
AGENDA ITEM SUMMARY

Subject: 28E Agreement – City, Charles City Community School District, Charles City Chamber of Commerce and Charles City Community Revitalization (Main Street Iowa)

Recommendation: Approve 28E agreement that covers FY21 and FY22

Background Summary:

The Charles City Broadband Commission recently met on February 11th, 2021 and reviewed the attached draft of the 28E agreement between the city, school, chamber and revitalization. They have recommended this for council approval.

This agreement lays out the relationship between the city and the other entities on the provision of services related to the local access cable channel and other related services.

This agreement is very similar to previous agreements in that the city uses funds derived from the Cable Franchise Fees (fund 199) to promote usage of the “channel 4” local public access channel, the PAN website and other duties. The chamber and revitalization perform duties associated with maintaining the channel and covering Broadband Commission meetings and the school employs a “PAN Director” who is responsible for getting information out to the public for community events as well as facilitate the recording and broadcasting of city council and school board meetings. Since the last adoption of a 28E agreement, Floyd county has also begun taping and broadcasting their board meetings, to which they are paying a small fee for the service.

There has been discussion from the Broadband Commission over what is the best way forward to provide these services, and given the technological changes over the years and especially over the last 12 months, there needs to be a thorough review of what services we want to provide and what can be afforded. Revenues for this “Cable Fund” are based on broadcast video sales and the use of the city right way, franchise fee, to provide them.

Due to declining revenues and the need to review the overall 28E agreement, all the entities associated with the agreement are proposing and Broadband Commission has recommended, that we approve this two year agreement that retroactively approves FY21 and the upcoming FY22, and give us time to do that process over the next year before a new agreement is drafted and provided to council for approval.

The only changed you see in the agreement are associated with the amount we are able to allocate to the school and the PAN Director and use of facilities. FY21 is \$43,163 and FY22 is reduced to \$41,000. Community Revitalization remains the same at \$10,000 and the chamber remains the same at \$3,900 for both years.

**REVISED AGREEMENT (2020) PURSUANT TO CHAPTER 28E IOWA CODE
FOR JOINT OPERATION OF LOCAL ACCESS CABLE CHANNELS**

The City of Charles City (City) has enacted a cable franchise ordinance which provides for the dedication of a cable channel (and up to two channels) for full-time transmission of public educational and governmental programming. This channel is referred to herein as the Public Access Network (PAN).

In order to facilitate the use of the PAN and an Internet presence, the City has a need for a facility where programming can be produced for transmission; and, to facilitate the transmission of data or video pictures over the PAN, the City has the need for technical support to operate the production facility, train personnel in the use of the systems, and to identify and correct problems occurring in the operation of these systems.

The Charles City Community School District (District) has space at the Charles City Community Middle School which is appropriate for use as a facility for the PAN, and the District has on its staff or can employ additional staff to provide the technical assistance required to support this system. The employment of a "PAN Director" will benefit the District by providing the means to produce and broadcast educational programs and events to the entire community and by affording to students and staff technical training in the production of such programs. The District is further benefited by the monetary contribution provided by the City for the staff which, in addition to supporting the Public Access Network, will be available to provide support to the District.

An important function of the PAN is to provide citizens of Charles City with information concerning community events. A calendar server has been purchased by the City to create a daily community calendar for transmission over the PAN. The Charles City Area Chamber of Commerce (Chamber) is able to provide the services of an employee to generate the calendar on a daily basis during the work week.

The PAN Director, the Charles City Community School District Communications, and Community Engagement Director shall be combined into one full-time position with the District. This is beneficial as a public service to the stakeholders of the Charles City Community School District and the community as a whole. The City, County and School District benefit by being able to request assistance from this position as an Emergency Public Information Officer for government agencies. The City and its citizens are benefited by a professional communicator with up-to-date skills and FEMA training during times of urgent need.

The Broadband Telecommunications Commission of the City of Charles City has identified the need for the services of an individual or organization to provide administrative and consulting services to the City of Charles City in the telecommunications area. These services include oversight of franchise compliance, oversight and advice regarding right-of-way use by private and public entities, oversight and promotion of City efforts to introduce high-speed Internet access to Charles City, provide liaison between the City of Charles City and telecommunication providers and utilities and advice and oversight on infrastructure improvements to enhance Broadband Communication. This person or organization will also be responsible for chairing the Broadband Telecommunications Commission, keeping minutes and records of Commission meetings, as well as setting meeting dates and ensuring there is adequate public notice of said Commission meetings. The Commission has further recommended that the City engage the services of Charles City Community Revitalization (Revitalization) to provide these services.

By virtue of the mutual benefit realized by the City, the District, Revitalization, and Chamber, as above described, the undersigned parties undertake the joint management and operation of the local access channels on the terms and conditions set forth herein:

1. **Term.** This agreement shall amend, modify, and replace the existing agreement between the parties, shall be effective upon approval by the governing bodies of the City, the District, Revitalization, and the Chamber, and shall conclude on June 30, 2022, subject to earlier termination pursuant to Paragraph No.12 of this agreement.
2. **Governing Commission.** The cooperative venture does not constitute a separate legal entity. A governing board, to be known as the Broadband Telecommunications Commission, is created with general supervisory responsibilities over the operation and maintenance of the PAN, and with such other duties as set forth herein.
 - a. **Commission Membership and Term.** The Commission shall consist of five members appointed by the Mayor of Charles City and serving staggered terms of five years. The Mayor shall also appoint two Ex-officio members, one of whom shall be a member of the City Council and the other of whom shall be either a member of the City Council or a City employee. The PAN Director shall also be an Ex-officio member. These Ex-officio members shall serve and indefinite term at the pleasure of the Mayor. The Community Development Director shall act as the non-voting chairperson of the Commission. The chairperson shall set the date, time, and place for quarterly meetings of the Commission.
 - b. **Vacancies.** The Mayor shall appoint a replacement for each Commission position that becomes vacant and this replacement shall serve for the balance of the term.
 - c. **Voting.** Three members of the Commission shall constitute a quorum and a majority of those present shall be required to pass a measure.
 - d. **Commission Duties.** The Commission shall:
 - i. Meet quarterly in compliance with the “open meeting” requirements of the Iowa code. Special meetings may be called as provided herein and shall also be conducted in compliance with the open meeting law of the State Code.
 - ii. Supervise the employees of the District, of Revitalization, and of the Chamber who are engaged in the operation of programming, management of the community calendar, and the general development of Broadband Services to the community.
 - iii. Identify the equipment needs of the Commission and formulate recommendations to the City, District, Chamber, and Revitalization for acquisition of the new equipment and the sale of the old.
 - iv. Provide the City Clerk with all proposed expenditures for City Council approval. (The Commission may request authorization for payment by the City Administrator for expenditures of less than \$10,000 when a delay in payment will cause a loss of service or loss of opportunity for savings)
 - v. Provide quarterly written reports to the City documenting Commission activities and actions.

vi. Draft and present to the City Council an annual Fund Budget Request for this Broadband Telecommunications Commission.

3. **Employees of Participating Entities.** All decisions concerning hiring, firing, evaluation, discipline and compensation shall be made by the entities that employ the persons providing services to the Commission. More specifically, this includes PAN Director, who is an employee of the District, the individual managing the community calendar, who is employee of the Chamber, and the person providing administrative and technical services, who is an employee of Revitalization.
4. **Payment of Expenses.** The Commission will not have a separate budget for its activities; will have no money under its control; and will have no authorization to pay expenses or to incur debt. All payments shall be made by the City Clerk from the money budgeted by the City for the Commission activities. The City will create a budget for these activities based on recommendations presented to it by the Commission.
5. **Ownership of Property.** Each entity (City, District, Chamber, and Revitalization) shall own the equipment purchased exclusively with the funds provided by that entity. Each of these entities shall maintain a current list of the equipment for which it claims ownership and shall be responsible to provide appropriate insurance coverage for this equipment at its own expense. Upon termination of this agreement, each entity shall continue to own the equipment that is contained on its list.

6. **Services Provided by the District.**

A. **Facility.** The District shall provide a facility in the Charles City Community School District for use by the citizens of Charles City in producing programs for transmission over the PAN. This facility shall be accessible 12 months of each year during the term of the contract. The District shall provide regular and emergency access to the areas to the Broadband Telecommunications Commission designee. The governing board shall, in cooperation with the District, establish access as needed and rules for use of the space(s) by the public. The governing board shall further develop rules and regulations governing access to, and use of, the area and its equipment, type and content of programming which can be produced and/or transmitted over the PAN, and oversee technical training. In formulating rules, the governing board shall seek to minimize disruption to ongoing school activities while school is in session. The District shall maintain a neat and orderly environment in and around the area.

B. **Technical Support.** The District shall employ a qualified Pan Director to manage the community's Public Access Network (PAN), supervise programming and equipment (including calendar server), and train persons in the operation of equipment and peripheral equipment used in remote locations. The PAN Director shall further seek to promote the use of the PAN by the public while protecting the integrity of the system.

This person's duties and responsibilities will include, but not be limited to: see Attachment A.

C. **Content.** The Broadband Telecommunications Commission shall establish rules on the types and content of programming which can be produced and transmitted over the PAN. The PAN Director, in turn, is responsible for seeing that those rules are followed.

D. **Communications & Community Engagement Director.** The Charles City Community School District shall maintain a full-time Communications & Community Engagement Director for use by the District for its needs and for use by the City of Charles City at the request of the City of Charles City, City Administrator. This person shall serve as Emergency Public Information Officer for the area within Floyd County. The Communications & Community Engagement Director shall not be shared beyond the governmental parties to this agreement, namely: the Charles City Community School District, and the City of Charles City in cooperation with Floyd County Emergency Management.

7. **Services Provided by Revitalization.** Charles City Community Revitalization, through its Director acting as Commission chairperson, shall provide assistance to the Broadband Telecommunications Commission in the performance of its duties and the exercise of its powers as set forth in Chapter 112 of the City Code of the City of Charles City. Services to be provided shall include oversight and advice regarding use of public right-of-way by private and public entities, oversight and promotion of efforts to introduce high-speed Internet access to Charles City, provide liaison between the City of Charles City and its telecommunications commission and telecommunication providers and utilities, advice and oversight regarding infrastructure improvements to enhance Broadband Communication within Charles City and providing a written quarterly report of Broadband-related hours worked and activities. The chairperson shall also be responsible for scheduling Commission meetings, providing public notice of such meetings, and keeping the minutes and recordings of all Commission activities and actions.

8. **Services Provided by the Chamber.**

The Chamber will, during its regular business hours, receive all requests from citizens and organizations for inclusion of event information on the community calendar. The Chamber will further provide the services of a Chamber employee to develop, maintain, and broadcast the community calendar on the PAN, as well as a written quarterly report of Broadband-related hours worked and activities

The Broadband Telecommunications Commission will establish rules and regulations governing the content of the community calendar and the criteria for use of the community calendar by requesting persons and organizations.

9. **City Contribution to the District.** In consideration for the use of the facility space(s) at the Charles City Community School District and the use of technical services of District personnel described in Attachment A, the City shall pay to the District an annual contribution, with the first payment in the amount of \$43,163 for services completed during the 2020-2021 fiscal year due upon the approval of this agreement. The City shall pay an annual contribution payment for services for the 2021-2022 fiscal year in the amount of \$41,000.00 on or before June 30, 2022. The City and School District agree to negotiate a reduction in or reimbursement of a portion of this fee if the School District does not employ a PAN Director as described in this agreement during the entire year for which the contribution is made.

10. City Contribution to Revitalization. In consideration for the services described in paragraph 7 to be provided by Charles City Community Revitalization, the City shall pay to Charles City Community Revitalization an annual contribution, with the first payment due following approval of this agreement and with the subsequent annual payment due during the fiscal year 2021-2022 within thirty days of receipt of invoice. The annual contribution shall be in the amount of \$10,000. Upon early termination of the contract, Charles City Community Revitalization shall reimburse the City on a pro-rated basis for that amount of the fee based on the number of months left in the term when compared to the twelve (12) months of the contract term.

11. City Contribution to the Chamber. In consideration for the services described in paragraph 8 to be provided by the Charles City Area Chamber of Commerce, the City shall pay to the Chamber an annual fee of \$3,900 following approval of this agreement and with the subsequent annual payment due during the fiscal year 2021-2022 within thirty days of receipt of invoice. Upon early termination of the contract, Charles City Area Chamber of Commerce shall reimburse the City on a pro-rated basis for that amount of the fee based on the number of months left in the term when compared to the twelve (12) months of the contract term.

12. Early Termination. Any of the undersigned parties may withdraw from this agreement upon 60 days' written notice to the Chairman of the Broadband Telecommunications Commission, but subject to the following conditions:

A. If the City withdraws prior to the anniversary date, then the entire fee paid for that year shall be retained by the District, the Chamber and Community Revitalization. The City shall have a reasonable period, not to exceed one year, to use the facilities at the School District pending relocation of the equipment, and shall pay a rental fee of \$50.00 per month for each month that the facility is used by the City after the conclusion of the year for which the annual fee was paid. The City shall remove the calendar server, together with any other equipment owned by the City, within one year of the date of its withdrawal from the agreement.

B. If the District withdraws prior to the anniversary date, the District shall reimburse the City a portion of the fee paid on the prior anniversary based on the number of days remaining in the year for which the fee was paid. The District shall further allow the City to have use of the space(s) in the District for a reasonable period, not to exceed one year, pending relocation of the space(s) and equipment, and for the period that the City continues to use the facility after termination of this agreement, it shall pay a rental fee of \$50.00 per month.

C. If the Chamber withdraws prior to the anniversary date, the Chamber shall reimburse the City a portion of the fee paid on the prior anniversary based on the number of days remaining in the year for which the fee was paid. The Chamber shall allow the City a reasonable time, not to exceed 180 days, to remove any other personal property owned by the City and located in the Chamber office.

On this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is the school board president of Charles City Community School District, the entity executing the within and foregoing instrument; that no seal has been procured by the said School District; that said instrument was signed on behalf of said School District by authority of its Board of Directors; and that the said _____ as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said School District, by it and by him voluntarily executed.

Notary Public in and for the State of Iowa

STATE OF IOWA)
) ss
COUNTY OF FLOYD)

On this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is the President of Charles City Area Chamber of Commerce, the entity executing the within and foregoing instrument; that the seal affixed thereto is the seal of said Chamber of Commerce; that said instrument was signed and sealed on behalf of said Chamber of Commerce by authority of its Board of Directors; and that the said _____ as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said Chamber of Commerce, by it and by him voluntarily executed.

Notary Public in and for the State of Iowa

STATE OF IOWA)
) ss
COUNTY OF FLOYD)

On this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____, to me personally known, who, being by me duly sworn, did say that she is the President of Charles City Community Revitalization, the entity executing the within and foregoing instrument; that said instrument was signed on behalf of said Community Revitalization by authority of its Board of Directors; and that the said Arcon Concepcion as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said Community Revitalization, by it and by her voluntarily executed.

Notary Public in and for the State of Iowa