD, AND IOWA STATE UNIVERSITY FOR THE OWNERSHIP AND OPERATION OF AN INTEROPERABLE COMMUNICATIONS SYSTEM**

THIS AGREEMENT is made and entered into the 11<sup>th</sup> day of December, 2018, pursuant to Iowa Code Chapter 28E, by the City of Ames, Iowa, (hereinafter CITY), Story County, Iowa, (hereinafter COUNTY), the Story County 911 Service Board (hereinafter 911 BOARD), and Iowa State University of Science and Technology (hereinafter ISU), for the combined use and benefit of all parties.

**PURPOSE**

The purpose of this Agreement is to gain economy of operations allowing the parties to purchase the land, equipment and services that will serve as the backbone of an interoperable communications system for participating public safety and public services agencies throughout Story County, and then to operate that system, including the on-going maintenance and improvement of the system, for the benefit of the parties. Interoperable communication systems generally include radio, paging, cellular, and similar systems and technology designed to allow public safety and public service agencies to communicate among themselves and with each other.

**BACKGROUND**

The parties to this Agreement have recognized that the interoperable communications system that currently provides service to the public safety and public service agencies throughout Story County no longer meets the requirements of the users and needs to be replaced. The parties also recognize that by working together each of the parties will acquire cost effective access to a new system.

In September 2017, the 911 BOARD entered into a contract with Mission Critical Partners (hereinafter referred to as MCP) of Port Matilda, PA, for an interoperable communications systems needs analysis study for all public agencies in Story County. MCP delivered a final report on that study in December 2017. The report called for the replacement of the current interoperable communications system with a new system by joining one of the existing or developing regional radio systems in Iowa. In January 2018, the parties to this Agreement joined together to extend the contract with MCP to, among other requirements, develop and design a functional interoperable communications system, assist in the preparation of comprehensive specification documents for that system, assist in the preparation, solicitation and review of proposals, and coordinate a final contract agreement with the successful vendor. Those processes are underway.

**LEGAL STATUS**

A separate legal entity under Iowa law is created through this Agreement by the parties to be known as StoryComm (hereinafter StoryComm) to accomplish this purpose.

## ORGANIZATION AND ADMINISTRATION

### A. Membership and Governance

There is hereby created a StoryComm Board of Directors (hereinafter BOD) which shall be operated and governed pursuant to this Agreement.

StoryComm BOD shall comprise three voting members and three ex officio members. CITY, COUNTY and ISU shall each have one voting representative on the BOD. The parties anticipate that the voting members will be senior members of the entity that they represent with decision making authority. The 911 BOARD shall have three ex officio members who will not be voting members. The 911 BOARD members shall be the three permanent members of the 911 BOARD's executive committee. The parties believe that the representatives of the 911 BOARD will work more closely with the interoperable communications system and its users on a day-to-day basis and will be able to advise the voting members.

The BOD may from time to time establish subcommittees to accomplish specific tasks or meet needed goals. The BOD shall establish the membership, duties and duration of any subcommittees. Subcommittee members may include anyone that the BOD deems necessary to accomplish the goals of the subcommittee, including both representatives from the parties to this Agreement and others who are not representatives of the parties. Members of the BOD may also serve on subcommittees.

### B. Powers

The BOD shall have the authority to make managerial decisions necessary to accomplish the purposes of this Agreement and to exercise any power, privilege or authority exercised or capable of exercise by the party represented including but not limited to: adopting rules, policies and procedures for the operation of StoryComm and the interoperable communications system; entering into contracts for the purchase or lease of land, goods and services; paying debts, borrowing, holding and investing funds; acquiring and holding state and federal licenses; hiring staff or contract for support services; arranging annual financial audits; and establishing a budget, to further the purpose of this Agreement.

### C. Meetings

The BOD shall meet at least once each calendar year and at such other times as deemed necessary or desirable. A special meeting may be called by any of the three voting members of the BOD.

For the purposes of coordinating the activity of StoryComm, one of the three voting members of the BOD shall act as chair. The position of Chairperson of the BOD shall be selected by the three voting members of the BOD on a majority vote on an annual basis.

All meetings shall be governed by the parliamentary procedures set forth in Robert's Rules of Order. A quorum requires that all three voting members be present, either in-person, by phone, or electronically. Each of the three voting members shall be entitled to one vote, and decisions of the BOD shall require a unanimous vote unless provided otherwise in this Agreement.

Because StoryComm is created by four public entities and will have the authority to establish a budget and make other recommendations, the BOD shall be deemed to constitute a

governmental body subject to Iowa open meeting and open records laws (Iowa Code Chapters 21 and 22). The Chairperson, through the administrative support from 911 Board, shall cause the minutes of the BOD meetings to be prepared, appropriately published and distributed to the BOD members and their participating cities' Mayors, the County Board of Supervisors, and the President of ISU.

## **COMMENCEMENT OF OPERATIONS**

StoryComm operations shall commence on a date to be determined by the BOD.

## **FINANCING**

The parties acknowledge that at the time they enter into this Agreement, MCP is actively working a Request for Proposals (hereinafter RFP) on behalf of the parties to develop the requirements for an appropriate interoperable communications system that will potentially serve all public safety and public service agencies in Story County. The responses to that RFP and the recommendation from MCP will provide the final projected costs for a new interoperable communications system. The exact costs cannot be known until the RFP process is complete. The parties will establish a final distribution of costs and process for management of the system once the final vendor is determined.

The parties agree that the following principals will govern the financing in acquisition and operation of the StoryComm interoperable communications system:

- A. The parties have agreed that ISU will act as the purchasing agent in developing, processing, and reviewing the RFP being developed by MCP. The parties agree that StoryComm will accept the purchasing process of ISU as its own for purchasing activities that occur both before and after the effective date of this Agreement. StoryComm will determine the successful vendor in the RFP process and, with the assistance of ISU and MCP, will negotiate a contract with that vendor. StoryComm will enter into the contract with the vendor.
- B. Costs for the infrastructure necessary to build out a successful interoperable communications system will be shared equally by the voting members of the BOD and held in the name of StoryComm. Infrastructure generally includes, but is not limited to, item such as land, towers, base stations, antennas, radio and networking management software, radio core equipment, backhaul equipment, power systems and licenses. Subscriber units, such as radio units, are not infrastructure.
- C. On-going costs associated with the interoperable communications system, including system maintenance and management (both hardware and software) and replacement costs ("Operating Costs"), shall be paid from collected User Fees (as defined below). At the time the BOD establishes a budget for a fiscal year, the BOD shall establish a fee to be charged per subscriber unit ("User Fee") and determine the number of subscriber units each party and any third parties will be using in connection with the interoperable communications system in the fiscal year. Each party and any third parties shall pay the User Fee for each subscriber unit it will use in connection with the interoperable communications system in the fiscal year. The BOD shall establish a procedure for billing and collecting the User Fees.
- D. To the extent possible, the 911 BOARD shall contribute toward the Operating Costs an amount at least equal to the amount allocated to tower fees in the 911 BOARD's 2018-2019

budget. Any other sources of revenue shall be applied to the Operating Costs. The BOD shall consider the availability of funds from these sources when establishing the User Fee.

E. If a party donates, or leases at no or reduced cost, land to support the infrastructure for the interoperable communications system, the value of the donated or leased land shall be offset against the amount the party owes for its share of the infrastructure costs and/or the amount it owes for User Fees.

F. StoryComm shall establish an initial budget as soon as practical after the selection of a vendor. StoryComm will operate on a July 1 to June 30 fiscal year and shall establish an annual budget by November 1 of each year for the next fiscal year.

G. StoryComm will appoint a fiscal agent to manage its day-to-day financial affairs. That may be one of the parties to this Agreement or an agent contracted for that purpose.

H. StoryComm may apply for and utilize grant funding in furtherance of the purpose of this Agreement.

I. The parties recognize that commitment of staff to support StoryComm's mission is critical. The parties agree that the BOD will make every effort to distribute the duties of StoryComm equitably and equally between the parties. Each party will be responsible for the costs of that party's staff allocated to the work of StoryComm.

### **EFFECTIVE DATE AND DURATION**

As required by Iowa law, this Agreement will be filed with the Secretary of the State of Iowa and shall be recorded in the office of the Story County Recorder. This Agreement shall be effective from and after the date on which recording is complete. This Agreement will continue in effect until terminated by one or more of the parties.

### **TERMINATION**

This Agreement may not be terminated by any of the parties for a period of ten years after its effective date except by unanimous agreement of the voting members of the BOD. Thereafter, any party may terminate this Agreement on written notice to the other parties. Written notice shall be given no later than January 1 of any given year and termination will be effective January 1 of the following year. Each party shall remain liable for its pro rata share of expenses until termination takes effect.

The parties further agree that, because of the unique and indispensable nature of the services jointly provided by this Agreement, termination may result in the disruption of services provided to the other parties. The parties may mutually agree to allow six month extension(s) to continue operation in order to permit the acquisition of funding and take into account the time needed to install a substitute/replacement system(s) by one or all of the parties.

### **DIVISION OF PROPERTY**

In the event of termination of this Agreement the parties agree that all property, tangible and intangible, acquired and held by StoryComm will be evaluated at the time of termination and, subject to the terms of the TERMINATION paragraph, a suitable distribution will be negotiated by the parties. A party may waive its rights to property, jointly acquired under this Agreement, as

the law provides.

## GOVERNING LAW

This Agreement shall be governed by and interpreted under the laws of the State of Iowa.

## AMENDMENTS

This Agreement may be amended at any time by an affirmative, unanimous vote of the voting members of the BOD. Any Party desiring an amendment to this Agreement shall notify the other Parties of its desire, and the reasons for the request.

Such a request shall be in writing to the other Parties, and shall be considered by the other Parties without unreasonable delay and within no more than ninety (90) days of receipt.

## NOTICES

All notices under this Contract shall be in writing and shall be deemed to have been given: (i) upon hand delivery; (ii) the next business day after sending by a nationally recognized overnight carrier with written confirmation of receipt or (iii) if sent by email, when the recipient acknowledges having received the email. Notices shall be sent to the BOD representatives of the other Parties.

## SIGNATURES OF THE PARTIES

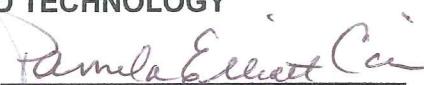
IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed by their duly authorized representatives.

CITY OF AMES, IOWA

By:   
John A. Mau, Mayor  
Authorized Representative

Date: 1-09-2019

IOWA STATE UNIVERSITY OF SCIENCE  
AND TECHNOLOGY

By:   
Pamela Elliott Cai  
Authorized Representative

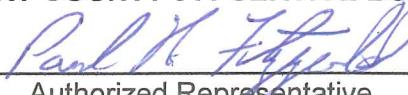
Date: 1-9-19

STORY COUNTY, IOWA

By:   
Story County  
Authorized Representative

Date: 12-11-18

STORY COUNTY 911 SERVICE BOARD

By:   
Paul H. Fitzgerald  
Authorized Representative

Date: 1-3-19