CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: February 17, 2020

ITEM: Resolution – Approval of three 28E Intergovernmental Agreements with West Des Moines Water Works

FINANCIAL IMPACT: No impact.

SYNOPSIS: The City of West Des Moines and West Des Moines Water Works have three 28E Agreements that originally expired July 1, 2019. City Council approved a short-term extension at the June 17, 2019 City Council meeting to give additional time for the City and Water Works to renegotiate the terms of the agreements. The Agreements pertain to:

1. The placement of radio antenna and related equipment on or in water towers;
2. The provision at no cost of water from Water Works to the City for City-owned and operated public buildings, facilities and landscaped medians;
3. Sharing fiber optic technologies related to services provided to the public by each entity.

Water Works and City staff have renegotiated each Agreement and have finalized the terms. The term of each Agreement will be for a period of ten (10) years.

If approved by the City Council, the West Des Moines Water Works Board of Trustees will consider these agreements at their February 19, 2020 Board meeting.

RECOMMENDATION: Approve - Resolution approving three 28E Intergovernmental Agreements between the City of West Des Moines and West Des Moines Water Works.

Lead Staff Member: Richard J. Scieszinski, City Attorney RJS

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	(K)

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation			

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THREE 28E INTERGOVERNMENTAL AGREEMENTS BY AND BETWEEN THE CITY OF WEST DES MOINES AND THE WEST DES MOINES WATER WORKS

WHEREAS, the City of West Des Moines (West Des Moines) and the West Des Moines Water Works (Water Works) desire to enter into an agreement under the provisions of Chapter 28E of the Code of Iowa, for Water Works to provide to West Des Moines, at no cost, water for city-owned and operating public buildings, facilities and landscaped medians; and

WHEREAS, the City of West Des Moines (West Des Moines) and the West Des Moines Water Works (Water Works) desire to enter into an agreement under the provisions of Chapter 28E of the Code of Iowa, for West Des Moines to provide to Water Works, at no cost, a shared connection to fiber optic technologies related to services provided to the public; and

WHEREAS, the City of West Des Moines (West Des Moines) and the West Des Moines Water Works (Water Works) desire to enter into an agreement under the provisions of Chapter 28E of the Code of Iowa, for Water Works to allow West Des Moines to place City and WestCom radio/similar antennas on/within Water Works water towers at no cost; and

WHEREAS, under Chapter 28E of the Code of Iowa, West Des Moines agrees to formalize their responsibilities by entering into three separate 28E agreements with Water Works.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that the Iowa Code Chapter 28E Intergovernmental Agreements between the City of West Des Moines and the West Des Moines Water Works pertaining to the following, copies of which are hereto attached, be duly approved and are authorized to be filed in the office of the Iowa Secretary of State and all things necessary to place said 28E Agreements in full force and effect in accordance with Chapter 28E, Code of Iowa is herewith authorized:

1. The placement of radio antenna and related equipment on or in water towers;

2. The provision at no cost of water from Water Works to the City for City-owned and operated public buildings, facilities and landscaped medians; and

3. The sharing of fiber optic and computer related technologies related to services provided to the public by each entity.

PASSED AND APPROVED on the 17th day of February, 2020.

_____ Attest:_____

Steven K. Gaer, Mayor Ryan T. Jacobson, City Clerk

City of West Des Moines, Iowa
West Des Moines Water Works
Chapter 28E Agreement

THIS AGREEMENT for antennas on Towers is entered into between the City of West Des Moines ("City") and West Des Moines Water Works ("Water Works")

WHEREAS, this Agreement shall be effective from the date of expiration of the previous 28E Agreement for antennas on Towers.

WHEREAS, the City and Water Works regularly discuss and negotiate a number of issues for the betterment for the services provided the public by each entity;

NOW, THEREFORE, BE IT REMEMBERED that in consideration of the mutual promises, covenants, and considerations herein contained and for the benefit of the public, the City and Water Works have entered into the following agreement pursuant to Chapter 28E of the Code of Iowa as set out herein:

WITNESSETH:

WHEREAS, the Water Works exercises rights of ownership, operates and maintains elevated water storage facilities ("Tower") located in West Des Moines, Iowa at 840 17th Street, 3400 University Avenue, 505 South 50th Street, 1725 98th Street and 301 88th Street; and will maintain these same rights for future Towers.

WHEREAS, by operation of Iowa Code Section 388.4, the title to the property operated by the Water Works is held in the name of the City;

WHEREAS, the Water Works has or may enter into agreements with companies permitting them to install and operate telecommunications equipment on a Tower and within the enclosed base of a Tower;

WHEREAS, the City wishes to install, operate, and maintain its transmission and receiving
equipment on a Tower and within the enclosed base of a tower to broadcast and receive radio signals to serve the public safety needs of the residents of the City;

WHEREAS, the 17th Street Tower will be exempt from the provisions of this 28E to maintain the appropriate aesthetics as promised to the neighborhood;

WHEREAS, the Water Works and the City are interested in entering into an agreement to permit the City to locate its transmitting and receiving equipment on and within a Tower;

WHEREAS, it is imperative that the use and operation of the City's transmission and receiving equipment is not impaired or interfered with by the other telecommunication uses which are co-located on and within a Tower.

WHEREAS, certain agreements to co-locate cellular and/or PCS communication antennae have already been entered into by and between the City and/or the Water Works and other communication companies.

WHEREAS, pursuant to the aforementioned agreements, the cellular companies have agreed that their use and operation of the cellular communication equipment will not in any way interfere with the use of the property by the landlord, the City, or its other agencies or boards;

WHEREAS, the aforementioned cellular communication companies have also executed an agreement with the City which provides that in the event their communication cell towers interfere with the City's emergency (i.e., fire, EMS, police, et.) communication (i.e., radio) frequencies, the cellular communication companies will take all steps necessary to eliminate the interference including, but not limited to, removal of the cellular equipment, if necessary.

WHEREAS, it is imperative that the Water Works maintain effective control and security in its facility including a Tower to assure the consistent and economical delivery of high quality, safe water to its customers.

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 both parties, Water Works and City hereby agree as follows:

1. The term of this agreement shall be for a period of ten (10) years.

2. This Agreement is a voluntary undertaking of the parties. It is not the intent of the City or Water Works to create a new legal entity by this Agreement.

3. This agreement may be renewed or extended by mutual written agreement of the parties.

4. The annual charge to the City for locating and operating it transmitting and receiving equipment on a Tower shall be One Dollar ($1) per year payable in advance on the first business day of each year. Payment of any rental charges may be waived by the Water Works.

5. In exchange for the aforementioned consideration, the Water Works agrees to permit the city at its sole expense, to install, maintain, repair, and replace its transmitting and receiving equipment on and within a Tower in locations approved in advance by the Water Works, which approval shall not be unreasonably withheld or delayed.

6. The City further agrees to repair or replace any part of a Tower which is damaged or destroyed as a result of the City exercising it rights under this agreement. The City also agrees to make short-term provisions at their expense for communication in the event the

water tower may be out of service for maintenance activities such as sandblasting or painting. The Water Works will provide six-months' notice prior to any major maintenance activities that could affect radio operations.

7. The Water Works acknowledges that the location or operation of the City's transmitting and receiving equipment on a Tower is a paramount safety need of the City. The City acknowledges consistent and economical delivery of high quality, safe water by the Water Works to its customers is also vital to the health and safety of residents of the City. The parties agree to cooperate fully to assure these vital safety needs are met for the benefit of all residents of the City.

8. The City shall be solely responsible for the costs of operating the transmitting and receiving equipment and said equipment shall be separately metered and billed to the City. However, in the event the Water Works utilizes the City's transmitting and receiving equipment, the Water Works will proportionally share in the costs of the operating of the equipment.

9. The City shall not sublet, sublease or otherwise share the transmitting and receiving equipment with any other entity except upon written approval of Water Works, which approval shall not unreasonably be delayed, conditioned or withheld.

10. The City shall obtain, at City's expense, all governmental approvals necessary for the operation of the radio transmitting and receiving equipment.

11. The Water Works will issue the City Manager and/or the Chief of Police and/or the Westcom Communications Director a key or access card to facilitate immediate access to a Tower in case of emergency which in any way threatens the function, reliability or use of the City's equipment. The City, its agents and contractors shall be granted non-emergency access to a Tower to install, maintain, repair, and replace its transmitting and receiving equipment subject to obtaining prior clearance from the Water Works' designated administrators in a proper and timely manner. Access for the City's contractors shall be given by City staff during normal business hours except in case of emergencies and, except in case of emergencies, the Water Works may require that the City personnel and contractors be accompanied by a Water Works' representative(s). The Water Works shall not unreasonably deny or delay non-emergency access.

12. The Water Works retains the right to continue use of a Tower and the authorization granted and accepted by the City pursuant to this Agreement is not exclusive. The Water Works may grant similar authorizations to persons or entities for use of the Tower so long as said uses do not interfere with the use by the City which is of paramount importance to the safety needs of the public.

13. This Agreement may be terminated by either party upon 180 days' notice by either party. In the event said written notice of termination is issued by either party or the term of the Agreement has not been renewed or extended, the City shall remove, at its sole cost and expense, its transmitting and receiving equipment and other ancillary equipment and, the

City agrees to restore a Tower to the condition it was in prior to the City's use of a Tower, ordinary wear and tear excepted.

14. All notices required by this agreement shall be in writing, mailed by regular, certified, or registered mail to the City at the following address: Attn: City Clerk, City of West Des Moines, 4200 Mills Civic Parkway, P. O. Box 65320, West Des Moines, Iowa 50265-0320; and to the Water Works at the following address: Board of Trustees, West Des Moines Water Works, 1505 Railroad Ave, West Des Moines, Iowa 50265.

15. The aforementioned cellular communication companies further acknowledge pursuant to the agreements as on file with Water Works hereto that they will take all steps necessary to ensure that their equipment does not in any way interfere with the City's and the Water Works' communication, transmission, and receiving equipment and, in the event that said cellular communication equipment does interfere they will take all steps necessary to immediately eliminate said interference including, but not limited to, removal of the cellular equipment if necessary as provided for in the attached agreements.

16. The City shall not share in the pro rata allocation of the costs of the screening materials and other improvements made to any Tower by tenants on any Tower.

17. City agrees to defend, indemnify and hold Water Works harmless from claims, loss, damages, judgments and expenses of any kind, including attorneys' fees arising directly or indirectly from the installation, use, maintenance, repair or removal of the transmitting and receiving equipment, except for claims arising from the negligence or intentional acts of Landlord, its employees, agents or independent contractors.

18. No waiver or breach of any of the terms of this condition shall constitute a waiver of any other or succeeding breach of the same or other provisions of this Agreement.

19. No statement, representation, or promise with reference to this Agreement or the premises, and/or repairs, alterations, or improvements or changes in the terms of this agreement shall be binding upon either party unless said changes are in writing and signed by an authorized representative of the City and Water Works and approved by their governing bodies. The individuals executing this warrant and represent that they are authorized to enter into this binding agreement on behalf of the Water Works and the City.

Dated this_____day of_____, 2020.

CITY OF WEST DES MOINES

_____
Steven K. Gaer, Mayor

Attest:

_____
Ryan T. Jacobsen, City Clerk

On this ____ day of _____, 2020, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Resolution No. 20-_____, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

BOARD OF TRUSTEES OF
WEST DES MOINES WATER WORKS

_____
Brian P. Rickert, Chair

Attest:

_____
Christina A. Murphy, P.E., Secretary

On this_____day of_____, 2020, before me the undersigned, a Notary Public in and for Said State of Iowa, personally appeared Brian P. Rickert and Christina A. Murphy, to me personally known who being by me duly sworn, did say that they are the Chair and Secretary respectively, of the Board of Trustees of the West Des Moines Water Works; that this instrument was signed on behalf of the West Des Moines Water Works and that the said Chairman and Secretary as such officers acknowledged the execution of said instrument to be the voluntary act and deed of the West Des Moines Water Works by it and by them voluntarily executed.

_____
Notary Public

City of West Des Moines, Iowa
West Des Moines Water Works
Chapter 28E Agreement

THIS AGREEMENT for no-cost water services is entered into between the City of West Des Moines ("City") and West Des Moines Water Works ("Water Works");

WHEREAS, this Agreement shall be effective from the date of expiration of the previous 28E Agreement for no cost water.

WHEREAS, the City and Water Works regularly discuss and negotiate a number of issues for the betterment for the services provided the public by each entity;

NOW, THEREFORE, BE IT REMEMBERED that in consideration of the mutual promises, covenants, and considerations herein contained and for the benefit of the public, the City and Water Works have entered into the following agreement pursuant to Chapter 28E of the Code of Iowa as set out herein:

I. PURPOSE:

The purpose of this Agreement is to outline shared non-cost public services between the City and Water Works.

II. DURATION:

1. This Agreement shall be approved, by resolution, by the respective governing bodies of the City and Water Works Board of Trustees with said resolution authorizing the Mayor of West Des Moines and the Chair of the Water Works to execute this Agreement on behalf of each respective party. Upon approval by each party as provided herein, the Agreement shall be filed and recorded as per Iowa Code Chapter 28E with the Agreement being in effect upon the completion of such filings.

2. Unless otherwise extended or amended by mutual written agreement of the parties, this Agreement will expire ten (10) years from the completion of the required filings.

III. ADMINISTRATOR:

Pursuant to Iowa Code Section 28E.6, the West Des Moines City Manager shall be the administrator of this Agreement.

IV. SERVICES AND RESPONSIBILITIES

The City of West Des Moines will be responsible for:

1. Advising Water Works prior to planning the construction of additional large water using facilities such as aquatic centers, fountains and all underground irrigation systems.

2. Testing seasonal water using facilities such as aquatic centers, irrigation systems and fountains for leaks each spring after the water is initially turned on to the facilities. All leaks to fountains and irrigation systems will be repaired prior to returning these facilities to service. Repairs to the aquatic centers will be determined based on the amount of leakage and impact to the public if the facility is closed. The Water Works will be notified when leaks are discovered that will not be promptly repaired.

3. Ensuring irrigation sprinkler heads are properly directing their spray onto the turf and landscape and away from impervious surfaces.

4. Installing and maintaining moisture sensor(s) or "smart" irrigation controls on each underground irrigation system to prevent the irrigation system from running when there has been sufficient rainfall or irrigation.

5. Reviewing monthly water usage reports provided by the Water Works and promptly investigating the reason for any unusually high water consumption. All leaks and faulty water fixtures will be repaired as soon as they are discovered, unless the leak occurs in the aquatic centers. Repairs to aquatic centers will be determined based on the amount of leakage and the impact to the public if the facility is closed.

6. Complying with Water Shortage Plan requirements when a Water Shortage Alert is issued by the Water Works.

7. Following the Water Works' Standard Construction Specifications and all applicable regulations for backflow prevention.

8. Paying the Water Works for the replacement cost of water meters and appurtenances when replacement is required for any reason other than normal wear and tear or damage by Water Works staff.

9. Consulting with the Water Works as to the best times of day and days of the week to operate irrigation systems and to fill swimming pools. The City will make

every effort to avoid Monday irrigation where possible to help offset demand peaks and will irrigate after 10 p.m. and before 10 a.m. when possible.

10. Refrain from withdrawing water for use by street sweepers, sewer cleaning machines, etc from hydrants limited by Water Works for fire protection only.

11. Returning a completing "Water Works Unaccounted for Water Form" whenever unmetered water is withdrawn for any purpose.

12. Exempting West Des Moines Water Works from monthly stormwater management fee, sanitary sewer fee and sanitary sewer basic service fee.

13. Paying for water services as shown on file at the City Clerk's and Water Works' offices. Services must be independently metered (no shared private and public meters).

West Des Moines Water Works will be responsible for:

1. Authorizing construction of all large water using facilities unless doing so will have a negative impact upon the water supply or the overall water distribution system. Authorization will not be unreasonably withheld.

2. Paying the cost of the initial water meter and appurtenances installed at each facility and for all replacement water meters and appurtenances when required due to normal wear and tear.

3. Issuing a Water Shortage Alert when there is a risk to the water supply.

4. Alerting City staff when water leaks are suspected.

5. Alerting City staff when "smart" irrigation systems may have failed.

6. Providing the City with monthly reports showing the water consumption of each City-owned facility.

7. When applicable, providing the City with a list of hydrants that should not be used for any purpose other than fire protection.

8. Assisting the City in locating leaking water fixtures, when requested.

9. Periodically advising the City of the best times to utilize irrigation systems so as to have the least impact upon the water supply and distribution system.

10. Providing, at no-cost, water resources for city-owned, operated, and exclusively managed public buildings, facilities and landscaped medians, or as mutually agreed upon by the Water Works General Manager and the City Manager, or their designee. A current list of locations that are covered and not covered by this agreement are on file with both the City Clerk and Water Works offices. Services must be independently metered (no shared private and public meters).

V. NOT A LEGAL ENTITY:

This Agreement is a voluntary undertaking of the parties. It is not the intent of the City or Water Works to create a new legal entity by this Agreement.

VI. NOTICES:

All notices under this Agreement shall be in writing and are deemed as given when deposited in the United States Post Office. Notices to the City shall be addressed to City Clerk, City of West Des Moines, P. O. Box 65320, West Des Moines, Iowa 50265-0320. Notices to Water Works shall be addressed to General Manager, West Des Moines Water Works, 1505 Railroad Ave, West Des Moines, IA 50265. If during the term of this Agreement either party shall change the address of the above contact persons, it shall notify the other of said new address.

VII. DISTRIBUTION OF PROPERTY

Upon termination of this Agreement or cancellation by either party equipment which has been acquired or purchased by the City will be retained by the City and equipment which has been acquired or purchased by Water Works will be retained by Water Works. In the case of a dispute or question as to ownership or use of equipment the parties shall meet and determine an equitable distribution of property.

VIII. INDEMNIFICATION:

Each party shall indemnify and hold the other party harmless from and against any and all claims, demands, causes of action, liability, loss, damage, or injury ("claims"), both to person and property, arising out of or related to this Agreement, to the extent such claims are attributable to the negligent or willful misconduct of the indemnitor; provided, indemnitee gives the indemnitor prompt notice of any such claims and all necessary information and assistance so that indemnitor, at its option, may defend or settle such claims and indemnitee does not take any adverse position in connection with such claims. In the event that any such liability, loss, damage or injury is caused by the joint or concurrent

negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

IX. TERMINATION

This Agreement may be terminated by mutual written agreement or by either party giving the other party written notice of termination at least 180 days prior to the conclusion of the City's fiscal year in which termination is to be effective. Upon providing such notice, this Agreement shall be terminated effective at the end of the fiscal year in which notice is given. Upon termination both parties' obligations hereunder shall terminate.

IN WITNESS WHEREOF, the City of West Des Moines, Iowa and West Des Moines Water Works have caused this Agreement to be executed in three (3) counterparts, each of which shall be considered an original, this _____ day of _____, 2020.

CITY OF WEST DES MOINES, IOWA

By_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobsen, City Clerk

WEST DES MOINES WATER WORKS

By_____
Brian P. Rickert, Chair

ATTEST:

_____
Christina A. Murphy, Secretary

City of West Des Moines, Iowa
West Des Moines Water Works
Chapter 28E Agreement

THIS AGREEMENT for Fiber Optics technologies is entered into between the City of West Des Moines (City) and West Des Moines Water Works ("Water Works").

WHEREAS, this Agreement shall be effective from the date of expiration of the previous 28E Agreement for Fiber Optics technologies.

WHEREAS, the City and Water Works have negotiated the sharing of fiber optics for the betterment of services provided to the public by each entity:

NOW, THEREFORE, BE IT REMEMBERED that in consideration of the mutual promises, covenants, and considerations herein contained and for the benefit of the public, the City and Water Works have entered into the following agreement pursuant to Chapter 28E of the Code of Iowa as set out herein:

I. PURPOSE:

The purpose of this Agreement is for the City to provide Water Works with fiber optics technologies.

II. DURATION:

1. This Agreement shall be approved, by resolution, by the respective governing bodies of the City and Water Works with said resolution authorizing the Mayor of West of West Des Moines and the Chair of the Water Works to execute this Agreement on behalf of each respective party. Upon approval by each party as provided herein, the Agreement shall be filed and recorded as per Iowa Code Chapter 28E with the Agreement being in effect upon the completion of such filings.

2. Unless otherwise extended or amended by mutual written agreement of the parties, this Agreement shall be in effect for a period of ten (10) years from the completion of the required filings.

III. ADMINISTRATOR:

Pursuant to Iowa Code Section 28E.6, the West Des Moines City Manager shall be the administrator of this Agreement.

IV. SERVICES AND RESPONSIBILITIES

The City of West Des Moines will be responsible for:

1. Notifying the Water Works a minimum of one (1) business day in advance of scheduled maintenance and as soon as possible when unexpected problems are discovered that may affect the fiber system.

2. Reporting to the Water Works designee regarding operation and maintenance, system upgrades and other factors that may affect fiber communications.

3. Providing generally accepted industry best practice for internet security.

4. Completing all scheduled maintenance that may have a negative effect upon Water Works established business practices outside of the Water Works established regular business hours.

5. Providing access to City-owned fiber optics for the purpose of communication for water treatment and distribution facility infrastructure at no cost to the Water Works.

West Des Moines Water Works will be responsible for:

1. Providing compensation to City as set forth below.

2. Providing funding for software maintenance and support agreements that are unique to the Water Works, when feasible and prudent.

3. Allowing remote access to network and physical access to building and equipment when required.

4. Following generally accepted industry best practices for system configuration, licensing and security.

5. Identifying a designee, who shall have decision making authority regarding operation and maintenance, system upgrades and other factors that may affect fiber communications or GIS.

6. All fiber connections/extensions into water works buildings or other properties from city fiber locations.

V. TERMINATION:

This Agreement may be terminated by mutual written agreement or by either party giving the other party written notice of termination at least 180 days prior to the conclusion of the City's fiscal year in which termination is to be effective.

Upon providing such notice, this Agreement shall be terminated effective at the end of the fiscal year in which notice is given. Upon termination both parties' obligations hereunder shall terminate.

VI. NOT A LEGAL ENTITY:

This Agreement is a voluntary undertaking of the parties. It is not the intent of the City or Water Works to create a new legal entity by this Agreement.

VII\. INDEMNIFICATION:

Each party shall indemnify and hold the other party harmless from and against any and all claims, demands, causes of action, liability, loss, damage, or injury ("claims"), both to person and property, arising out of or related to this Agreement, to the extent such claims are attributable to the negligent or willful misconduct of the indemnitor; provided, indemnitee gives the indemnitor prompt notice of any such claims and all necessary information and assistance so that indemnitor, at its option, may defend or settle such claims and indemnitee does not take any adverse position in connection with such claims. In the event that any such liability, loss, damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

IN WITNESS WHEREOF, the City of West Des Moines, Iowa and West Des Moines Water Works have caused this Agreement to be executed in three (3) counterparts, each of which shall be considered an original, this _____ day of _____, 2020.

CITY OF WEST DES MOINES

ATTEST:

By _____
Steven K. Gaer, Mayor

_____
Ryan T. Jacobsen, City Clerk

WEST DES MOINES WATER WORKS

ATTEST:

By _____
Brian P. Rickert, Chair

_____
Christina A. Murphy, P.E., Secretary