



## WEST DES MOINES WATER WORKS BOARD OF TRUSTEES MEETING COMMUNICATION

**ITEM:****DATE:** March 19, 2018

5. Recommendation from Committee
  - a. Planning and Regionalization
    1. Discussion

– Review and Discuss Draft  
Memorandum of Understanding  
Between West Des Moines Water  
Works and City of West Des Moines  
Regarding the Appraisal for Purchase of  
City Hall Office Space

**FINANCIAL IMPACT:**

None at this time.

**SUMMARY:**

A preliminary draft of a Memorandum of Understanding (MOU) between the West Des Moines Water Works (WDMWW) and City of West Des Moines (City) follows this Board communication. The Board of Trustees has an opportunity to discuss the proposed appraisal process as described in the MOU and provide direction to staff on how to proceed. Any action regarding the appraisal and MOU will be brought before the Board for consideration at a future meeting.

**BACKGROUND:**

The WDMWW Administrative Office has been located in the current City Hall since the building was constructed in 2004. Prior to the move to City Hall, WDMWW was located within the Public Library since 1994. WDMWW paid the City for joint occupancy in both the Public Library and City Hall locations. The City has determined through a consultant that they have additional space requirements for existing personnel. They have expressed a strong interest in obtaining the approximately 5000 square feet of office space which is currently owned by WDMWW. The 1994 and 2004 Joint Occupancy agreements indicate that both parties may mutually agree to separate and relocate the WDMWW office based on space constraints or logistical concerns. The appraisal of the suite space is the first step in determining the feasible options for both parties.

**RECOMMENDED ACTION BY THE BOARD OF TRUSTEES:**

To review and discuss the draft Memorandum of Understanding between West Des Moines Water Works and City of West Des Moines regarding the appraisal for purchase of City Hall office space and provide direction to staff.

Prepared by: \_\_\_\_\_

Approved for Content by: \_\_\_\_\_



## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") is made as of the \_\_\_\_ day of April, 2018 by and between the City of West Des Moines, Iowa ("City") and the West Des Moines Water Works ("Water Works"), both organized and existing under the laws of the State of Iowa.

### WITNESSETH:

WHEREAS, on August 1, 1994 the City and Water Works (hereinafter "Parties") entered into an Agreement regarding the joint occupancy of municipal offices located in the West Des Moines Public Library (hereinafter "Library") and any future joint facility; and

WHEREAS, the Agreement addressed the payment amount, payment terms and space to be occupied as municipal offices by the Water Works in the Library and any future joint facility and provided Water Works the ability to relocate from the Library and any future joint facility upon mutual agreement of the Parties; and

WHEREAS, on June 11, 2001 the Parties approved an Amendment to the Agreement to establish additional terms and conditions regarding the joint occupancy by the Parties of West Des Moines City Hall; and

WHEREAS, consideration is now being given by Water Works regarding relocation from City Hall due to potential space allocation restraints and other logistical issues encountered by City; and

WHEREAS, consistent with the terms and conditions of the Agreement and Amendment to the Agreement, the Parties seek to accurately determine the fair market value of the interest owned by Water Works in the municipal office space located in West Des Moines City Hall; and

WHEREAS, determining the fair market value of the interest owned by Water Works is being done to initiate discussion regarding options available to the Parties and does not signify or require relocation of Water Works from West Des Moines City Hall or termination of the Agreement and Amendment to the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Water Works enter into this Memorandum of Understanding.

### 1. ACKNOWLEDGMENT AND AGREEMENT OF EACH PARTY'S INTEREST.

The Parties acknowledge that the interest acquired by Water Works in the West Des Moines City Hall was derived from the payment made by Water Works to the City for the proportional cost to develop the Library and City Hall sites and construct the improvements as detailed and set forth in Paragraph 2 of the Agreement and Paragraph 3

of the Amendment to the Agreement. The Parties further agree that calculation of the payment to be made by the City to Water Works upon relocation by Water Works from City Hall as provided in Paragraph 7 of the Agreement shall be based upon the current appraised fair market value of City Hall as a free-standing office building and parking lot using the sales comparison approach.

2. DETERMINATION OF WATER WORKS INTEREST.

The ownership interest of Water Works in the West Des Moines City Hall shall be 12.2 percent, which is obtained by calculating the percentage total net floor space of 5000 square feet and net common area of 478 square feet for which Water Works paid the City to the total gross floor space of 44,900 square feet comprising City Hall ( $5478 \div 44,900 = 12.2\%$ ). The fair cash market value of the ownership interest of Water Works in City Hall shall be 12.2 percent of the appraised fair market value of City Hall.

3. APPRAISAL.

The Parties agree that Commercial Appraisers of Iowa, an M.A.I. (Member of Appraisal Institute) designated entity ("Appraiser"), will determine the fair market value and prepare an appraisal of City Hall. The appraisal will be the joint-property of each Party, and each Party will be responsible for and pay one half of the total cost of the appraisal.

**Commented [A1]:** Russ Mantemach with Commercial Appraisers of Iowa has been suggested.

4. DETERMINATION OF FAIR MARKET VALUE.

The appraisal of Commercial Appraisers of Iowa shall be used to establish the fair market value of City Hall for purposes of determining the proportionate financial interest of Water Works as calculated in Paragraph 2, above. In the event one or both Parties determine that an additional appraisal is necessary, a second M.A.I. appraisal may be obtained. The Parties must mutually agree to the choice of the second appraiser and shall share equally in the cost of the second appraisal. In the event a second appraisal is obtained, the determination of the fair market value of City Hall shall be the average of the fair market value established by Commercial Appraisers of Iowa and the fair market value established by the second appraiser.

**Commented [A2]:** Is an averaging of the two appraisals the appropriate way to value the space? Should the higher of the two values be used instead? BR

5. OUTSTANDING OBLIGATIONS.

The Parties agree that upon relocation of Water Works from City Hall, the payment made by the City to Water Works shall constitute full, final and complete compensation to Water Works for its interest in City Hall. The Parties further agree that additional financial obligations of the Parties regarding maintenance and utility costs existing under the Agreement and Amendment to the Agreement, if any, shall be addressed separately.

**Deleted:** Work

6. RELOCATION.



The Parties acknowledge that the Agreement and Amendment to the Agreement require the City and Water Works to mutually agree that Water Works relocate from City Hall due to space allocation constraints and/or logistical needs. The parties additionally acknowledge that City has determined additional space is necessary to accommodate current and long-term staffing requirements. The Parties further agree that this Memorandum of Understanding addresses the manner in which the financial interest of Water Works in City Hall is determined, but does not require the relocation of Water Works from City Hall unless there is mutual agreement of the Parties.

7. APPROVAL OF MEMORANDUM OF AGREEMENT.

This Memorandum of Agreement shall be of no force of effect unless and until approved by both the West Des Moines Water Works Board of Trustees and the City Council of the City of West Des Moines.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement on the day and year above first written.

**CITY OF WEST DES MOINES, IOWA**

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

COUNTY OF POLK            )  
  ) ss  
STATE OF IOWA            )

This document was acknowledged before me on this \_\_ day of April, 2018 by Steven K. Gaer and Ryan T. Jacobson, Mayor and City Clerk, respectively, as approved by the City Council of the City of West Des Moines in Resolution \_\_ on April \_\_, 2018, and on behalf of whom this record was executed.

\_\_\_\_\_  
Notary

**WEST DES MOINES WATER WORKS**

\_\_\_\_\_  
Brian P. Rickert, Chair  
Board of Trustees

ATTEST:

\_\_\_\_\_  
Secretary

COUNTY OF POLK       )  
                                  ) ss  
STATE OF IOWA       )

This document was acknowledged before me on this \_\_\_\_ day of April, 2018 by Brian P. Rickert and \_\_\_\_\_, Chair and Secretary, respectively, as approved by the West Des Moines Board of Water Works Trustees in Resolution \_\_\_\_ on April \_\_, 2018, and on behalf of whom this record was executed.

\_\_\_\_\_  
Notary

DRAFT

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mg

INST # 015580  
RECORDING FEE 11.00  
AUDITOR FEE \_\_\_\_\_  
INTERGOVERNMENTAL AGREEMENT

FILED FOR RECORD  
POLK COUNTY, IOWA

FOR THE JOINT OCCUPATION OF

94 SEP -6 A 8:21.1

MUNICIPAL OFFICES

TIMOTHY J. BRIEN  
RECORDER

This agreement is made and entered into as of the 1st day of August, 1994 by and between the City of West Des Moines, Iowa ("City") and the Board of Trustees of the West Des Moines Water Works ("Water Works") both 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:**
- A. Both the City and Water Works have deemed it to be of their mutual advantage to jointly occupy municipal offices in a new Public Library ("Library") or any future joint facility, and
  - B. Both parties agree that a joint facility will be beneficial to the citizens of West Des Moines, and
  - C. Both parties agree that it is prudent to reduce to writing their mutual understandings pertaining to a shared facility, to the end that public funds invested in said facility will be effectively and efficiently used.

2. **PAYMENT AMOUNT:** The Water Works will pay for occupancy in the new Library, an amount proportional to the bare land, street and utility development, site development, building construction, architectural and engineering costs which would have been incurred if it had constructed a freestanding office building. This amount shall be \$285,480 based on the primary use of 1,962 square-feet plus 478 square-feet for the Water Works pro rata share of common areas.

3. **PAYMENT TERMS:** The Water Works shall pay to the City a down payment of \$83,500 upon closing the sale of 227 Fifth Street. The remaining \$201,980 will be divided into 5 installments. The first installment of \$40,396 shall be paid within 30 days of occupancy in the Library with the 4 remaining payments made annually on the anniversary of the first.

4. **PARK OWNERSHIP:** The Water Works will transfer ownership of the park located adjacent to 227 Fifth Street building to the City. This action recognizes the City's participation in the original purchase price of this property.

5. **EQUIVALENT SPACE:** When the Water Works moves from the Library to a new joint City Hall/Water Works facility, it shall receive credit from the City for an equivalent amount of space in the new joint facility.

Return to:

Mr. Jody Smith, City Clerk  
City of West Des Moines  
P. O. Box 65320  
West Des Moines, IA 50265

**6. MAINTENANCE/UTILITY COSTS:** The Water Works shall pay a pro rata share for direct building maintenance, site maintenance, and utility costs of the Library or any future joint facility. This amount shall be calculated by dividing the sum of the square feet primarily occupied by the Water Works plus the Water Works share of common areas, by the total building square footage.

**7. SEPARATION:** In the event that both the City and Water Works mutually agree to any future relocation of Water Works offices from the Library or any future joint facility, such separation shall be considered for specific reason(s) relating to space allocation constraints and/or logistical needs.

**8. APPLICABILITY:** The provisions of this agreement shall apply to the successors and assigns, if any, of both parties.

**9. AMENDMENTS:** Amendments hereto shall become effective only upon approval of both parties.

**10. DURATION:** The duration of this agreement shall be ninety-nine years from the date of approval unless terminated earlier by mutual agreement of both parties.

**11. RECORDATION:** When this agreement has been approved by both parties, the Agreement shall be filed with the Polk and Dallas County Recorders as well as with the Iowa Secretary of State.

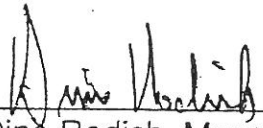
**12. SIGNATORIES:** The signatories of this agreement have been authorized to sign this document, in triplicate, on behalf of their respective parties.

IN WITNESS WHEREOF, the parties hereto affix our hands and seals on the date above first written.

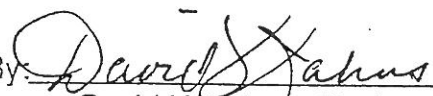
CITY OF WEST DES MOINES

BOARD OF TRUSTEES  
WEST DES MOINES WATER WORKS

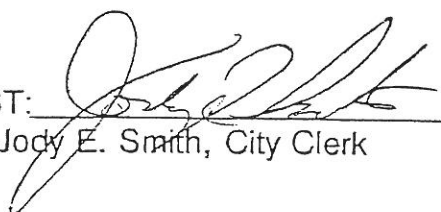
By: \_\_\_\_\_

  
Dino Rodish, Mayor

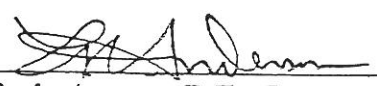
By: \_\_\_\_\_

  
David V. Jahns, Chairman

ATTEST: \_\_\_\_\_

  
Jody E. Smith, City Clerk

ATTEST: \_\_\_\_\_

  
L. R. Anderson, P.E., Secretary

**A RESOLUTION  
APPROVING THE FIRST AMENDMENT  
TO INTERGOVERNMENTAL AGREEMENT FOR THE JOINT OCCUPATION  
OF MUNICIPAL OFFICES**

**WHEREAS**, as of the first day of August, 1994, The Board of Trustees of the West Des Moines Water Works (Board) entered into an intergovernmental agreement for the joint occupation of municipal offices, and;

**WHEREAS**, said Board recognizes the continued mutual advantage to jointly occupy municipal offices in a new joint City Hall/Water Works facility ("City Hall"), as contemplated in the 1994 agreement, and

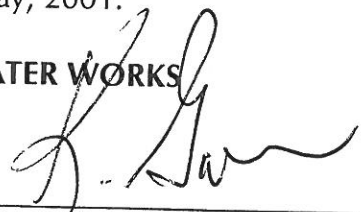
**WHEREAS**, said Board acknowledges that the time and conditions are appropriate for construction and occupancy of the City Hall.

**NOW, THEREFORE, BE IT RESOLVED  
BY THE BOARD OF TRUSTEES OF THE WEST DES MOINES  
WATER WORKS, AS FOLLOWS:**


That the document entitled "First Amendment to Intergovernmental Agreement for the Joint Occupation of Municipal Offices, attached hereto, is hereby adopted, effective on the first day of June, 2001.

**PASSED AND APPROVED**, this 14th day of May, 2001.

**THE BOARD OF TRUSTEES, WEST DES MOINES WATER WORKS**

  
\_\_\_\_\_  
W. Kent Gaer  
Chairman

Attest:

  
\_\_\_\_\_  
L. R. Anderson  
Secretary



**FIRST AMENDMENT  
TO INTERGOVERNMENTAL AGREEMENT  
FOR THE JOINT OCCUPATION OF  
MUNICIPAL OFFICES**

This first amendment to Intergovernmental Agreement for the Joint Occupation of Municipal Offices is made and entered into as of the First day of June, 2001, by and between the City Council of the City of West Des Moines ("City") and the Board of Trustees of the West Des Moines Water Works ("Water Works"), both organized and existing under the laws of the State of Iowa, and is in consideration of the following promises and agreements and upon the following terms and conditions:

- 1. PURPOSE:**
- A. This first amendment to Intergovernmental Agreement For the Joint Occupation of Municipal Offices amends the agreement, similarly titled, which was entered into as of the First day of August, 1994 and recorded beginning in Book 7081, page 980 in the records of Polk County Auditor, and
  - B. Both the City and Water Works recognize the continued mutual advantage to jointly occupy municipal offices in a new joint City Hall/Water Works facility ("City Hall"), as contemplated in the 1994 agreement, and
  - C. Both parties acknowledge that the time and conditions are appropriate for construction and occupancy of the City Hall.

**2. SPACE ALLOCATION:** The Water Works will pay for occupancy in the City Hall, based on the actual net floor space its offices shall occupy therein, subject to the equivalent space provisions of paragraph 5 of the 1994 agreement. Initially, this space is estimated to be 5,000 square feet. The parties acknowledge that the Water Works space in the Library building, now fully paid for, is equal to 1,962 square feet, providing for new space in the City Hall of  $5,000 - 1,962 = 3,038$  square feet.

**3. COST BASIS:** The parties agree that the estimated cost for the new space in the City Hall shall be based on these cost elements: Street and utility development, site development which will take place along with the building construction, the building construction, architectural and engineering services.

**4. ESTIMATED AND FINAL COSTS:** The parties agree that the current estimated cost for the elements listed in paragraph 3 is \$160.00 per square foot of the building. The final per square foot cost payable by the Water Works shall be determined upon close-out of the construction.

**5. PAYMENT TERMS:** The Water Works shall pay to the City these amounts at the times listed:

on June 30, 2001	\$ 80,000
on January 31, 2002	150,000
on January 31, 2003	150,000
on January 31, 2004	<u>106,080</u>
total	\$ 486,080

with the amount of the final payment adjusted in accordance with the space allocation, cost basis and final cost provisions of paragraphs 2, 3 and 4, above.

**6. ALL OTHER PROVISIONS:** All other provisions of the 1994 agreement shall remain unchanged and in full force and effect.

**IN WITNESS WHEREOF,** the parties hereto affix our hands and seals on the date above first written.

THE CITY COUNCIL  
CITY OF WEST DES MOINES, IOWA

By: \_\_\_\_\_

Eugene T. Meyer, Mayor

THE BOARD OF TRUSTEES  
WEST DES MOINES WATER WORKS  
WEST DES MOINES, IOWA

By: \_\_\_\_\_

W. Kent Gaer, Chairman

ATTEST:

\_\_\_\_\_  
Jody E. Smith, City Clerk

ATTEST:

\_\_\_\_\_  
L. R. Anderson, P. E., Secretary