



Agenda Item:

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COUNCIL COMMUNICATION City Manager's Office

GENERAL INFORMATION

Agenda Date: 04/25/2005
05-227

Communication No.:

Agenda Item Type: Resolution
No.:

Roll Call

Submitted by: William G. Stowe, Public Works Director

SUBJECT—

Approving and Authorizing the Execution of a 28E Agreement with the City of West Des Moines for Joint Maintenance of Boundary Streets.

SYNOPSIS—

An agreement has been prepared between the City of Des Moines and the City of West Des Moines that provides for joint maintenance and servicing of corporate line roadways and rights-of-way in the respective cities.

FISCAL IMPACT—

The City's share of the maintenance responsibilities will be funded in the Public Works Department and Traffic and Transportation Department Operating Budgets.

RECOMMENDATION—

Approval

BACKGROUND—

The City of Des Moines shares a boundary street, 63rd/1st Street, with the City of West Des Moines. Arrangements have now been made for joint maintenance of the roadway, traffic

signals, and streetlights via a 28E Agreement with the City of West Des Moines. Similar agreements have been approved for the maintenance of boundary streets jointly owned by the City of Des Moines and Polk and Warren Counties. The recommended 28E agreement is attached.

28E AGREEMENT
BETWEEN THE CITY OF WEST DES MOINES, IOWA,
AND THE CITY OF DES MOINES, IOWA
BOUNDARY STREETS JOINT MAINTENANCE AGREEMENT

THIS JOINT MAINTENANCE AGREEMENT, (Agreement) is made and entered into on the effective date herein provided by and between the City of West Des Moines, Iowa, a Municipal corporation organized and existing under the laws of the State of Iowa (West Des Moines), and the City of Des Moines, a Municipal corporation organized and existing under the laws of the State of Iowa (Des Moines).

1. **Purpose.** The purpose of this Agreement shall be to provide for the joint exercise of the respective powers of the Cities hereto in connection with the maintenance project hereinafter described pursuant to the provisions of Chapter 28E of the Code of Iowa.
2. **Project.** The term “project” for the purpose of this Agreement shall mean the specific division of responsibility between the Cities hereto for the joint maintenance and servicing of corporate line roadways and rights-of-way in the respective Cities.

TRAFFIC SIGNALS

63rd/1st Street – (Between the Intersections of Ashworth Road & Railroad Avenue)

- A. Responsibility of West Des Moines:
West Des Moines will be responsible for all costs associated with the traffic signals at the intersection of Ashworth Road.
- B. Joint Responsibility
At the intersections of Grand Avenue and Railroad Avenue, the maintenance, labor, and repair material costs or reconstruction of these jointly owned traffic signals shall be shared equally. Initial costs for electric service, maintenance parts, and labor of all traffic signals shall be incurred and paid by West Des Moines, and fifty percent (50%) of said incurred costs will be billed to Des Moines for payment on a quarterly basis to West Des Moines.

SW 63rd/S. 1st Street – (Between the Intersections of Railroad Avenue and McKinley Avenue)

- A. Responsibility of Des Moines:
Des Moines will be responsible for all costs associated with the traffic signals at Park Avenue and SW. McKinley Avenue.
- B. Responsibility of West Des Moines:
West Des Moines will be responsible for all costs associated with the traffic signals at the intersection of Lincoln Street.

GENERAL MAINTENANCE

SW 63rd Street/S. 1st Street – Between Brown’s Woods Drive (Des Moines SW McKinley Avenue) and Army Post Road

- A. Responsibility of Des Moines:
Des Moines shall be responsible for pavement and shoulder maintenance.
- B. Responsibility of West Des Moines:
West Des Moines shall be responsible for snow removal, mowing, and street painting.
- C. Responsibility of Cities Separately:
Each City shall be responsible for maintenance on their respective side of the street for all signage and drainage issues.

Army Post Road – Between SW63rd Street/S. 1st Street to Hwy 28

- A. Responsibility of Des Moines:
Des Moines shall be responsible for pavement and shoulder maintenance, snow removal and street painting.
- B. Responsibility of Cities Separately:
Each City shall be responsible for maintenance on their respective side of the street within their corporate boundaries for all mowing, signage and drainage issues.

STREET LIGHTS

63rd Street/S. 1st Street – Ashworth Road to McKinley Avenue

- A. Responsibility of Des Moines:
Des Moines will incur street light costs for the east side of the street within its corporate limits. Maintenance for street lights will be the responsibility of MidAmerican Energy.
- B. Responsibility of West Des Moines:
West Des Moines will incur street light costs for the west side of the street within its corporate limits. Maintenance for street lights will be the responsibility of MidAmerican Energy.
- C. Responsibility of Cities Separately:

Maintenance for street lights will be the responsibility of MidAmerican Energy with the costs for street lights made payable to MidAmerican Energy by each City separately on their respective side of the street.

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63rd Street/S. 1st Street – McKinley Avenue/Browns Wood’s Drive to Army Post Road

A. Responsibility of Des Moines:

Des Moines will incur street light costs for the east side of the street within its corporate limits. Maintenance for street lights will be the responsibility of MidAmerican Energy.

B. Responsibility of West Des Moines:

West Des Moines will incur street light costs for the west side of the street within its corporate limits. Maintenance for street lights will be the responsibility of MidAmerican Energy.

C. Responsibility of Cities Separately:

Maintenance for street lights will be the responsibility of MidAmerican Energy with the costs for street lights made payable to MidAmerican Energy by each City separately on their respective side of the street.

3. **Project Administration.** The project shall be administered by the City Manager of each City, or his or her designee. No separate legal or administrative agency is created by this Agreement.
4. **Exercise of Powers.** Each City will exercise its powers and shall retain sole responsibility within each respective corporate jurisdiction in furtherance of the project.
5. **Major Reconstruction.** Any major construction or reconstruction within the public right-of-way of any road enumerated in this Agreement, including major construction or reconstruction of roadway paving and parking, shall be accomplished by mutual agreement between West Des Moines and Des Moines. 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. **Finances.** Each City shall finance its share of the cost of maintenance responsibilities of this Agreement in such a manner as shall be determined by its Council and permitted by law. Both Cities agree to cooperate to the extent necessary to allow both Cities to fully comply with all laws applicable to the financing of and contracting for any work or activity contemplated by this Agreement.
7. **Method of Approval.** The Cities hereto shall approve this Agreement by Resolution, which Resolution shall authorize the Mayor and the City Clerk to execute this Agreement.

8. **Filing with Secretary of State.** When this Agreement has been approved by the Cities hereto, this Agreement shall be filed with the Secretary of State of the State of Iowa in accordance with Sec. 28E.8 of the Code of Iowa.
9. **Recording with Polk County Recorder.** When this Agreement has been filed with the Secretary of State of Iowa, this Agreement shall be recorded in the office of the Polk County Recorder in accordance with Sec. 28E.8 of the Code of Iowa.
10. **Effective Date.** This Agreement shall be effective from and after the date on which this Agreement is recorded in the office of the Polk County Recorder.
11. **Duration.** This Agreement shall be effective from the effective date herein provided until terminated as provided below.
12. **Method of Termination.** The City desiring to terminate this Agreement shall serve a written notice of termination on the other City and this Agreement shall terminate thirty (30) days from the date of receipt of such notice by the other City.
13. **Notices.** Any notice under this Agreement shall be in writing and shall be deemed to be given when deposited in the United States Post Office.

Notices to West Des Moines shall be addressed to:
 City Manager
 City of West Des Moines
 4200 Mills Civic Parkway
 West Des Moines, Iowa 50265

Notices to Des Moines shall be addressed to:
 City Manager
 City of Des Moines
 400 Robert D Ray Drive
 Des Moines, Iowa 50309

14. **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa now or hereinafter applicable hereto.
15. **Entire Agreement.** This Agreement contains the entire Agreement between the Cities hereto and may not be changed except by an amendment in writing signed by them.
16. **Liability.** Each party agrees to indemnify and to hold the other parties, its elected officers, agents, employees, volunteers 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.

IN WITNESS WHEREOF, West Des Moines has caused this Agreement to be executed in three (3) counterparts, each of which shall be considered an original, this _____ day of

_____, 2005.

CITY OF WEST DES MOINES

By _____
Eugene Meyer, Mayor

APPROVED AS TO FORM:

ATTEST:

Richard Scieszinski, City Attorney

Jody Smith, City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2005, before me, the undersigned, a Notary Public, personally appeared EUGENE MEYER AND JODY SMITH, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as Roll Call No. _____ on the ____ day of _____, 2005, and that Eugene Meyer and Jody Smith acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

Notary Public for the State of Iowa

IN WITNESS WHEREOF, Des Moines has caused this Agreement to be executed in three (3) counterparts, each of which shall be considered an original, this ____ day of _____, 2005.

CITY OF DES MOINES

By _____
T. M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

ATTEST:

Emily Gould Chafa, Assistant City Attorney

Diane Rauh, City Clerk

STATE OF IOWA)

) ss:
COUNTY OF POLK)

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public, personally appeared T.M. FRANKLIN COWNIE and DIANE RAUH, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as Roll Call No. _____ on the _____ day of _____, 2005, and that T.M. Franklin Cownie and Diane Rauh acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

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Notary Public for the State of Iowa