CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Resolution Approving 28E Agreement with the City of Clive (Management and Operation of West Side Fire Station)

DATE: August 20, 2018

FINANCIAL IMPACT: With the proposed new agreement, all operating costs for the facility will continue to be shared by the cities of Clive and West Des Moines. These costs will also continue to be allocated based on the number of calls for service into each jurisdiction.

The Original Agreement (dated 1991) specified financial terms should one of the Cities decide to exercise its dislocation rights, which Clive wishes to exercise at this time. Those terms include determining the fair value of the Joint Facility and its related assets so that Clive's ownership is terminated and full ownership can be passed to the City of West Des Moines. The Original Agreement included specific steps and methodology to determine this value. There were four specific types of assets identified and staff from each City have jointly negotiated these items as follows:

(1) Joint Facility – an independent appraisal conducted in 2017 revealed that the value of the Joint Facility is $1,680,000. The Original Agreement outlined that Clive will be entitled to 47% of that value based on their financial contribution to its original construction and maintenance.

(2) Apparatus – There are two engines assigned to the facility and each city has contributed towards their purchase. The older engine has no book value so it was agreed that no compensation is owed to Clive. The newer engine was paid 42% by Clive, so Clive is entitled to that percentage of the current book value of the engine, or $231,732.

(3) Equipment – the Chiefs agreed that the equipment housed at the facility (paid for jointly) is $76,885, and it was agreed that Clive contributed approximately 35% of the acquisition cost.

(4) Over the years Clive has contributed $531,666 towards a joint savings fund intended to purchase future apparatuses. Since Clive will now not own any future apparatuses, those funds will be returned to Clive.

The parties have negotiated that the Dislocation Allowance will be paid to Clive over the next five fiscal years using the following percentages: 5% of the total paid in FY 2019, 10% in FY 2020, 25% in FY 2021, and 30% in FY 2022 and 2023.

BACKGROUND: The cities of Clive and West Des Moines entered into an intergovernmental agreement in 1991 ("Original Agreement") to construct, maintain, and operate a fire station and emergency medical services facility at 1801 68th Street in the City of West Des Moines ("Joint Facility"). The Original Agreement established a 21 year term beginning in 1991 and ending in 2012. In 2012, the Cities entered into a new five-year agreement and in 2017, the Cities entered into a five-year extension of the 2012 agreement. The agreement being considered at this time ("Agreement") will repeal and replace any previous agreements or extensions of those agreements.

The Cities continue to share a common interest to jointly provide services. The purpose of the Joint Facility and this Agreement is to provide both municipalities fire protection, fire suppression, rescue, emergency medical and other related services of a nature traditionally or reasonably performed by fire fighters or emergency medical services ("E.M.S.") personnel, stationed, based or operating from the Joint Facility. This Agreement is to 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.

The Original Agreement specifically identified financial terms in the event that one of the cities exercise its' dislocation rights, and Clive is desiring to exercise those rights at this time. The proposed Agreement specifies the financial and operating conditions of the dislocation as well as other items negotiated by both parties.

Changes or clarifications from the Original Agreement include the following negotiated items:

(1) The primary service coverage area of the Joint Facility will be automatically adjusted in the event that either party relocates equipment and personnel to new facilities.

(2) The combined management committee of the Joint Facility is no longer in place and West Des Moines will be generally responsible for management of the station.

(3) Staff participation in inspections and public relations is clarified.

(4) Clive will remain responsible for its proportionate share of short-term capital expenses associated with repairs or improvements needed at the facility.

(5) The Dislocation Allowance is quantified as described above in the Financial Impact section.

Clive staff have indicated that they will be presenting the Agreement for approval at the Clive City Council meeting of August 23, 2018 If the agreement is approved by both City Councils, the effective date of the agreement will be September 1, 2018.

RECOMMENDATION: Approve the proposed resolution authorizing the 28E Agreement with the City of Clive authorizing the Mayor to execute the document on behalf of the City of West Des Moines.

Lead Staff Member: **Tim Stiles, Finance Director, and Craig Leu, Fire Chief** TS CL

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Safety		
Date Reviewed	August 3, 2018		
Recommendation	Yes	No	Split

RESOLUTION NO._____

RESOLUTION APPROVING A FIVE YEAR AGREMENT WITH THE CITY OF CLIVE FOR FUNDING AND OPERATION OF A JOINT FIRE AND EMERGENCY MEDICAL SERVICES FACILITY

WHERAS, the Cities of West Des Moines and Clive have a current 28E Agreement for the funding and operation of a Joint Fire and Emergency Medical Services Facility, and

WHEREAS, the City of Clive desires at this time to exercise its Dislocation Rights as defined in this Agreement, and

WHEREAS, the Cities desire to continue and enhance this combined relationship while incorporating the terms of the Dislocation, and

WHEREAS, staff of the Cities have negotiated and agreed to all terms and conditions of a new Agreement under the provisions of Iowa Code Chapter 28E, and

WHEREAS, said Agreement will allow for sharing of resources and is in the best interest of the citizens of West Des Moines,

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

(1) The 28E Agreement between the Cities of West Des Moines and Clive for the Funding and Operation of a Joint Fire and Emergency Medical Services Facility is hereby approved.
(2) The Mayor is authorized to sign the 28E Agreement on behalf of the City and the City Clerk is directed to attest to the Mayor's signature.
(3) The City Clerk is directed to electronically file a copy of the 28E Agreement with the Secretary of State of Iowa upon execution by all parties.

PASSED AND APPROVED this 20th day of August 2018

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

INTERGOVERNMENTAL AGREEMENT FOR THE FUNDING AND OPERATION OF A JOINT FIRE AND EMERGENCY MEDICAL SERVICES FACILITY BY THE CITIES OF CLIVE AND WEST DES MOINES

This Intergovernmental Agreement ("Agreement") is entered into pursuant to the provisions of Chapter 28E of the Code of Iowa. This Agreement is made and entered into, on the effective date herein, by and between the City of Clive, Iowa, ("Clive") and the City of West Des Moines, Iowa, ("West Des Moines") (Clive and West Des Moines are referred to herein individually as "City" or jointly as the "Cities"), both 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:

   On October 24, 1991 Clive and West Des Moines entered into an intergovernmental agreement to construct, maintain and operate a fire station and emergency medical services facility ("Original Agreement"). The address of the facility is 1801 68th Street in the City of West Des Moines (the "Joint Facility"). The Original Agreement established a 21 year term beginning in 1991 and ending in 2012. The Original Agreement was amended three (3) times, based on agreed improvements/alterations. In 2012, the Cities entered into a new agreement with a term ending on June 30, 2017 ("2012 Agreement"). In 2017, the Cities entered into a five-year extension of the 2012 Agreement. This Agreement will repeal and replace any previous Agreements or extensions of those Agreements. The Cities share a common interest to continue with jointly providing services. The purpose of this Joint Facility and this Agreement is to provide both municipalities fire protection, fire suppression, rescue, emergency medical and other related services of a nature traditionally or reasonably performed by fire fighters or emergency medical services ("E.M.S.") personnel, stationed, based or operating from the Joint Facility. This Agreement is to 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. DEFINITIONS:

   A. PROJECT. For the purposes of this Agreement, the term "Project" shall mean the operation of the "Joint Facility." Said Project consists of equipping the Joint Facility with appropriate fire, rescue and E.M.S. apparatus/equipment, personnel and operation of the Joint Facility.

   B. PRIMARY SERVICE AREA. For the purpose of this Agreement the "Primary Service Area" shall mean the portion of the Cities where the Joint Facility is the closest Fire/E.M.S. facility for first-due response, as determined by Westcom Computer Aided Dispatch (CAD) software.

i. Adjustments. The Primary Service Area shall be automatically adjusted if during the term of this Agreement, Clive enters into an agreement with the City of Urbandale, Iowa for Fire/EMS services based at a new facility near 152nd Street and Meredith Drive in Urbandale, Iowa or if Clive relocates or constructs a new facility to replace the current Station 32 in Clive. Automatic adjustments will also be made if West Des Moines relocates and/or redistributes the equipment and personnel currently located at the Joint Facility.

1. The adjustments will be in effect once the Urbandale facility or relocated Clive facility are able to provide Fire/E.M.S. services.

2. If the Joint Facility is sold during the term of this agreement, the Cities agree to discuss a contract for service between the Cities with Fire/EMS services coming from a West Des Moines station location to replace the Joint Facility. These discussions will include consideration of an Enhanced First Responder agreement, including principles outlined in Exhibit A.

3. LEVEL OF SERVICE. For the purposes of this Agreement the Cities agree to jointly provide the following level of service from the Joint Facility:

A. At all times, a minimum staff of three (3) personnel will operate the Joint Facility, with exceptions given for unexpected absences and while the personnel may be responding to an incident.

B. Medical care at the Basic Life Support level of EMS service.

C. Inspections of commercial and multi-family residential properties in the Primary Service Area, utilizing the Clive records management system. To the extent the Primary Service Area is reduced due to adjustments in 2B(i)(2) being implemented, then West Des Moines' joint obligation for inspections shall end.

D. Participation in public relations events in the Primary Response Area. To the extent the Primary Service Area is reduced due to adjustments in 2B(i)(2) being implemented, then West Des Moines' joint obligation for public relations events shall end.

E. Any new uniforms, personal protective equipment, or apparatus purchases may be West Des Moines specific.

4. MANAGEMENT:

A. POWERS. The Agreement shall be administered by West Des Moines except where the Agreement delegates or reserves powers to Clive. West Des Moines shall establish written policies pertaining to the operational procedures of the Joint

Facility, and shall appoint officers of the Joint Facility to be responsible for daily operational decisions.

B. BUDGET. Annually, by December 15, the West Des Moines City Manager shall deliver to the Clive City Manager a proposed Joint Facility Budget for the next fiscal year which shall be subject to the approval of the respective city councils. In the event the proposed Joint Facility Budget is not approved by both city councils, the Joint Facility Budget, for the current year, adjusted for inflation (consumer price index) shall remain in effect until approval of a new Joint Facility Budget is given by both city councils.

5. PROFESSIONAL SERVICES. West Des Moines shall have authority within the approved budget to engage legal and other professional services as may be necessary.

6. COORDINATING AGENCY. West Des Moines shall be the Coordinating Agency for the Project and herby consents to such designations. Both cities agree that:

A. The Coordinating Agency shall act as the contracting authority and will advertise for and hold the letting for all required bids required of the Joint Facility.

B. The Coordinating Agency shall employ, under Civil Service Rules and Procedures, all regular and probationary employees needed for the operation of the Joint Facility to carry out the purposes of this Agreement.

C. The Coordinating Agency shall manage all personnel of the Joint Facility pursuant to its employee and administrative policies and procedures, union contracts, civil service, city ordinances and other applicable laws.

D. The Coordinating Agency shall keep and maintain all books and records of the Project and shall pay all bills of the Project in a timely manner. Clive shall have the right, at any time upon reasonable notice, to review and inspect the books and records of the Project.

7. CALCULATIONS AND DIVISIONS OF OPERATING COSTS AND SHORT TERM CAPITAL EXPENSES. Costs shall be divided on the basis of a three (3) year average of actual Joint Facility calls for service (in each City) for the immediate preceding three (3) Fiscal Years.

A. Clive's portion of short term capital expenses associated with any Joint Facility repairs or improvements will be allocated based on the division of operating costs and paid in the fiscal year for which the repairs/improvements occur.

8. RESPONSE FEES. West Des Moines may not charge Clive residents, guests, occupants, business owners, or property owners for responses or services provided under this Agreement, unless the time at the scene exceeds one hour or involves a hazardous materials release and otherwise mutually agreed to by both Cities

9. OWNERSHIP AND MAINTENANCE. Throughout the term of this Agreement the Joint Facility shall be titled as under the ownership of West Des Moines and is a joint exercise of the powers of Clive and West Des Moines, except as specifically provided herein. Each City shall follow its regulations for approval of any and all expenditures and other such matters as may be required by the respective City.

10. DISLOCATION. With this Agreement Clive desires to exercise its dislocation rights as established through previous agreements for the Joint Facility. The process for Clive's dislocation will be as follows:

    A. Joint Facility Value – To determine value of the Joint Facility, Clive sought an appraisal of the Joint Facility by an independent appraisal firm dated September 5, 2017 which is satisfactory to West Des Moines. Procurement of the appraisal services, including payment, was solely Clive's responsibility. The appraised value of the land, buildings and fixtures as of September 5, 2017 shall be the Building Value for the purposes of calculating the Dislocation Allowance Value formula. To the extent West Des Moines sells the Joint Facility on or before the expiration of the term of this Agreement, and Clive declines to purchase the Joint Facility pursuant to paragraph 16, and the third party sale price is lower than the appraised value, the Cities agree that the Building Value shall be adjusted to reflect the sale price for any future Dislocation Allowance Value payments.

    B. Determination of Equipment and Fund Value – The Cities have determined the remaining value of the long term capital assets as described in Exhibit B and the value of those assets attributable to Clive ("Equipment Value"). All other equipment not identified in Exhibit B are determined to have no remaining value and therefore no compensation will be given to Clive. Ownership of these assets will remain with West Des Moines. The Cities have also determined the dollar amount of Clive's contribution to the remaining funds held in the equipment replacement fund and that contribution is outlined in Exhibit B.

    C. Dislocation Allowance – West Des Moines shall pay to Clive a dislocation allowance equal to 47% of the Building Value, plus the equipment value attributable to Clive as established in paragraph 10B for the long term capital assets, plus the amount of Clive's remaining contributions to the equipment replacement fund ("Dislocation Allowance Value"). Once the total Dislocation Allowance Value is determined West Des Moines shall pay the funds to Clive by May 1 of each fiscal year based on the following schedule:

        i. Year 1 (FY 2018-19) – 5% of the Dislocation Allowance Value
        ii. Year 2 (FY 2019-20) – 10% of the Dislocation Allowance Value
        ii. Year 3 (FY 2020-21) – 25% of the Dislocation Allowance Value
        iii. Year 4 (FY 2021-22) – 30% of the Dislocation Allowance Value
        iv. Year 5 (FY 2022-23) – 30% of the Dislocation Allowance Value

D. To the extent the Cities cannot agree on the equipment and fund attributable value in paragraph 10B, the Cities agree to engage a third party equipment appraiser, such as Ritchie Bros. or Taylor and Martin to provide a binding value. The Cities will equally share the expenses and costs of the third party to conduct the valuation.

11. IDEMNIFICATION. To the extent permitted by law, 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 other party, its successors and assigns, may incur or sustain a) by reason of the indemnifying party's breach of this Agreement due to 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 the indemnifying party. This Agreement shall not extend the liability of either City and each City is 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.

12. AGREEMENT - METHOD OF APPROVAL. The parties hereto approve this Agreement by Resolution, which Resolution shall authorize the respective Mayors to execute this agreement.

13. AGREEMENT - FILING WITH SECRETARY OF STATE. Following approval of the Agreement by the Cities, the Coordinating Agency shall file this Agreement with the Secretary of the State of Iowa in accordance with the provisions of Iowa Code Section 28E.8. The Coordinating Agency shall file all required subsequent reports with the Secretary of State of Iowa.

14. AGREEMENT - EFFECTIVE DATE. This Agreement shall be effective September 1, 2018. This Agreement shall replace and supersede any previous agreements between Clive and West Des Moines related to the Joint Facility.

15. DURATION AND TERMINATION. This Agreement shall be effective from the date herein provided until terminated as herein provided. This Agreement may not be terminated by either City for five (5) fiscal years (or prior to June 30, 2023), except by mutual agreement of the Cities.

16. EFFECT OF TERMINATION OR SALE. In the event this Agreement is terminated early by mutual agreement West Des Moines shall pay to Clive the remaining unpaid Dislocation Allowance Value in total within 90 days of termination. The Joint Facility may not be sold by West Des Moines during the term of this Agreement without giving Clive the first right of refusal to purchase the Joint Facility at the amount equal to the Joint Facility's appraised value of the land, buildings and fixtures or the purchase price, whichever is less.

17. NOTICES. Any notice under this Agreement shall be in writing and shall be deemed to be given when deposited in the United States mail, postage prepaid, sent certified or registered, and addressed as follows:

i. Notices to Clive shall be addressed: City Manager, City of Clive, 1900 NW 114th Street, Clive, Iowa 50325.
ii. Notices to West Des Moines shall be addressed to: City Clerk, City of West Des Moines, 4200 Mills Civic Parkway, West Des Moines, IA 50265.
iii. If during the term of this Agreement either City shall change the address of its notification contact, the City shall notify the other of said new address and the new address shall be by mutual agreement substituted for the address herein provided.

18. MISCELLANEOUS. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa with jurisdiction in the state and federal courts located in Polk County, Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. 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. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

19. MUTUAL AID AGREEMENTS. This Agreement is not intended to abrogate or unnecessarily amend existing mutual aid agreements between the Cities.

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

CITY OF CLIVE, IOWA

By:_____
Scott Cirksena, Mayor

ATTEST:

_____
Joyce Cortum, City Clerk

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

CITY OF WEST DES MOINES, IOWA

By:_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

Exhibit A

Enhanced First Responder Principles

- The agreement will seek to balance the need for emergency response based on the closest unit and providing basic Fire/Rescue/EMS services that are not as time sensitive.

- The agreement will also take into account the available daily resources and investment of each jurisdiction while trying to retain a response capability for the citizens of each City.

    - Provide first response into areas based on unit location as determined by Computer Aided Dispatch (CAD).

    - Utilize enhanced dispatching systems to determine call types and priorities.
        - Certain call types will be assigned lower priorities and not receive a closest unit response, but will be handled by the Authority Having Jurisdiction (AHJ).

    - Takes into account the amount of resources available in each city and will only utilize resources based on previously agreed upon parameters.
        - In the case of large scale events and/or unusual circumstances, additional resources can be requested through a pre-defined process.

Exhibit B

1) Appraised Value of Joint Facility – September 2017

Appraised Market Value of Joint Facility = $1,360,000

Attributable to Clive (47%) = $ 639,200

2) Joint Facility Apparatus Value with Depreciation

2016 Pierce Lance Pumper = $ 551,743

Attributable to Clive (42%) = $ 231,732

3) Joint Facility Equipment Value

Total Value of Equipment = $76,885

Attributable to Clive (35%) = $26,910

4) Joint Facility Equipment Replacement Fund

Clive Share of Funds to Replace 2001 Pierce Lance Pumper = $ 496,734

Clive Share of Funds to Replace 2016 Pierce Lance Pumper = $ 34,932

Total = $ 531,666

Total Dislocation Allowance Due to Clive = Total of 1 + 2 + 3 + 4 = $1,429,508

Schedule - Dislocation Allowance Repayment Due to Clive

May 1, 2019 – 5% of the Dislocation Allowance Value	= $	71,476
May 1, 2020 – 10% of the Dislocation Allowance Value	= $	142,951
May 1, 2021 – 25% of the Dislocation Allowance Value	= $	357,377
May 1, 2022 – 30% of the Dislocation Allowance Value	= $	428,852
May 1, 2023 – 30% of the Dislocation Allowance Value	= $	428,852
Total	= $	1,429,508