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CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: **DATE: May 4, 2015**

Equipment Sharing Agreement

FINANCIAL IMPACT:

It is anticipated that the participating agencies will save financial resources through this collaborative effort in sharing of equipment.

SYNOPSIS:

The collaborative agreement will allow the participating agencies to both list and rent equipment to the partner agencies. Details contained in the agreement define the parameters of the program including costs, safety and accident resolution.

BACKGROUND:

In an effort to more effectively collaborate with some of our western suburban partners, the City of West Des Moines organized a meeting to discuss and develop an intergovernmental agreement for the purpose of sharing equipment. The West Des Moines Fleet Manager has developed a website for the listing and pricing of the equipment available for rent. West Des Moines will manage the website and facilitate the details of this agreement.

RECOMMENDATION:

City Council Approve Equipment Sharing Agreement

Lead Staff Member: Bret Hodne, Public Works Director

STAFF REVIEWS

Department Director	Bret Hodne RBH
Appropriations/Finance	Tim Stiles, Finance Director
Legal	
Agenda Acceptance	RTG

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Works		
Date Reviewed			
Recommendation	Yes	No	Split

EQUIPMENT SHARING AGREEMENT

This AGREEMENT is entered into this _____ day of _____, 2015, by and among the **Cities of Clive, Grimes, Johnston, Norwalk, Urbandale, Waukee, West Des Moines and Windsor Heights** (collectively referred to as the "Cities" and individually referred to as the "City"), all municipal corporations organized and existing under the laws of the State of Iowa.

RECITALS

WHEREAS, each City has specialized equipment and the Cities are interested in sharing equipment for a variety of public works purposes and projects, and generally provide joint opportunities to ensure efficient and economical operations.

WHEREAS, the Cities desire to enter into this Agreement to establish procedures for sharing equipment and defining legal relationships and responsibilities;

NOW THEREFORE, it is mutually agreed by and among the Cities as follows:

Section 1. Purpose

A. The purpose of this Agreement is to create a system for the sharing of motor vehicles, equipment and machinery (collectively referred to as "Equipment").
B. The Cities agree to make available to each other Equipment in the manner and on the terms and conditions provided in this Agreement. The City supplying the Equipment shall be designated as the "Provider" and the City receiving the equipment shall be designated as the "Borrower".

Section 2. Term

The term of this Agreement shall be for a period of approximately two (2) years, or through June 30, 2017. . This Agreement shall automatically renew for additional two (2) year periods unless and until terminated by the parties.

Section 3. Sharing Period and Rates

A. Equipment Catalog. Each City shall provide to the City of West Des Moines an accurate and current Equipment Sharing Catalog (hereinafter referred to as "Catalog") that reflects the Equipment that the Provider may make available to the Borrower. The Catalog shall contain a complete description of each piece of equipment, the rates and fees for borrowing such equipment, and any applicable rules, restrictions, or limitations for borrowing such Equipment listed in the Catalog. Amendments to each of the Provider's Equipment listed in the Catalog shall occur as necessary and be provided to each City.
B. Equipment Sharing Periods. Equipment shall be provided upon reasonable request at mutually agreed upon times and locations, for a duration mutually agreed upon by the Provider and

Borrower. The Provider retains the right to refuse any Borrower's request for Equipment for any reason. Equipment shall be returned immediately after use or at the Provider's request.

C. Storage During Sharing Period. The Borrower shall be responsible for storing the Equipment in a reasonably safe and secure area. If inside storage is required on a listed piece of Equipment, the Provider shall include this in the listing. It will be the Borrower's responsibility to either meet the requirements or seek alternative options with the Provider.

D. Charges for Equipment. Charges shall be consistent with those listed in the Catalog or any subsequent amendments, and shall begin accruing at the time Borrower picks up or accepts delivery of the Equipment and shall cease upon return of the Equipment to Provider.

Section 4. Invoices and Payments

A. The Provider shall invoice the Borrower on each occasion where Equipment is shared. The invoice shall show the Equipment rented, duration of the rental, agreed upon rental rate, and total due.

B. The Borrower shall pay invoices within thirty (30) days of receipt of the invoice.

Section 5. Equipment Usage

A. The Cities agree to permit Equipment to be used only by properly trained, properly licensed and supervised operators. All Equipment operators shall be properly trained and qualified to operate the Equipment shared under this Agreement. It is the Borrower's responsibility to ensure that its Equipment operators have been or will be properly trained, licensed, and supervised to properly operate the Equipment shared under this Agreement. Upon agreement of both the Provider and Borrower, the Provider may supply an operator with the Equipment at a rate agreed upon by both Cities. If the Provider is unable to supply an operator and the Borrower does not have a qualified operator on staff, sharing shall not take place or be delayed until a qualified operator can either be supplied by the Provider or obtained by the Borrower.

B. Usage Requirements. Equipment shared under this Agreement shall be used by the Borrower for municipal purposes only and not for the direct benefit of private persons or entities. Borrowers shall use and operate Equipment only for its intended purposes, in a careful, reasonable, and prudent manner, and in compliance with all requirements for operation of any governmental authority having jurisdiction, if applicable. Borrower shall not sublease or allow anyone other than the Borrower's employees to use the Equipment shared under this Agreement.

C. Borrower Responsible for Charges and Fees. Borrower shall be responsible for paying all fees, charges, expenses, and penalties that might be incurred against Equipment shared under this Agreement while in the Borrower's possession, and shall hold the Provider harmless from and against them.

D. Fuel. Borrower shall be responsible for supplying all fuel used during the period it borrows the Equipment. Provider shall ensure that the fuel tank(s) are full when the Borrower picks up the Equipment, and the Borrower shall ensure that the fuel tank(s) are full when it returns the Equipment to the Provider.

Section 6. Equipment Delivery and Pickup

A. Delivery/Pickup. Borrower shall be responsible for pickup and returning any Equipment shared under this Agreement, unless Provider and Borrower mutually agree otherwise. Equipment may be picked up and returned during normal working hours.
B. Condition of Equipment. Provider shall ensure that any Equipment being shared is serviced and maintained consistent with recognized industry standards and in safe operating condition prior to the Borrower picking up the Equipment.
C. Timely Return of Equipment. Borrower shall return Equipment to Provider as soon as practical.
D. Inspections. Providers sharing Equipment under this Agreement certify that, to the best of their knowledge, the Equipment is in good repair and ready for its intended use. Equipment shared under this Agreement shall be inspected by representatives of both Provider and Borrower at the time of delivery/pickup and again at the time of return. Each City shall document the inspection on an Equipment Inspection Form that shall be agreed upon by all Cities. The Equipment Inspection Form shall accompany the Catalog and be updated as needed.
E. Operations and Safety Manuals. Provider shall provide a copy of all Equipment operation, safety and maintenance manuals if requested by the Borrower.

Section 7. Contact Person

Each City shall appoint a person to act as a liaison to serve as the contact for each rental request, all inspections, and to otherwise facilitate the orderly and efficient distribution of Equipment sharing requests and related information. A list of contacts shall accompany the Catalog and be updated as needed.

Section 8. Maintenance and Repair of Equipment

A. Responsibility of Borrower. Borrower shall be responsible for performing all maintenance during the share period, such as fluid level checks and daily pre-trip inspections. Borrower shall also be responsible for the following items during the share period:
    1) Tire repair and replacement of any damaged tires that cannot be safely repaired;
    2) Replacement of any damaged or worn-out tools such as cutting edges, blades or brooms;
    3) Replacement of any windows or windshields that are cracked or damaged;
    4) Minor repairs and adjustments required to keep the Equipment in safe operating condition during the share period.
B. If it is observed that Equipment requires an excessive amount of minor repairs and adjustments, Borrower shall promptly notify Provider of specific issues prior to utilizing the Equipment.
C. Any repairs made by the Borrower pursuant to the requirements of this Agreement shall be performed by qualified personnel, and specifically persons or contractors employed or retained by the Borrower to maintain and repair Borrower's own fleet of equipment.
D. Notwithstanding anything contained herein to the contrary, Provider shall be responsible for latent defects that may occur during the normal operation of Equipment by Borrower.

Section 9. Equipment Failure Not Resulting from Misuse or Failure to Perform Required Maintenance

A. Provider shall be responsible for the repair or replacement of Equipment when:
   1) Equipment fails during its normal operation;
   2) Equipment is being used as intended by the manufacturer; and
   3) Equipment has received all manufacturer required maintenance during its use by the Borrower.

B. Borrower shall be responsible to reimburse Provider for the cost of repair or replacement of Equipment when:
   1) Operating Equipment outside of its normal operation;
   2) Operating Equipment in a manner not intended by the manufacturer; or
   3) Operating Equipment without performing required maintenance during its use by the Borrower.

C. Except for minor repairs, the Provider shall determine, with reasonable judgment, whether failed equipment shall be repaired or replaced.

Section 10. Equipment Damaged Due to Accidents

A. Borrower Responsibility for Damage. Borrower shall be responsible for the cost of repairing all damage to Equipment incurred during the share period that is not to be considered normal wear and tear. For the purposes of this Agreement, the following definitions shall apply:
   1) "Normal wear and tear" is identified as minor dents, dings, paint chips, or scratches less than two (2) inches in size, and interior wear and tear such as soiled carpet and sets.
   2) "Excess wear and tear" is defined and dents, dings, paint chips and scratches more than two (2) inches in size, cracked or punctured bumpers, chipped or cracked windows, interior holes, rips, tears or stains requiring heavy cleaning or replacement of fabric, interior damage such as gouged steering wheels or dashboards, missing equipment, or any other interior or exterior damage attributable to collision, as well as mechanical repairs resulting from damage or negligence.
   3) "Total loss" is defined as a situation where the Equipment is deemed damaged beyond repair as determined by an independent appraisal.

B. Notice to Provider. Borrower shall notify Provider immediately if Provider's Equipment is involved in any accident during the share period. Borrower shall promptly submit to Provider a written report of any accident that occurs in connection with this Agreement, in a form acceptable to the Provider, and shall cooperate with any requests by Provider related to the accident. Borrower's report to Provider must include, at a minimum, the following information: (1) name and address of any person injured or deceased, or the owner of any property that suffered damage as the result of the accident; (2) name and address of Borrower's employee(s) involved in the accident; (3) name and address of the Borrower's liability insurance carrier, unless self-insured; and (4) a detailed description of the accident with a law enforcement report, if applicable. Borrower also agrees to take all reasonable steps to preserve all evidence and information that may be relevant to the circumstances surrounding any potential claim, and to allow Provider to review and inspect evidence and the scene of the accident.

C. Accident Damage Repair. Except as otherwise provided, Borrower shall be responsible for the cost of repairing all Equipment damage due to accidents. In cases where Equipment damage is caused by a third party and that party assumes responsibility, Borrower shall arrange to have the Equipment repaired and shall seek reimbursement from the third party and/or that party's insurance carrier. Borrower shall notify Provider prior to commencing any repairs and Provider has the right to accept or reject the repairs upon inspection.

D. Damage Due to Equipment Defect. Provider shall be responsible for the cost of repairing all Equipment damage due to accidents caused by Equipment defects.

E. Damage Resulting in Total Loss. In cases of Equipment damage resulting in a total loss, Borrower shall be responsible for covering the loss. In the event of a total loss, the Borrower and Provider shall reach separate agreement on the amount to be paid to the Provider. In cases of Equipment damage resulting in a total loss caused by a third party where that party assumes responsibility, Borrower shall seek reimbursement from the other party's insurance carrier. All funds from the settlement shall be paid to the Provider.

F. Damage from Excess Wear and Tear. At the time the Borrower returns the Equipment to Provider, the Cities shall make an assessment of any excess wear and tear. If excess wear and tear damage exists, the Provider shall submit and invoice to Borrower for the cost of the damage. The repair amount on the invoice shall be based on the actual cost as determined by agency labor rates or actual contracted costs and for any parts purchased to make the repairs.

G. Damaged or Stolen Equipment in Borrower's Possession. Borrower shall assume responsibility if Provider's equipment is damaged or stolen while in Borrower's possession, regardless of whether the incident causing the damaged or stolen Equipment was due to actions or omissions attributable to the Borrower, caused by a third party or third parties, or due to an act beyond the control of the Borrower. In cases of damaged Equipment, the Borrower shall be responsible to the Provider for such property damage. In cases of stolen Equipment, the Borrower shall pay the Provider in the same manner as if the Equipment suffered a total loss. The Borrower shall at all times maintain insurance coverage in an amount and type to sufficiently protect against such losses to Equipment shared under this Agreement while in Borrower's possession or use. The Borrower may attempt to collect reimbursement from a responsible third party where applicable.

Section 10. Relationships of the Cities

The parties to this Agreement shall at all times be considered separate and distinct entities or municipal corporations. At no time shall an employee or official of one City be entitled to any wages, benefits, or rights conferred to an employee or official of another City who is a party to this Agreement.

Section 11. Assignment

The Cities shall not assign, sublet, transfer, or otherwise substitute their interests in this Agreement, or any of their rights or obligations under this Agreement, without prior written consent of all the other Cities.

Section 12. Indemnification

Each City shall be solely responsible for its own acts or omissions and those of its employees and officers under this Agreement. No City shall be responsible or liable for consequential damages to another City arising out of providing or using equipment, services or labor under this Agreement.

Except as otherwise provided in this section, Borrower shall indemnify, defend and hold harmless Provider and its agents, officers, attorneys, employees, officials and volunteers, to the fullest extent permitted by law from any and all claims, causes of action, injuries, losses, liabilities, costs (including expert witness and attorney's fees) or damages arising out of or related to, or alleged to arise out of or relate to the use of the Equipment by the Borrower, except for any claims, causes of action, injuries, losses, liabilities or damages proximately caused by the sole negligence, or willful misconduct of the Provider, or any latent defect in the Equipment.

Except as otherwise provided in this section, Provider shall indemnify, defend and hold harmless Borrower and its agents, officers, attorneys, employees, officials and volunteers, to the fullest extent permitted by law from any and all claims, causes of action, injuries, losses, liabilities, costs (including expert witness and attorney's fees) or damages proximately caused by the sole negligence, or willful misconduct of the Provider, or any latent defect in the Equipment.

Providers requiring that their personnel operate or assist in the operations of Equipment shall hold harmless, indemnify and defend the Borrower, its officers, agents and employees from all claims arising solely by reason of any negligent act by persons designated by Provider to operate or assist in the operation of Equipment. Notwithstanding the above, the Borrower shall bear sole responsibility for ensuring that it has the authority to request the work and for any representations made to the Provider regarding site conditions or other aspects of the project. The Providers of the Equipment shall adequately insure the Equipment or provide self-insurance coverage while the Equipment is in the Provider's possession or use.

The provisions of this section shall survive the termination of this Agreement, and are intended to fully allocate the risk of all liability to third parties arising out of this Agreement. No other rights of indemnity or contribution shall exist between the Cities in law or equity.

Section 13. Termination

Any City may terminate this Agreement for any reason by giving thirty (30) days prior written notice to all other Cities. In the event of such termination, all costs incurred up to the date of termination shall be the responsibility of the user.

Section 14 Dispute Resolution – Arbitration

A. The Cities agree that any disputes arising between them with regard to the interpretation or application of this Agreement, shall be submitted to binding arbitration at the request of either City. Any request for arbitration must be in the form of a written notice requesting arbitration. Such notice shall identify each disputed matter to be submitted to arbitration. In the absence of agreement by the parties to the contrary, the question or questions to be arbitrated shall be those specified in the notice requesting arbitration.

B. The Cities may agree on an arbitrator. If they fail to agree on a single arbitrator within ten (10) days after the request for arbitration is received, the parties shall request a list of seven arbitrators, all of whom have law degrees, from the Iowa Public Relations Board. The parties will then alternatively strike a name from the list until one (1) arbitrator remains. The party requesting arbitration shall make the first strike.
C. Should either City refuse or neglect to supply the arbitrators with any papers or information demanded in writing by the arbitrators, the arbitrators are empowered to proceed ex parte.
D. No one shall be qualified to act as an arbitrator if service in such role would create a conflict of interest. Each arbitrator selected shall be qualified by experience and knowledge of the matter to be submitted to arbitration.
E. The arbitration award may be for damages, and may include any legal or equitable remedy otherwise available to the Cities, provided that the arbitrator may not make a finding of material breach and shall not have authority to declare termination of this Agreement. The award may be impeached only for fraud or mistake. Such award shall be a condition precedent to any right of legal action.
F. The costs of arbitration shall be shared equally by the Cities.
G. The award of the arbitrators shall be in writing and it shall not be open to objection on account of the form of the proceeding or the award.

Section 15. Payment of Attorney's Fees

If judicial proceedings are necessary to enforce the terms of this Agreement, the prevailing City shall be entitled to reasonable attorney's fees directly attributed to such litigation, in addition to any other legal or equitable relief to which it may be entitled.

Section 16. Amendment of Agreement

This Agreement may be amended only by written agreement signed by all Cities.

Section 17. Assignment of Agreement

No City may assign this Agreement to a third party.

Section 18. No Third Party Beneficiaries

Nothing in this Agreement shall be construed to create in any third party, or in favor of any third party, any right(s), license(s) or privilege(s).

Section 19. Severability

If any section, provision or part of this Agreement shall be found to be invalid or unconstitutional, such finding shall not affect the validity of the Agreement as a whole or any section, provision or part thereof not found to be invalid or unconstitutional.

Section 20. Governing Law; Jurisdiction

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa. Lawsuits brought by either Party in connection with this Agreement shall be heard and tried in Polk County District Court, Des Moines, Iowa.

Section 21. Entire Agreement

This Agreement represents the entire Agreement among the Cities. Any subsequent change or modification to the terms of this Agreement shall be in the form of a duly executed addendum to this Agreement.

Section 22. Execution of Agreement

This Agreement shall be executed in eight (8) counterparts, each of which so executed shall be deemed to be an original. Each City shall become a party hereto by the passage of a resolution approving this Agreement and execution of the same by its statutory officers.

Each City approving this Agreement shall execute the separate signature pages provided for it, and the parties hereto authorize the City Clerk of the City of Urbandale to assemble the signature pages and append same to copies of this Agreement, which shall then be distributed to each of the parties to this Agreement. .

WEST DES MOINES, IOWA

By_____

Attest:

_____

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2015, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____ and _____, to me personally known, and who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively of the _____; 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 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