# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

**DATE: February 23, 2015**

## ITEM:

Resolution - Approval of Restated 28E Agreement with the City of Clive - Joint Maintenance of Roads

## FINANCIAL IMPACT:

City has assumed joint responsibility with the City of Clive for roadway maintenance responsibilities along University Avenue from 22nd St./NW 86th St. west to NW 142nd Street. Costs associated with this area were factored into the current fiscal year budget.

## BACKGROUND:

This is an update of our current 28E Agreement with the City of Clive, adopted in 1998.

## RECOMMENDATION:

City Council Adopt:

- Resolution approving restatement of 28E Agreement with the City of Clive and authorizing Mayor to execute Agreement.

Lead Staff Member: Bret Hodne, Director of Public Works

STAFF REVIEWS

| | |
|---|---|
| **Department Director** | Bret Hodne, Public Works Director |
| **Finance Director** | Tim Stiles |
| **Legal** | Richard Scieszinski |
| **Agenda Acceptance** | RTJ |

| PUBLICATION(S) (if applicable) | | | SUBCOMMITTEE REVIEW (if applicable) | | | |
|---|---|---|---|---|---|---|
| **Published In** | | | **Committee** | **Public Works** | | |
| **Dates(s) Published** | | | **Date Reviewed** | **February 17, 2015** | | |
| | | | **Recommendation** | **Yes** | **No** | **Split** |

# RESOLUTION

**WHEREAS,** there is an existing Agreement between the City of Clive and the City of West Des Moines in accordance with provisions of Chapter 28E, Code of Iowa, providing for the joint maintenance and servicing of University Avenue from 22nd St./NW 86th St. west to NW 142nd street, and;

**WHEREAS,** the City of Clive and the City of West Des Moines desire to reestablish their Agreement under the provisions of Chapter 28E, 2009 Code of Iowa, and;

**WHEREAS,** under Chapter 28E of the 2014 Code of Iowa, the City of Clive, as a public agency, may enter into an Agreement with the City of West Des Moines, another public agency, to provide services to the mutual advantage of both agencies.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA,** that the 28E Agreement, a copy of which is hereto attached, be duly approved and is authorized to be filed in the office of the Iowa Secretary of State and the Recorder of Polk County, Iowa, and all things necessary to place said 28E Agreement in full force and effect in accordance with Chapter 28E, Code of Iowa, 2009, is herewith authorized.

**BE IT FURTHER RESOLVED**, the Mayor and City Clerk are hereby authorized and directed to prepare and execute all documents necessary for this 28E Road Maintenance Agreement, and the City Manager and City Clerk are directed to file the same with the State of Iowa as provided by Chapter 28E.

**IN WITNESS WHEREOF,** the parties here to have set their hands, for the purpose herein expressed.

**PASSED AND APPROVED** this **23th** day of **February, 2015.**

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

RESTATED JOINT MAINTENANCE AGREEMENT

THIS JOINT MAINTENANCE AGREEMENT ("Agreement") is entered into on the effective date herein provided, by and between the CITY OF CLIVE, IOWA, a municipal corporation organized and existing under the laws of the State of Iowa ("Clive") and the CITY OF WEST DES MOINES, IOWA, a municipal corporation organized and existing under the laws of the State of Iowa ("West Des Moines"), pursuant to Chapter 28E of the Iowa Code.

WHEREAS, Clive and West Des Moines have previously entered into one written agreement regarding the allocation of maintenance responsibilities along University Avenue from 22nd St/NW 86th St west to NW 142nd Street.

WHEREAS, Clive and West Des Moines desire to restate herein the agreements of the cities regarding the allocation of maintenance responsibilities along University Avenue from 22nd St/NW 86th St west to NW 142nd Street.

NOW, THEREFORE, in consideration of the following mutual promises and agreements, the parties agree as follows:

In consideration of the following promises and agreements and upon the following terms and conditions, the parties agree as follows:

1. Purpose. The purpose of this Agreement shall be to provide for the joint exercise of the respective powers of the cities hereto in connection with the maintenance project hereinafter described pursuant to the provisions of Chapter 28E of the Code of Iowa, and to supersede the existing 28E Agreement entitled "Joint Maintenance Agreement" adopted by the respective cities on or about the 24th day of September, 1998.

2. Project. The term "project" for the purpose of this Agreement shall mean the specific division of responsibility between the cities hereto for the maintenance, repair and reconstruction of University Avenue, a jointly owned public street, fiber optic cables and the automated traffic control signals, including any pertinent equipment which regulates traffic along such public street.

   A. Responsibility of Clive: Clive shall be responsible, at its sole cost, for normal snow removal operations from WDM's 22nd Street to Clive's NW 142nd Street. Clive shall be responsible for pavement maintenance on all left turn lanes including the island tips in the westbound traffic lanes at its sole cost.

   B. Responsibility of West Des Moines: West Des Moines shall be responsible for the maintenance of all traffic island signs, overhead lane directional signs, and street painting including traffic control markings, which shall include stop lines as well as signs and signals at the offset intersection located at WDM's 31st Street and Clive's 94th Street. West Des Moines shall be responsible for pavement maintenance on all left turn lanes including the island tips in the eastbound traffic lanes at its sole cost.

   C. Automated Traffic Control Signals: The costs of materials for maintenance and repair or reconstruction of jointly owned traffic signals shall be shared equally by the cities.

      (i) Costs for electric service, power and for maintenance materials for all traffic signals shall be incurred and paid by West Des Moines, and fifty percent (50%) of said incurred costs shall be billed to Clive for payment on a quarterly basis to West Des Moines.

      (ii) West Des Moines shall be solely responsible for all in house labor costs related to locating, maintenance and repair or reconstruction of the jointly owned traffic signals. The sharing of costs as provided in this paragraph shall encompass not only existing traffic signals and necessary appurtenances, as shown in exhibit A, but shall also include such future traffic signal improvements as may be jointly constructed and owned by the Cities.

(iii) Contractor labor costs related to maintenance and repair or reconstruction of the jointly owned traffic signals shall be shared equally by Clive and West Des Moines.

(iv) Clive shall be solely responsible for the maintenance and cost of the Emergency Vehicle Preemption system.

D. Fiber Optic Cable(s) and related equipment: Jointly owned fiber optic cables and the related equipment is installed along University Avenue and extends from 22nd St/NW 86th St west to NW 142nd Street along University Avenue. Joint owners of this fiber optic cable and equipment are the West Des Moines and Clive.

(i) The sharing of costs as provided in this paragraph shall encompass not only existing jointly owned fiber optic cable and necessary appurtenances, as shown in exhibit B, but shall also include such future fiber optic system improvements as may be jointly constructed and owned by West Des Moines and Clive

(ii) If either city or a contractor operating under the direction of said city is required to perform any splicing, access any splice cases, or perform any other procedure that could accidentally disrupt the passage of light in the fibers or otherwise directly impact the other city's activity, they must communicate that proposed activity to the other city in a reasonable time.

(iii) West Des Moines will perform maintenance on all the fiber cable and appurtenances along the University Avenue corridor, including locating of the Fiber facility, Fiber repairs, Fiber restoration, and Fiber relocation that becomes necessary during the term of this Agreement. Clive will pay its proportionate cost based on the number of fiber in a sheath(s) that are allocated to the Clive. West Des Moines shall be solely responsible for all labor cost performed by their staff. If maintenance is performed by a contractor Clive shall pay its proportionate cost based on the number of fiber in a sheath(s). Clive has the responsibility to locate the fiber cable on NW 94th Street from University Avenue north to Indian Hills School up to the entry point of the building.

(iv) West Des Moines and Clive shall mutually agree to allow the use of either cities dark fiber by another third party entity.

E. Responsibility of Cities Separately: Each City shall separately be responsible for its respective side of University Avenue for all pavement maintenance, street sweeping, street lighting and traffic control devices other than those mentioned above.

F. Responsibility of Cities Jointly: Both cities shall jointly be responsible for major pavement repairs, major snow emergencies and other major improvement projects.

3. Project Administration. The project shall be administered by the Project Administration Committee, which shall consist of the City Manager of each City and their respective Public Works Director or City Engineer.

4. Exercise of Powers. Each City shall exercise its powers within its respective corporate jurisdiction in furtherance of the project and shall retain sole responsibility for its jurisdictional authority.

5. Finances. Each City shall finance its share of the cost of maintenance responsibilities set forth in Paragraph 2(c) of this Agreement in such a manner as shall be determined by its respective City Council and as permitted by law. Both cities agree to cooperate to the extent necessary to allow both cities to fully

comply with all laws applicable to the financing of and contracting for any work or activity contemplated by this Agreement.

6. Method of Approval. The cities shall approve this Agreement by passage of its respective Resolution, which shall authorize the Mayor and City Clerk to execute this Agreement.

7. Filing with Secretary of State. Upon approval of this Agreement by the cities, this Agreement shall be filed with the Secretary of State of the State of Iowa in accordance with the provisions of Section 28E.8 of the Code of Iowa.

8. Filing of Agreement with Iowa Secretary of State. After execution by the parties, this Agreement shall be filed with the Secretary of State of the State of Iowa in accordance with the provisions of Section 28E.8 of the Code of Iowa.

9. Effective Date. This Agreement shall become effective from and after the date on which this Agreement is recorded in the Office of the Polk County Recorder.

10. Termination. In the event that either City desires to terminate this Agreement, a written notice of termination shall be served upon the other City and this Agreement shall terminate thirty (30) days from the date of receipt of such notice by the other City.

11. Notices. Any notice under this Agreement shall be in writing and shall be deemed to be effective when personally served or deposited in the United States Mail, postage prepaid, addressed to the parties at the respective address set forth below:

To West Des Moines: City Manager
City of West Des Moines
Post Office Box 65320
4000 George M. Mills Civic Parkway
West Des Moines, Iowa 50265-0320
To Clive: City Manager
City of Clive
1900 NW 114th Street
Clive, Iowa 50325

12. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa.

13. Entire Agreement. This Agreement contains the entire Agreement between the cities and may not be changed except by an amendment in writing signed by the cities hereto.

14. Severability. If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.

15. Miscellaneous Headings. Title to articles, paragraphs and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.

16. Further Assurances. Each party agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.

IN WITNESS WHEREOF, the City of West Des Moines has caused this Agreement to be executed in three (3) counterparts, each of which shall be considered an original, this ____ day of _____, 2015.

CITY OF WEST DES MOINES

By: _____
Steven Gaer, Mayor

(SEAL)

ATTEST:

_____
Ryan Jacobson, City Clerk

IN WITNESS WHEREOF, the City of Clive has caused this Agreement to be executed in three (3) counterparts, each of which shall be considered an original, this _____day of _____, 2015.

CITY OF CLIVE

BY: _____
Scott Cirksena, Mayor

(SEAL)

ATTEST:

_____
Joyce Cortum, City Clerk

STATE OF IOWA)
)ss:
COUNTY OF POLK )

On this ____ day of _____ 2015, before me, _____, a Notary Public in and for the State of Iowa, personally appeared Steven Gaer and Ryan 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 Clive, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Ordinance No. _____ passed (the Resolution adopted) by the City Council, under Roll Call No. _____ of the City Council on the _____ day of _____ 2015, and that _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the corporation, by it voluntarily executed.

_____
Notary Public in and for the
State of Iowa

**STATE OF IOWA )**
) ss:
COUNTY OF POLK)

On this ____ day of _____ 2015, before me, _____, a Notary Public in and for the State of Iowa, personally appeared Scott Cirksena and Joyce Cortum, 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 Urbandale, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Ordinance No. _____ passed (the Resolution adopted) by the City Council, under Roll Call No. _____ of the City Council on the ____ day of _____,2015, and that _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the corporation, by it voluntarily executed.

_____
Notary Public in and for the
State of Iowa

# Exhibit A

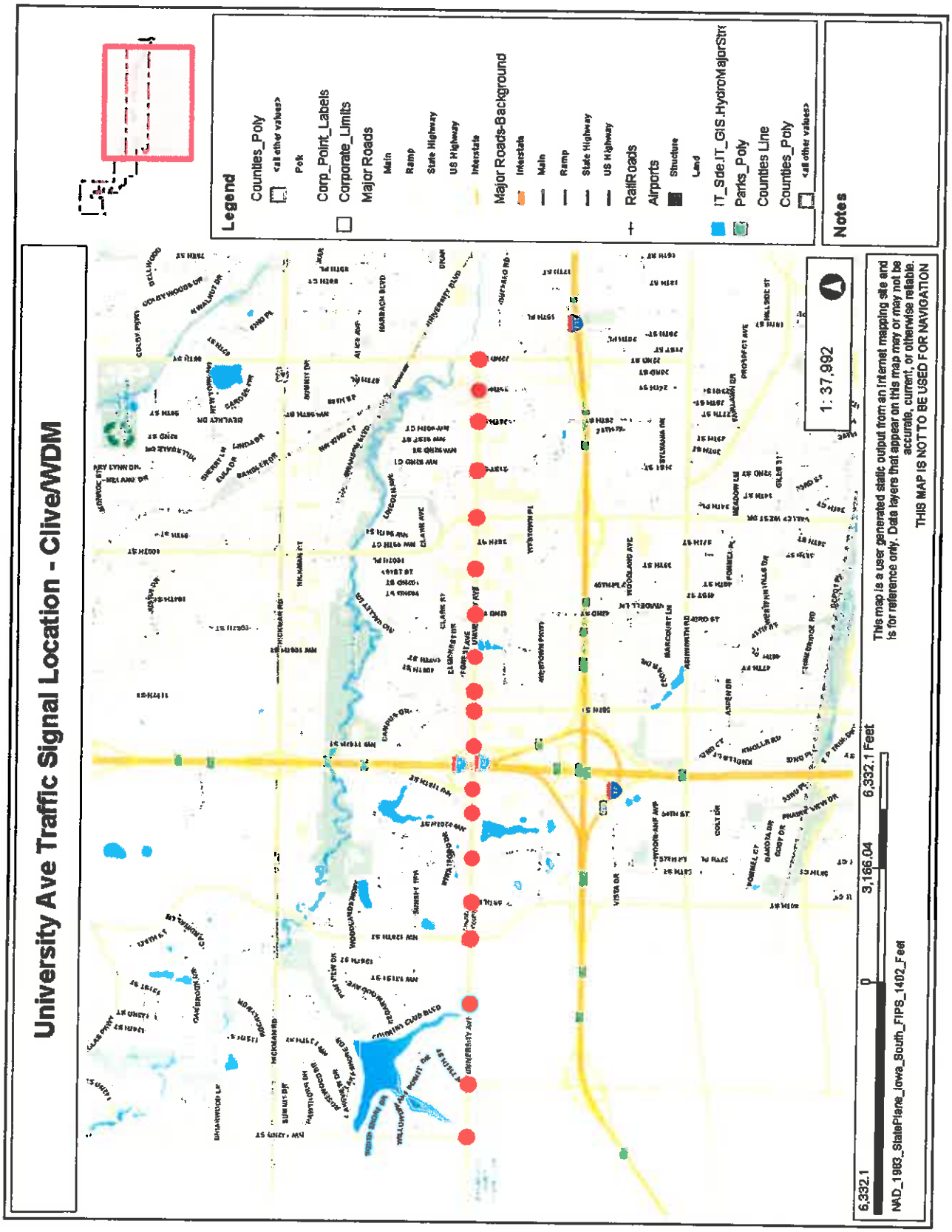
University Ave Traffic Signal Location - Clive/WDM
Legend
Counties_Poly
<all other values>
Polk
Corp_Point_Labels
Corporate_Limits
Major Roads
Main
Ramp
State Highway
US Highway
Interstate
Major Roads-Background
Interstate
Main
Ramp
State Highway
US Highway
RailRoads
Airports
Structure
Land
IT_Sde.IT_GIS.HydroMajorStr
Parks_Poly
Counties Line
Counties_Poly
<all other values>
Notes
1: 37,992
This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION
6,332.1
0
3,166.04
6,332.1 Feet
NAD_1983_StatePlane_Iowa_South_FIPS_1402_Feet

**Exhibit B**

Designated Fiber: University Avenue Fiber Optic Cables
West Des Moines - Clive

**University Avenue - 22nd Street to 50th Street**

| Sheath Identifier | Tube/Strand Identifier | Ownership |
|---|---|---|
| 72 Strand Single Mode Sheath | Blue | WDM Schools |
| | Orange | WDM Schools |
| | Green | WDM Schools |
| | Brown | Clive |
| | Slate | West Des Moines |
| | White | West Des Moines |
| 24 Multi Mode Sheath | Blue | West Des Moines/Clive |
| | Orange | West Des Moines/Clive |
| 48 Single Mode Sheath | Green | West Des Moines/Clive |
| | Brown | West Des Moines |
| | Slate | West Des Moines |
| | White | Clive |

**University Avenue - 50th Street to NW 142nd Street**

| Sheath Identifier | Tube/Strand Identifier | Ownership |
|---|---|---|
| 72 Strand Single Mode Sheath | Blue | Clive |
| | Orange | Clive |
| | Green | Clive |
| | Brown | West Des Moines |
| | Slate | West Des Moines |
| | White | West Des Moines |
| 24 Multi Mode Sheath | Slate | West Des Moines/Clive |
| | White | West Des Moines/Clive |
| 48 Single Mode Sheath | Blue | West Des Moines/Clive |
| | Orange | West Des Moines |
| | Green | West Des Moines/Clive |
| | Brown | Clive |

STATE OF IOWA)
)ss:
COUNTY OF POLK )

On this ____ day of _____ 2015, before me, _____, a Notary Public in and for the State of Iowa, personally appeared Steven Gaer and Ryan 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 Clive, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Ordinance No. _____ passed (the Resolution adopted) by the City Council, under Roll Call No. _____ of the City Council on the _____ day of _____ 2015, and that _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the corporation, by it voluntarily executed.

_____
Notary Public in and for the
State of Iowa

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COUNTY OF POLK)

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Notary Public in and for the
State of Iowa

**STATE OF IOWA )**
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_____
Notary Public in and for the
State of Iowa