# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

**ITEM: Approval, fourth amended and restated Inter-governmental agreement for the ownership and operation of a consolidated dispatch center.** **DATE: February 23, 2015**

**FINANCIAL IMPACT:** It is projected that West Des Moines estimated percentage of Westcom expenses will drop from 47.4 percent to 41.9 percent with the addition of Waukee to Westcom.

**BACKGROUND:** This amendment was prepared by the West Des Moines City Attorney's Office. This action amends the current Westcom 28E Agreement to add Waukee into Westcom, and switches all Westcom agencies to a population based calculation for a division of the expenses.

We will be adding two dispatchers to our employee compliment to accommodate the increased call volumes generated by adding Waukee into our system. We will make the fiscal adjustments in a future budget amendment.

This amendment was approved by the City of Waukee on February 2, 2015.
This amendment will go for consideration by the Cities of Urbandale, Clive and Norwalk in the next few weeks.

**OUTSTANDING ISSUES** (if any): none

**RECOMMENDATION:** Approval of agreement and direct the required filing by the Clerk's office.

**Lead Staff Member:** **Chief Jeff Dumermuth**

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | J.Dumermuth |
| Appropriations/Finance | |
| Legal | Witgraff |
| Agenda Acceptance | RTJ |

**PUBLICATION(S)** (if applicable)

| | |
|---|---|
| Published In | |
| Dates(s) Published | |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | | | |
| Date Reviewed | | | |
| Recommendation | Yes | No | |

**RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A CHAPTER 28E AGREEMENT BY AND BETWEEN THE CITY OF CLIVE, THE CITY OF URBANDALE, AND THE CITY OF WEST DES MOINES, FOR THE OPERATION OF A CONSOLIDATED DISPATCH CENTER FOR POLICE, FIRE AND EMERGENCY MEDICAL SERVICES**

**WHEREAS,** the Cities of Clive, Urbandale and West Des Moines, also known as WestCom Authority Agencies, have operated a joint public safety dispatch center under the provision of Chapter 28E of the Code of Iowa, and

**WHEREAS,** the WestCom Authority Agencies desire to enter into a Fourth Amended and Restated 28E Agreement to add the City of Waukee as a contract user and revise how operating costs are divided amongst WestCom partner agencies; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WEST DES MOINES, 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 all things necessary to place said 28E Agreement in full force and effect in accordance with Chapter 28E, Code of Iowa 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 the 28E 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 hereto have set their hands, for the purpose herein expressed.

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

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

# FOURTH AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT FOR THE OWNERSHIP AND OPERATION OF A CONSOLIDATED DISPATCH CENTER FOR POLICE, FIRE, AND EMERGENCY MEDICAL SERVICES

This Fourth Amended and Restated Agreement is made and entered into, on the effective date herein, by and among the City of Clive, Iowa ("Clive"), the City of Urbandale, Iowa ("Urbandale"), and the City of West Des Moines, Iowa ("West Des Moines"), (singular or plural, "Authority Member(s);" collectively, the "Authority") and the City of Norwalk, Iowa ("Norwalk") and the City of Waukee, Iowa ("Waukee") as Contract Users, as municipal corporations organized and existing under the laws of the State of Iowa, in consideration of the following promises and agreements and upon the following terms and conditions:

1. **PURPOSE:**

   Authority Members share a common interest and desire to jointly own and operate a consolidated dispatch unit ("Westcom") for police, fire, emergency medical services, and such other communication requirements of the Authority Members as may from time to time be determined, and to proportionately share the associated costs thereof. This Agreement shall be construed to effectuate its purpose through the joint exercise of governmental power in the manner described in this Agreement and pursuant to Iowa Code Chapter 28E.

2. **EQUIPMENT:**

   The Authority will own such equipment and other assets and individual Authority Members will possess such undivided ownership interests therein as is established in ¶8 below.

3. **DEFINITIONS:**

a. CONTRACT USER: For the purposes of this Agreement, the term "Contract User" shall mean users of the system who pay a fee for services to Westcom, but are not full Authority Members.

b. COORDINATING AGENCY: For the purposes of this Agreement, the term "Coordinating Agency" shall mean West Des Moines.

c. SERVICE AREA: For the purposes of this Agreement, the term "Service Area" shall mean the geographical area within the Authority Members' combined corporate limits as they exist on the effective date of this Agreement and as they may change in the future, as well as the geographical area of Contract User(s) of the system that have joined this Agreement or may join this Agreement in the future.

4. **MANAGEMENT COMMITTEE**

a. POWERS. This Agreement shall be administered by the Management Committee, which, except where this Agreement delegates or reserves powers to an Authority Member, shall make the managerial decisions necessary to accomplish the purposes of this Agreement. In addition to power thus implied, the Management Committee shall by means of the budget procedure specified hereinafter recommend to the City Manager or Administrator of each Authority Member and Contract User the levels of staffing, equipment, and budget. The Management Committee shall establish written policies pertaining to the operational procedures of the Westcom system, and shall appoint an individual as Westcom Director to be responsible for daily operational decisions.

b. BUDGET. Annually, at least one hundred twenty (120) days prior to the date City budgets are required to be filed with the County Auditor, the Westcom Director shall deliver to the City Manager or Administrator of each Authority Member for their review and approval a proposed Authority Budget for the next fiscal year which shall be subject to the approval of each respective Authority Member's City Councils. In the event the proposed Authority Budget is not approved by all Authority Members' City Councils, the Authority Budget for the current year, adjusted for inflation (consumer price index), shall remain in effect until approval of a new Authority Budget is given by all Authority Members' City Councils. Following review by the City Manager or Administrator of each Authority Member, the Authority Budget may be amended with the approval of all Authority Members' City Councils. The City Manager or Administrator and City Councils of the Contract Users will be consulted in the budgeting process.

c. COMPOSITION. The Management Committee shall consist of two (2) representatives from each Authority Member, one of whom shall be the Police Chief and one of whom shall be either the Fire Chief or Emergency Medical Services Chief and the City Manager acting as the Management Committee Chair. The City Manager for each Authority Member shall be ex officio Management Committee members. An Authority Member City Manager, chosen by the Authority Member City Managers, will act as the Management Committee Chair. Each Authority Member may designate alternate representatives to serve in the absence of Management Committee members. The Contract Users, collectively, shall designate two (2) representatives to serve on the Management Committee.

d. MEETINGS. The Management Committee shall meet at least once each calendar year and at such other times as it deems necessary. A special meeting may be called by the Chair or any three (3) Authority Members of the Committee. At any meeting each Authority Member, including the Chair but otherwise excluding ex officio Authority Members, shall have one (1) vote. A quorum shall consist of a number equal to fifty percent (50%) of the total Management Committee's voting members plus one (1). Except as otherwise provided herein, decisions of the Management Committee shall be made by a majority vote of Management Committee members present constituting a quorum. Minutes of all meetings shall be taken by the designated Secretary who shall cause all minutes to be forwarded to the City Clerk of each Authority Member and Contract User. Because the Management Committee and the Sub-Committees thereof are created by Authority Member City Councils, and make budget and other recommendations, the Management Committee and Sub-Committees thereof shall be deemed to constitute governmental bodies subject to the open meetings and open records law of Iowa, to wit: Chapters 21 and 22, Code of Iowa. Notice of meetings shall be sent to each Authority Member and Contract User.

e. PROFESSIONAL SERVICES. The Management Committee shall have the authority within the approved budget to engage legal and other professional services as may be necessary.

f. SUB-COMMITTEES OF THE MANAGEMENT COMMITTEE. There shall be Sub-Committees of the Management Committee, to wit: Operations & Technology, and such other sub-committees as may from time to time be established by the Management Committee.

i. Operations & Technology Sub-Committee:

1. Membership: Each member of the Management Committee, except the City Manager-Chair and ex officio Authority Members, shall appoint two (2) members to the Operations & Technology Sub-Committee. Each Contract User shall appoint two (2) members to the Operations and Technology Sub-Committee. The Westcom Director shall appoint one (1) telecommunicator and one (1) Dispatch Shift Supervisor to the Operations & Technology Sub-Committee.

2. Duties: The Operations & Technology Sub-Committee shall function as the Management Committee's liaison with the Coordinating Agency for operational, technology, system maintenance and system improvement issues, and shall develop recommended operational standard operating guidelines and protocols.

5. **COORDINATING AGENCY:** West Des Moines shall be the Coordinating Agency for the Project and hereby consents to such designation. Authority Members and Contract Users agree that:

a. The Coordinating Agency shall act as the contracting authority for the Management Committee and will advertise for and hold the letting of all required bids.

b. Subject to review by the Management Committee, the Coordinating Agency shall employ under its Civil Service Rules and Procedures all regular and probationary employees needed for the operation of Westcom to carry out the purposes of this Agreement. The Coordinating Agency shall manage all Westcom personnel

pursuant to its employee and administrative policies and procedures, union contracts, civil service, city ordinances and other applicable laws.

c. The Coordinating Agency shall have custody of and maintain all books and records of Westcom on behalf of the individual Authority Members. Authority Members and Contract Users shall have the right, at any time upon reasonable notice, to review and inspect the books and records of Westcom. The books and records of Westcom shall be deemed to be the books and records of Authority Members individually with undivided ownership interests in proportion to their respective contributions to the Authority Budget plus original documented contributed capital, and neither the Authority nor the Coordinating Agency shall be deemed to possess an ownership interest by virtue of custody or the obligation to maintain said books and records.

d. Pursuant to policies and procedures adopted by the Management Committee and the Authority's adopted budget, the Coordinating Agency shall, through its accounts payable system, pay all bills of the Authority.

6. **DIVISION OF ANNUAL OPERATING COSTS:** Authority Members and Contract Users shall annually budget for operating costs in accordance with the Authority Budget and each Authority Member and Contract User shall be responsible for contribution to budgeted costs. The division of annual operating costs, beginning with Fiscal Year 2015/2016, shall be based upon the population of each Authority Member and Contract User and other applicable data. For budgeting and "true-up" purposes, the population of Authority Members and Contract Users shall be determined in November of each year by either the most recent Federal Census or the most recent Federal Census Estimates as posted on http://quickfacts.census.gov. If all Authority Members have a Special Census certified in

the same calendar year that population will be used until that population is updated by a subsequent calendar year Federal Census Estimate for all Authority Members.

7. Authority Members and Contract Users shall remit payment to the Coordinating Agency on a monthly basis on or before the 15th day of each month its share of annual budgeted operating costs divided by twelve (12). The Coordinating Agency shall provide Authority Members and Contract Users with monthly statements of actual costs incurred. Any difference between actual and budgeted expenditures shall be an adjustment to the following year's payment of costs on a pro-rata basis.

8. **OWNERSHIP AND MAINTENANCE:** The location of Westcom offices shall be owned by the Coordinating Agency and, except as provided immediately below, all other Westcom assets and equipment shall be owned by the Authority as a joint exercise of the powers of the Authority Members, with undivided ownership interests in each Authority Member as equates to the respective proportions specified in ¶¶ 4 & 6 hereof. The backbone of the 800 MHZ system (including, among other components, the common antennas, transmission lines and central processing units) shall be deemed a Westcom asset owned by the Authority as a joint exercise of the powers of the Authority Members, with undivided ownership interests in each Authority Member as equates to the respective proportions specified in ¶6 hereof. Contract Users shall be responsible for their own initiation, installation, and maintenance costs to the Westcom system, which includes but is not limited to infrastructure, connection fees, radio charges for use of the master controller, radio towers, and software upgrades. Any equipment, including associated software and licenses as well as infrastructure purchased by the Contract User, shall remain the property of the Contract User. Contract Users shall have full responsibility for maintenance of such equipment and facilities.

9. **OPERATIONAL STANDARDS:** Authority Members and Contract Users shall maintain operational standards consistent with applicable national professional accrediting agencies.

10. **INDEMNIFICATION:** Each party agrees to indemnify and to hold the other parties, their elected officers, agents, employees and successors and assigns, harmless from and against all claims, demands, actions and/or causes of actions, judgments, settlements, or other costs, including reasonable attorney's fees, which the other parties, their successors and assigns, may incur or sustain a) by reason of indemnifying party's breach of this Agreement or failure to legally or timely meet the responsibilities imposed herein (including, but not limited to, any financial obligations herein), or b) by reason of the torts of indemnifying party. Clive shall indemnify, defend and hold harmless the Authority and all other Authority Members and Contract Users for damages, claims, demands, suits, judgments, costs and expenses arising from a loss or damage to private property and/or the death of or injury to private persons, relating to police, fire, emergency medical services or any other actions taken by Westcom personnel under the direction of the police chief, fire chief, or emergency medical chief for Clive or during any call initiated by Clive. Urbandale shall indemnify, defend and hold harmless the Authority and all other Authority Members and Contract Users for damages, claims, demands, suits, judgments, costs and expenses arising from a loss or damage to private property and/or the death of or injury to private persons, relating to police, fire, emergency medical services or any other actions taken by Westcom personnel under the direction of the police chief, fire chief, or emergency medical chief for Urbandale or during any call initiated by Urbandale. West Des Moines shall indemnify, defend and hold harmless the Authority and all other Authority Members and Contract Users for damages, claims, demands, suits, judgments, costs and expenses arising from a

loss or damage to private property and/or the death of or injury to private persons, relating to police, fire, emergency medical services or any other actions taken by Westcom personnel under the direction of the police chief, fire chief, or emergency medical chief for West Des Moines or during any call initiated by West Des Moines, provided, however, that West Des Moines' indemnification obligation shall not extend to actions by its personnel taken in its capacity as Coordinating Agency for or on behalf of the Authority rather than for on or behalf of West Des Moines. All actions by West Des Moines personnel in the performance of its functions as Coordinating Agency shall be the responsibility of Authority members and Contract Users collectively. Each ~~new Authority Member and~~ Contract User shall indemnify, defend and hold harmless the Authority and all other Authority Members and all other Contract Users for damages, claims, demands, suits, judgments, costs and expenses arising from loss or damage to private property and/or death of or injury to private persons, relating to police, fire, emergency medical services or any other actions taken by Westcom personnel under the direction of the police chief, fire chief, or emergency medical chief for said Contract User or during any call initiated by said Contract User. This Agreement shall not extend the liability of any Authority Member and each Authority Member and the Management Committee are authorized to insure any and all liabilities which may be incurred as a result of this Agreement or operations under it and where appropriate to accept insurance in lieu of other indemnification.

11. **AGREEMENT – METHOD OF APPROVAL:** The parties hereto approve this Agreement by Resolution, which Resolution shall authorize the respective Mayors to execute this Agreement.

12. **AGREEMENT – FILING WITH THE IOWA SECRETARY OF STATE:** When this Agreement has been approved by the Authority Members and Contract Users hereto, this Agreement shall be electronically filed with the Secretary of State of the State of Iowa in accordance with the provisions of 28E.8 Code of Iowa.

13. **AGREEMENT – EFFECTIVE DATE:** This Agreement shall become effective on July 1, ~~2014~~ 2015.

14. **DURATION AND TERMINATION:** This Agreement shall be effective from the date herein provided until terminated as herein provided. This Agreement shall replace all prior Iowa Code Chapter 28E agreements of the Authority Members and Contract Users that relate to Westcom. This Agreement shall continue until terminated by an Authority Member by giving written notice to the other parties not later than December 31 of any given year, whereupon this Agreement shall then terminate with respect to the notice-giving Authority Member(s) eighteen (18) months thereafter as of June 30. This Agreement shall continue until terminated by a Contract User by giving written notice to the other parties not later than February 28 of any given year, whereupon this Agreement shall then terminate with respect to the notice-giving Contract User(s) sixteen (16) months thereafter as of June 30.

15. **EFFECT OF TERMINATION:** In the event this Agreement is terminated by (a) mutual agreement of all of the Authority Members or (b) by a single Authority Member or Contract User giving a timely notice as provided immediately above, each Authority Member or Contract User shall continue to remain liable for its pro rata portion of the Authority Budget until termination takes effect eighteen (18) months thereafter for Authority Member(s) and sixteen (16) months thereafter for Contract User(s) as provided immediately above. In the event of termination of this Agreement by mutual agreement of all Authority Members, a determination of the respective ownership interests of each then

present Authority Member in the assets and equipment of the Authority shall be made on the basis of each Authority Member's total contributions to the Authority Budget plus initial contributed capital value from the effective date of this Agreement to the date of termination for each Authority Member.

16. **MODIFICATION OF THE AGREEMENT:** Modifications to this Agreement shall require the approval by resolution of all Authority Members' City Councils at the time of the proposed modification, except for the addition of new Contract Users. The Management Committee shall possess the power to recommend to the Coordinating Agency the addition of Contract Users. The Management Committee's recommendation shall be unanimous. The City Council of the new Contract User shall separately approve the new 28E Agreement by resolution. The Coordinating Agency shall consider and may adopt the new 28E Agreement to identify the new Contract User and confirm that the new Contract User accepts the terms and conditions of the existing 28E Agreement.

17. **NOTICES:** Any notice under this Agreement shall be in writing and shall be deemed to be given when deposited in United States Post Office.

    a. Notices to Clive shall be addressed: City Manager, City of Clive, 1900 NW 114th Street, Clive, IA 50325.

    b. Notices to Urbandale shall be addressed: City Manager, City of Urbandale, 3600 86th Street, Urbandale, IA 50322.

    c. Notices to West Des Moines shall be addressed to: City Clerk, City of West Des Moines, 4200 Mills Civic Parkway, P.O. Box 65320, West Des Moines, IA 50265-0320.

    d. Notices to Norwalk shall be addressed to: City Administrator, City of Norwalk, 705 North Avenue, Norwalk, IA 50211.

e. Notices to Waukee shall be addressed to: City Administrator, City of Waukee, 230 W. Hickman Road, Waukee, IA 50263.

f. If during the term of this Agreement an Authority Member or Contract User shall change the address of its City Hall or seat of municipal government, it shall notify the other Authority Members and Contract Users of said new address and the new address shall be by mutual agreement substituted for the address herein provided.

g. The Westcom Director or designee shall read and review this Agreement to ensure correctness and accuracy by present practices by June 30 of even numbered years.

18. **ARBITRATION:** Should the parties be unable to agree upon the allocation of costs among them, or should any other dispute arise concerning the interpretation or operation of this Agreement which the parties are unable to resolve, then any such dispute shall be submitted to an arbitrator mutually agreeable to the parties; or, in absence of such agreement, to an arbitrator chosen by the Chief Judge of the Fifth Judicial District of the State of Iowa. In either event, the determination of such arbitrator as to the dispute submitted to the arbitrator shall be final.

19. **MUTUAL AID AGREEMENTS:** This Agreement is not intended to abrogate or unnecessarily amend existing mutual aid Agreements between the parties.

Passed and approved this ____ day of _____, 2015.

CITY OF WEST DES MOINES, IOWA

By_____

Steven K. Gaer, Mayor

ATTEST:

_____

Ryan Jacobsen, City Clerk