CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: October 3, 2016

ITEM: Approval to add Woodland Lake to the City's Solid Waste Collection Program and approval and acceptance of Hold Harmless Agreement – The Villas at Woodland Lake Homeowners Association – c/o Sue Clark Real Estate Services, P. O. Box 71637, Clive, IA 50325-0637

RESOLUTION: Approval of Addition to Solid Waste Collection and Recycling Program and Approval and Acceptance of Hold Harmless Agreement

FINANCIAL IMPACT: The cost to the City to add additional residents to the City's solid waste collection and recycling contract is negligible.

BACKGROUND: On January 21, 2013, the City Council approved an amendment to City Code to allow West Des Moines residences on private streets and within private developments to participate in the City's residential solid waste collection (household and yard waste) and recycling program.

The City recently received a request from Sue Clark, Agent for Villas at Woodland Lake HOA, to join our solid waste collection program. Woodland Lake is located at Woodland Avenue and 68th Street and consists of 120 attached units all served by private streets. The development is fully built out and occupied. Attached is a map of the development.

City and West Des Moines Water Works billing staff and the Metro Waste Authority (MWA) have reviewed this request and have no objections to the addition of this private development to the City's solid waste collection and recycling contract. The homeowner's association has signed the attached hold harmless agreement to indemnify and hold the City, Metro Waste Authority, and the individual waste haulers harmless from any and all liability and claims for any damage that may occur to their private streets and driveways relating to or arising out of the collection of solid waste and recycling. Yard waste collection is not included.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Based upon the preceding review, staff recommends the City Council adopt a resolution to add Woodland Lake to the City's residential solid waste collection and recycling program and approve and accept the Hold Harmless Agreement.

Lead Staff Member: Joseph C. Cory, Deputy Public Services Director

STAFF REVIEWS:

Department Director	Bret Hodne, Public Services Director
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	Ryan Jacobson, City Clerk

PUBLICATION(S) (if applicable):

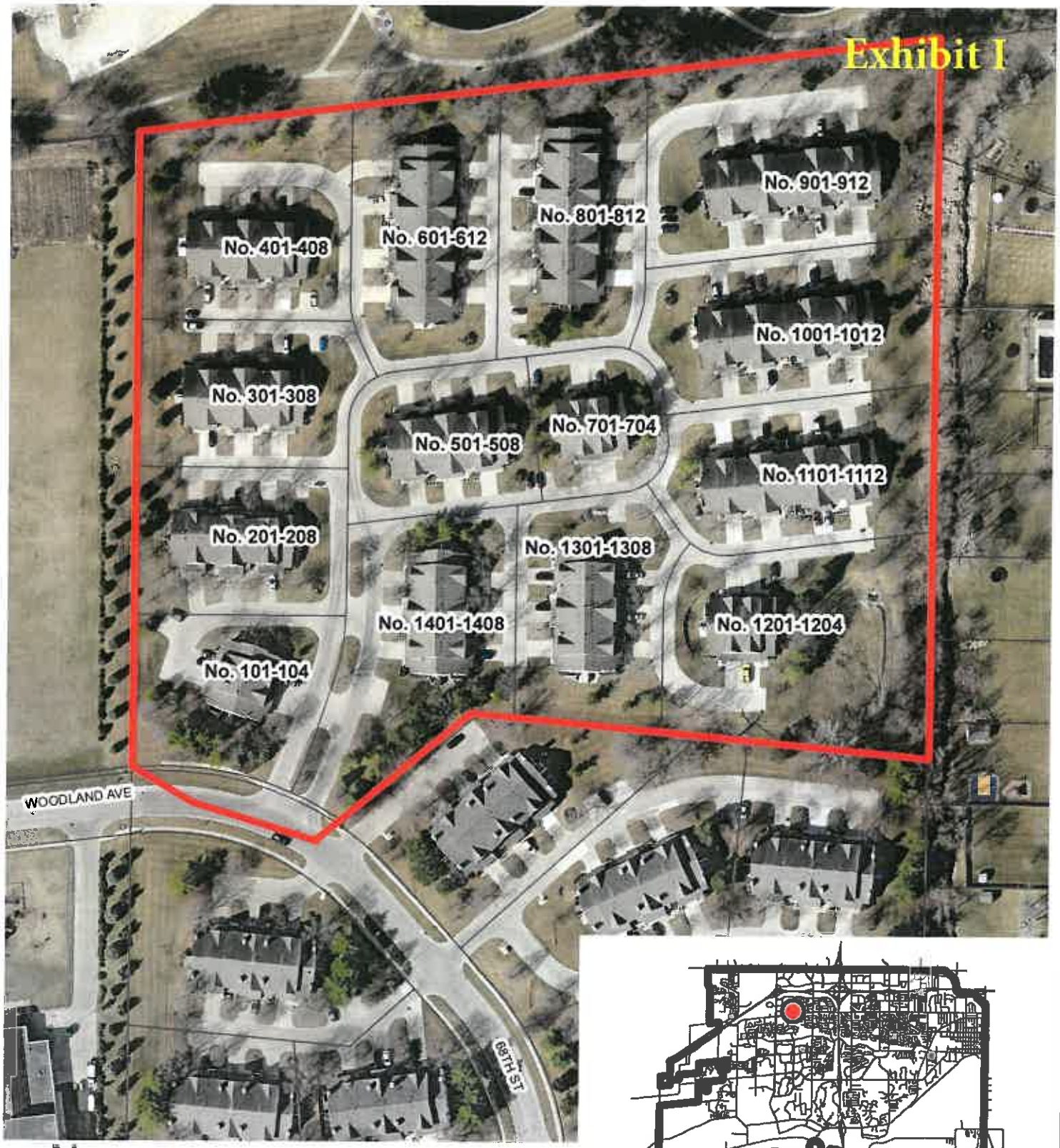
Published In	Noticing not required
Date(s) Published	
Letter sent to surrounding property owners	

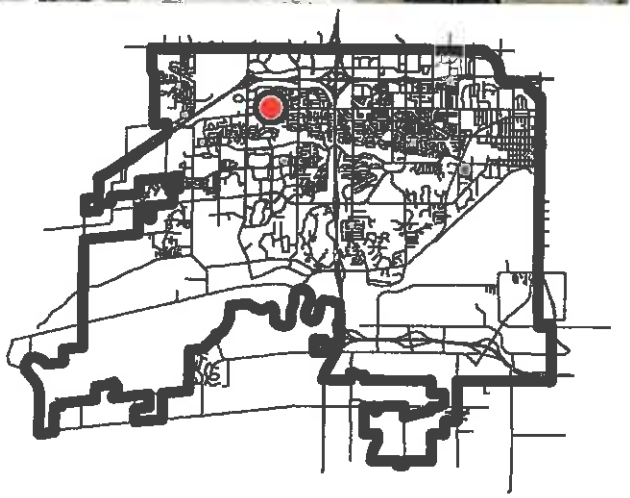
SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Works		
Date Reviewed	September 26, 2016		
Recommendation	Yes ☒	No ☐	Split ☐

ATTACHMENTS:

Exhibit I	-	Location Map
Exhibit II	-	Request Letter
Exhibit III	-	Resolution
Exhibit IV	-	Hold Harmless Agreement





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LEGEND

LOCATION

LIMITS

THE CITY OF WEST DES MOINES

DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION
560 S. 16TH STREET (515)222-3475
WEST DES MOINES, IOWA 50265
FAX NO. (515)222-3478

PROJECT:	Villas Woodland Lake Trash Collection-120 Units
LOCATION:	Woodland Ave. and 68th Street

DRAWN BY: RLC	DATE: 08/15/2016	SHT. 1 OF 1

Exhibit II

Villas at Woodland Lake HOA

September 8, 2016

Joe Cory, Deputy Public Works Director
City of West Des Moines
PO Box 65320
West Des Moines, IA 50265-0320

SUBJECT: Trash and Recycle Service

Dear Joe:

The Board of Directors of the Villas at Woodland Lake HOA has approved actions requesting recycling and trash collection services be provided, effective December 1, 2016 by the City of West Des Moines and Metro Waste Authority.

Enclosed is the HOA approved/executed Indemnity/Hold Harmless Agreement required to move forward with this s request. Once approved, executed and recorded, I would appreciate receiving a copy of the final Agreement.

Please let me know if you need anything else as it relates to this matter.

Should you have any questions please call me at 222-3191 Ext. 201 or email Sue@SueClarkRealEstate.com

Thank you.

Sincerely,

SUE CLARK REAL ESTATE SERVICES
As Agent For
Villas at Woodland Lake HOA

Sue Clark, CCIM
President

ENC

PO Box 71637 Clive, IA 50325

Exhibit III

Prepared by: Joseph C. Cory, City of WDM, PO Box 65320, WDM, IA 50265-0320, 515-222-3480
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

A RESOLUTION APPROVING THE ADDITION OF WOODLAND LAKE TO THE CITY'S SOLID WASTE COLLECTION AND RECYCLING PROGRAM AND APPROVING AND ACCEPTING THE RELATED HOLD HARMLESS AGREEMENT

WHEREAS, the City of West Des Moines, Iowa, has received a request from the Agent of the Villas at Woodland Lake Home Owners' Association to voluntarily join the City's solid waste and recycling collection program; and,

WHEREAS, Woodland Lake is a private residential development not directly accessed by public streets and as such the City Council has the discretion to approve the addition of said private development to the City's solid waste and recycling collection program; and,

WHEREAS, the following document establishing an indemnity/hold harmless agreement related to the provision of solid waste and recycling collection has been presented to the City for approval and it is the policy of the City of West Des Moines, Iowa, to approve agreements involving any property interests of the City:

> **Indemnity/Hold Harmless Agreement** to indemnify and hold the City, Metro Waste Authority, and the individual waste haulers harmless from any and all liability and claims for any damage that may occur to their private streets and driveways relating to or arising out of the collection of solid waste and recycling on the association owned property legally described as Woodland Lake, City of West Des Moines, Dallas County, Iowa; and,

WHEREAS, it is in the best interest of the citizens of the City to approve and accept the above-described document.

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

1. The addition of the Woodland Lake to the City's solid waste and recycling collection program and contract is hereby approved.

2. The document described above is hereby approved and accepted and shall be, fully executed by the Mayor and City Clerk and filed with the county recorder as appropriate.

PASSED AND ADOPTED this 3rd day of October, 2016

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on October 3, 2016, by the following vote:

ATTEST:

_____
Ryan Jacobson, City Clerk

Exhibit IV

Prepared by: Joseph C Cory, Public Works Department, City of West Des Moines, P.O. Box 65320, WDM, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, P. O. Box 65320, West Des Moines, IA 50265-0320
Address Tax Statement to: Not applicable

INDEMNITY/HOLD HARMLESS AGREEMENT

This Agreement is made and entered into this 30 day of August 2016 by and between **THE VILLAS AT WOODLAND LAKE HOMEOWNERS ASSOCIATION** (hereinafter known as "Association" or "the Association"), and the **CITY OF WEST DES MOINES**, an Iowa municipal corporation (hereinafter known as "City" or "the City").

WITNESSETH:

WHEREAS, the Association is comprised of the Owners of parcels of land located in West Des Moines, Iowa; and

WHEREAS, the parcel(s) of land owned by the Association are legally described as:

Woodland Lake, official plat
City of West Des Moines, Dallas County, Iowa;

and

WHEREAS, the Association has requested to participate in the City's solid waste collection and recycling program, which is operated in conjunction with the Metro Waste Authority; and

WHEREAS, in order to participate in the solid waste collection and recycling program, it will be necessary for agents of the City, Metro Waste Authority and Waste Management and Waste Connections to access the private property of the Owners and the Association; and

WHEREAS, in order to participate in the solid waste and collection and recycling program, the Association has agreed to release and/or indemnify and hold the City, the Metro Waste authority, Waste Management and Waste Connections, and/or any other private hauler operating under the authority of the City and the Metro Waste Authority, harmless from any and all liability, damages, claims, costs, expenses, interest, and reasonable attorney's fees related to or arising from the collection of solid waste and recycling occurring on the Association land as part of the City's program.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by all parties, the City and the Association hereby agree as follows:

Participation in Program. The City, in conjunction with the Metro Waste Authority, agrees to allow the Association to participate in the solid waste collection and recycling program as provided by West Des Moines Code of Ordinance Title 4, Chapter 5, "Solid Waste Control," pursuant to the terms and conditions imposed by the Ordinance and the rules and regulations of the City of West Des Moines governing the program. The Association agrees to abide by and comply with all terms and conditions of the program, including the terms

and conditions imposed by this Agreement.

Hold-Harmless. The Association agrees to release and hold the City, Metro Waste Authority, Waste Management and Waste Connections, and any other private hauler(s) operating under the authority of the City and Metro Waste Authority, their officials, employees, agents and assigns, harmless from any and all losses, damages, claims or expenses, including court costs and reasonable attorney fees, incurred or asserted by the Association or the Owners for damage to the Association's tangible property, arising from the collection of solid waste collection and recycling as part of the City's program.

Running of Benefits and Burdens. The terms and conditions of this Indemnity/Hold Harmless Agreement are binding upon the Association including, but not limited to, future owners, developers, successors-in-interest, lessees or occupants. All provisions of this instrument, including benefits and burdens run with the land and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

Termination. Either party may terminate its participation in the program with written notice provided to the non-terminating party no less than one year prior to the date of termination. Written notice shall be provided to the parties as follows:

City of West Des Moines
City Clerk
4200 Mills Civic Parkway
West Des Moines, IA 50265

The Villas at Woodland Lake Homeowners Association
c/o (*insert name*) Sue Clark Real Estate Services
(*insert mailing address*) PO Box 71637
Clive, IA 50325

Jurisdiction and Venue. The Association agrees that the District Court in and for the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Indemnity/Hold Harmless Agreement and said parties shall consent to the jurisdiction of Dallas County, Iowa.

Words and Phrases. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context.

Parties. The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, and contractors. The term "Association" shall refer to The Villas at Woodland Lake Homeowners Association, its assigns, successors-in-interest and lessees, if any.

Paragraph Headings. The paragraph headings in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement.

Integration/Construction. This Agreement shall constitute the entire agreement between the parties regarding the subject matter hereof, and no amendments or additions to this Agreement shall be binding unless in writing and executed by the Owners and the City. This Agreement has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories such signatories are fully informed with respect thereto; no such signatory shall be deemed the scrivener of this Agreement; and, based on the foregoing, the provisions of this Agreement and any Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party.

Recording. This instrument shall be recorded in the Office of the Dallas County Recorder. Cost of recording shall be the responsibility of the Association.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first written above.

VILLAS AT WOODLAND LAKE HOMEOWNERS ASSOCIATION

Laura Rosenberg
_____, President

_____, Secretary

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STATE OF IOWA)
) SS:
COUNTY OF Polk)

On this 30th day of August, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared LAURA Rosenberg and _____, to me personally known, who being by me duly sworn, did say that they are the President and Secretary, respectively, of The Villas at Woodland Lake Homeowners Association and that the said instrument was signed by the President and Secretary of the Association; and that the execution of this instrument is the voluntary act and deed of the Association by it and by them voluntarily executed.

Susan E. Clark
Notary Public in and for the State of Iowa

CITY OF WEST DES MOINES, IOWA

_____
Steven K. Gaer, Mayor

Attest:

_____
Ryan Jacobson
City Clerk

STATE OF IOWA)
)SS:
COUNTY OF POLK)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steven K. Gaer and Ryan Jacobson, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, a Municipal Corporation executing the within and foregoing instrument; that said instrument was signed and sealed on behalf of the City of West Des Moines, Iowa, by authority of its City Council by Resolution _____ adopted on _____, 2016 and that said Steven K. Gaer and Ryan Jacobson as such officers acknowledged the execution of said instrument to be the voluntary act and deed of the City of West Des Moines, Iowa by it and them voluntarily executed.

_____
Notary Public in and for the State of Iowa