CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: November 30, 2015

ITEM: Resolution – Approval of Agreement between the City of West Des Moines and the Fox Creek Benefited Water District

FINANCIAL IMPACT: None at this time

SYNOPSIS: While constructing Fox Creek Sanitary Sewer Phase I, the City was required to relocate a water main owned by the Fox Creek Benefited Water District to avoid a conflict with installation of the sanitary sewer. Although currently unknown, there is a potential the water main may have sustained damage or may subsequently fail due to being relocated. The attached agreement provides the Fox Creek Benefited Water District the right to renegotiate damages within five years of execution of the agreement if damage from the relocation occurred. Although no property was acquired by the City from the Water District, if damage did occur renegotiation will occur in the same fashion as provided to owners of property acquired under the threat of eminent domain.

The Fox Creek Benefited Water District has approved the agreement.

RECOMMENDATION:

Approve the Agreement with the Fox Creek Benefited Water District regarding the right to renegotiate damages related to the Fox Creek Sanitary Sewer Project, Phase I

Lead Staff Member:

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney RJS
Appropriations/Finance	
Legal	
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation			

RESOLUTION NO._____

APPROVAL OF WATER LINE RELOCATION AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND THE FOX CREEK BENEFITED WATER DISTRICT

WHEREAS, in the course of construction of the Fox Creek Sanitary Sewer Project Phase I, the City of West Des Moines was required to relocate a water main owned by the Fox Creek Benefited Water District to avoid a conflict with installation of the sanitary sewer; and

WHEREAS, although currently unknown, damage may have occurred to the water main caused by its relocation by the City; and

WHEREAS, to address any unforeseen damage to the water main, the City and the Fox Creek Benefited Water District have negotiated an agreement to allow the Water District to recover any damages sustained as a result of the relocation in the manner provided by Iowa Code Section 6B.52; and

WHEREAS, it is in the best interest of the parties to approve the Water Line Relocation Agreement between the City of West Des Moines and the Fox Creek Benefited Water District.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The Water Line Relocation Agreement between the City of West Des Moines and the Fox Creek Benefited Water District is approved.

2. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor's signature.

PASSED AND ADOPTED this 30th day of November, 2015.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

AGREEMENT
WATER LINE RELOCATION

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and between the **CITY OF WEST DES MOINES**, a municipal corporation hereinafter referred to as the **City** and the **FOX CREEK BENEFITTED WATER DISTRICT**, a corporation existing under Chapter 357 of the Code of Iowa hereafter referred to as the **Water District.**

WHEREAS, the District currently owns and operates a water distribution system, and

WHEREAS, as part of the construction of its Fox Creek Trunk Sewer Phase 1 project the City encountered a water main owned by the Water District and relocated the water main to avoid a conflict with the sanitary sewer, and

WHEREAS, there is some potential the relocated water main may fail or otherwise be damaged as a result of the relocation activities or the consequences of the relocation, and

WHEREAS, any said future damages to the water main cannot be identified at the time of the relocation, and

WHEREAS, the City and Water District are in agreement that the City should provide some assurance to the Water District relative to potential future damages to the water main.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. The City and Water District agree the Water district shall have the right of renegotiation of damages identical to the provisions of Section 6B.52 of the Code of Iowa even though Section 6B.52 is not directly applicable to the Water District because the City did not to obtain a property interest from the Water District for construction of the sewer project.

2. The provisions of this Agreement shall be applicable for the relocation of the water main that occurred in the area of Manhole 8 of the Fox Creek Trunk Sewer - Phase 1 project as illustrated on Plan Drawing No. 4, a copy of which is attached to and made a part of this agreement.

3. The five year period for renegotiation of damages as provided in Iowa Code Section 6B.52 shall begin on the date this agreement is made and entered as shown above.

IN WITNESS WHEREOF, the parties hereto have subscribed their names on the date written above.

CITY OF WEST DES MOINES

By: _____
Steven K. Gaer, Mayor

ATTEST:

By: _____
Ryan T. Jacobson, City Clerk

FOX CREEK BENEFITTED WATER DISTRICT

By _____
President