CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: December 11, 2017

ITEM:

Resolution - Approval of Amendment to 28E Agreement with Warren County
Joint Maintenance of Corporate Line Roads and Rights-of-Way

FINANCIAL IMPACT:

City will assume responsibility for a joint portion of former Warren County roads in newly annexed areas. Most of these areas were factored into current budget.

BACKGROUND:

This is an update of our current 28E Agreement with Warren County reflecting roadways which are now under jurisdiction of both the County and the City.

RECOMMENDATION:

City Council Adopt:

- Resolution approving amendment to 28E Agreement with Warren County and authorizing Mayor to execute Agreement.

Lead Staff Member: Kevin L. Hensley, Public Services Superintendent

STAFF REVIEWS

Department Director	Bret Hodne, Public Services Director
Appropriations/Finance	
Legal	Richard Scieszinski
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	**Yes**	**No**	**Split**

RESOLUTION

WHEREAS, there is an existing Agreement between Warren County 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 several corporate line roads, all within Warren County, Iowa and;

WHEREAS, Warren County and the City of West Des Moines desire to amend the existing Agreement under the provisions of Chapter 28E of the 2017 Code of Iowa, to provide for roadway and rights-of-way maintenance and services of existing and new corporate boundary roadways within and adjoining the City and within Warren County;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WEST DES MOINES, WARREN 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 Warren County, Iowa, and all things necessary to place said 28E Agreement in full force and effect in accordance with Chapter 28E, Code of Iowa, 2017 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 11th day of **December, 2017.**

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

28E AGREEMENT BETWEEN THE CITY OF WEST DES MOINES, IOWA, AND WARREN COUNTY, IOWA

THIS AGREEMENT, made and entered into by and between Warren County, Iowa, (which hereinafter may be referred to as "Warren County" or "County") and the City of West Des Moines, Iowa (which hereinafter may be referred to as "West Des Moines", or "City"), in accordance with provisions of Chapter 28E, Code of Iowa, 2017. The purpose of this Agreement shall be to provide joint exercise of the respective powers and duties of the County and City hereto in connection with the joint maintenance of certain roads and rights-of-way which are under the jurisdiction by both the County and the City. This Agreement shall become binding upon each party after approval by the City Council of West Des Moines and the Board of Supervisors of Warren County. This document shall supersede any and all other documents pertaining to mutual agreement between the City and Warren County for joint maintenance of certain roads and rights-of-way.

WITNESSETH:

WHEREAS, there are certain existing and corporate line roadways and rights-of-way and new roadways and rights-of-way within areas surrounded by and included in the corporate boundaries of the City and are presently being maintained by Warren County; and

WHEREAS, under Chapter 28E of the Code of Iowa, 2017, the County Board of Supervisors for Warren County, 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; and

WHEREAS, there is an existing Agreement between the County and City in accordance with provisions of Chapter 28E, Code of Iowa, 2017, providing for the joint maintenance and servicing of corporate line road(s), within Warren County, Iowa, and;

WHEREAS, due to the changing character of certain roads by development of adjacent properties, the County and City desire to execute a revised Agreement under the provisions of Chapter 28E, Code of Iowa, 2017, to provide for roadway and rights-of-way maintenance and services of existing and new corporate boundary roadways within and adjoining the City and within Warren County, as designated in Attachment A.

NOW, THEREFORE, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

1. Termination of Existing Agreements. The existing agreements between Warren County, Iowa, and the City of West Des Moines, Iowa, established in accordance with provisions of Chapter 28E, Code of Iowa, and approved by the Warren County Board of Supervisors and the City Council of the City of West Des Moines providing for the joint maintenance by the County and City of certain common roadways all within Warren County, Iowa, is herewith terminated and shall no longer be in effect upon the approval and acceptance of this Agreement as provided herein.

2. Adams Street (Between S.E. 60th Street/10th Avenue and South Orilla Road/County Highway R45)
   Except as limited by the provisions of Paragraph 5 hereof, the City shall perform all maintenance of the Road, including all minor and major roadway surface and shoulder repair, shoulder mowing, snow and ice removal, and all traffic control related functions in accordance with the Manual on Uniform Traffic Control Devices, including signing, traffic markings, signalization, necessary street lighting, traffic aids, determination of speed limits and their boundaries. The City of West Des Moines will be responsible for dust control activities where there are City of West Des Moines residents in close proximity within its jurisdiction.

3. S.E. 50th Street/20th Avenue (Between the West Des Moines Corporate Limits and Adams Street)
   Except as limited by the provisions of Paragraph 5 hereof, the City shall perform all maintenance of the Road, including all minor and major roadway surface and shoulder repair, shoulder mowing, snow and ice removal, and all traffic control related functions in accordance with the Manual on Uniform Traffic Control Devices, including signing, traffic markings, signalization, necessary street lighting, traffic aids, determination of speed limits and their boundaries. The City of West Des Moines will be responsible for dust control activities where there are City of West Des Moines residents in close proximity within its jurisdiction.

4. S.E. 35th Street/30th Avenue (Between Adams Street and the West Des Moines Corporate Limits)
   Except as limited by the provisions of Paragraph 5 hereof, the City shall perform all maintenance of the Road, including all minor and major roadway surface and shoulder repair, shoulder mowing, snow and ice removal, and all traffic control related functions in accordance with the Manual on Uniform Traffic Control Devices, including signing, traffic markings, signalization, necessary street lighting, traffic aids, determination of speed limits and their boundaries. The City of West Des Moines will be responsible for dust control activities where there are City of West Des Moines residents in close proximity within its jurisdiction.

5. Any major construction or reconstruction within the public right-of-way of any road or structures enumerated in this Agreement, including major construction or reconstruction of roadway paving, bridges and ditches, shall be accomplished by separate mutual agreement between the City and County. Major construction or reconstruction shall include replacement and reconstruction of greater than 50 square yards of contiguous or proximate paving or aggregate placement of more than 200 ton per year.

6. This Agreement shall remain into effect for ten (10) years from the date it is filed with the Iowa Secretary of State provided, however, this agreement may be terminated at any time by a resolution of the Warren County Board of Supervisors or the West Des Moines City Council by giving ninety (90) days written notice of such intention to terminate to the other party.

7. Each agency shall be solely liable for any claim for damages filed that pertains to the services performed by that agency as outlined above. Each party agrees to indemnify and to hold the other party, its 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 party, its successors and assigns, may incur or sustain a) by reason of the indemnifying party's breach of this Agreement or failure to legally or timely meet the responsibilities imposed herein, or b) by reason of the torts of the indemnifying party.

8. The costs for performing the duties outlined above in Paragraphs 2 through 4, inclusive, shall be borne by the agency performing the service. The costs for performing the duties outlined above in Paragraph 5 shall be shared by the agencies by mutual agreement. Each party shall finance its costs in such a manner as permitted by law and as shall be determined by its respective City Council and County Board of Supervisors. Both parties agree to cooperate to the extent necessary to fully comply with all laws applicable to the financing of and contracting for any work or activity contemplated by this Agreement.

9. The parties hereunto shall approve this Agreement by resolution of both the Warren County Board of Supervisors and City Council of West Des Moines which shall authorize the execution of this Agreement. It will then be electronically filed in the office of the Iowa Secretary of State, in accordance with Chapter 28E, Code of Iowa, 2017, by the City of West Des Moines. This agreement shall become effective when filed and shall remain in effect until terminated as provided herein. The termination of this agreement shall not relieve either party of any obligation or liability arising during the term of the Agreement.

10. This is the entire agreement between the parties and it may be amended only in writing, signed by authorized representatives of both parties.

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

12. For the purposes of this Agreement, the Director of Public Services for the City of West Des Moines shall be the Administrator of this project. By entering this Agreement, the City and County do not intend to create a separate legal entity. The parties do not intend to jointly acquire or hold real or personal property under this Agreement.

13. 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.

14. 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 affect the provisions and purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands, for the purpose herein expressed.

WARREN COUNTY, IOWA
Board of Supervisors

Passed and Approved the
_____ day of _____, 2017.

_____
Doug Shull, Chair

ATTEST:

_____
Traci VanderLinden, County Auditor

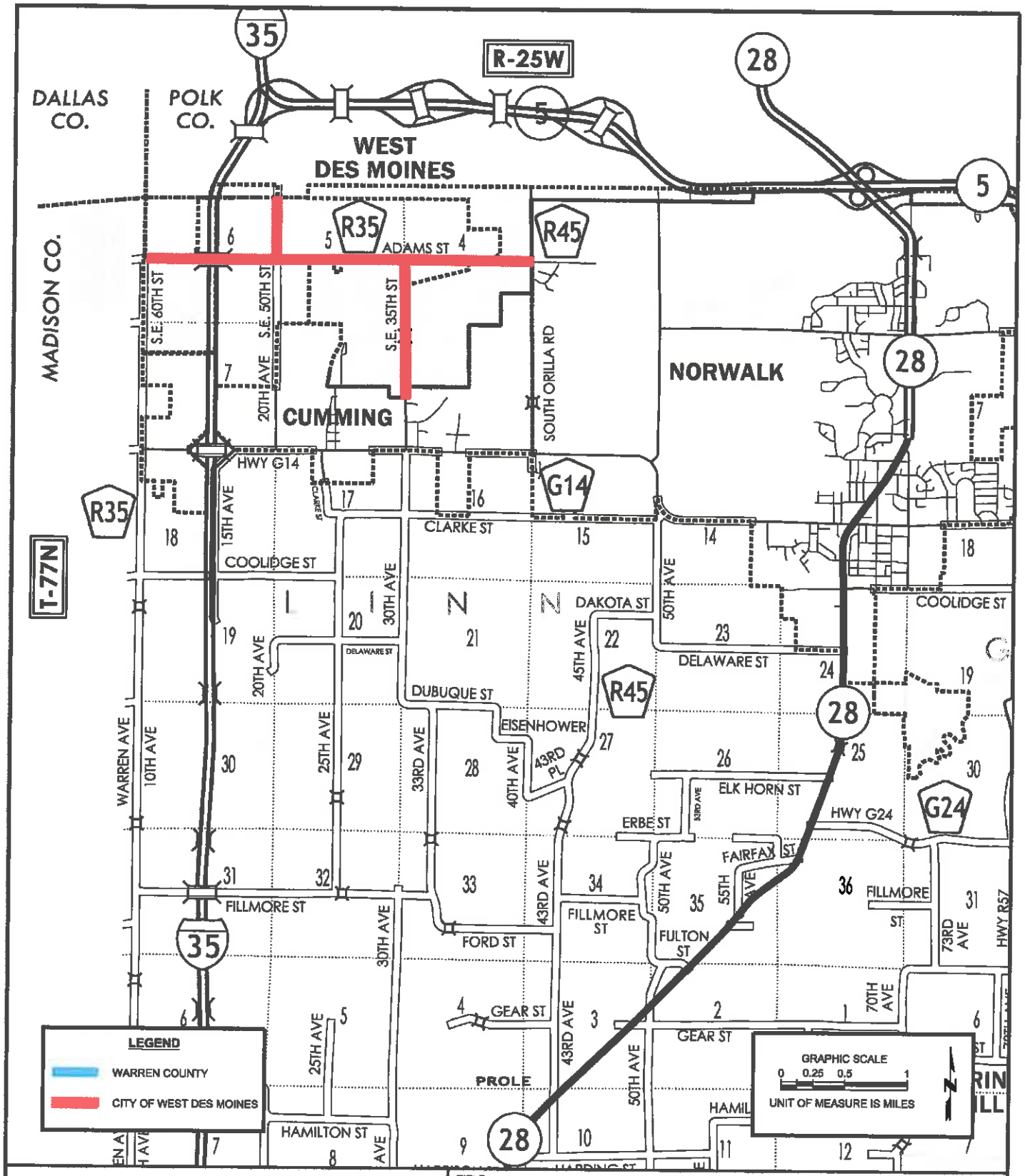
CITY OF WEST DES MOINES, IOWA

Passed and Approved the
_____ day of _____, 2017.

_____
Steven Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk



WARREN COUNTY
SECONDARY ROADS DEPARTMENT
ENGINEERING OFFICE
301 N. BUXTON STREET, SUITE 211
INDIANOLA, IOWA 50125
PH: (515) 961-1050

TITLE: ATTACHMENT A

PROJECT: 28E AGREEMENT BETWEEN WEST DES MOINES AND WARREN COUNTY

DRAWN BY: davidc	DATE: 12/1/2017	SHEET NUMBER 1 OF 1

G:\28E Agreements\West Des Moines\Drawings\S-28E-WDSM-APPA.dgn