

**BUSINESS OF THE CITY COUNCIL  
WINDSOR HEIGHTS, IOWA  
AGENDA STATEMENT**


Item No. 8  
For Meeting of 03.01.10

**ITEM TITLE:** Consideration of Resolution Approving a 28E Agreement for 73<sup>rd</sup> Street and University Avenue Intersection Improvement Project

**CONTACT PERSON:** Jason VanAusdall, Public Works Director  
Marketa George Oliver, City Administrator

**SUMMARY EXPLANATION**

The attached agreement is related to the University Avenue/Boulevard improvement project and the upgrades to the intersection at 73<sup>rd</sup> Street and University. The Council approved the acquisition of right-of-way for this project at its February 15<sup>th</sup> meeting. The Public Works Committee recently met with representatives from Clive regarding this project, which is scheduled to take place in spring/summer of 2010. Also at the end of this item, you will find a brief history of the University Corridor improvements.

<input checked="" type="checkbox"/> Resolution _____ Ordinance _____ Contract _____ <input checked="" type="checkbox"/> Other (Specify) <u>28E</u>
Funding Source _____ <u>Grants; TIF</u>
APPROVED FOR SUBMITTAL _____ <div style="text-align: center;"> City Administrator</div>

**STAFF/COMMITTEE RECOMMENDATION:** Pass resolution authorizing the execution of the 28E agreement on a roll call vote.

**COUNCIL ACTION:**

**RESOLUTION NO. 10-0301/  
Approving a 28E Agreement for 73<sup>rd</sup> Street and University Avenue Intersection Improvement  
Project**

**WHEREAS**, the City of Windsor Heights wishes to continue to offer superior services to its residential and commercial residents; and

**WHEREAS**, Windsor Heights and Clive share a mutual road, University Avenue; and

**WHEREAS**, Clive has undertaken a road improvement plan on University Avenue with the final phase including a section in Windsor Heights, and

**WHEREAS**, to maintain the high quality of infrastructure we prize in Windsor Heights, the city wishes to partner with Clive and help them finish this road project;

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF WINDSOR HEIGHTS, IOWA** that the City of Windsor Heights hereby approves the 28E agreement with the City of Clive for University Avenue and 73<sup>rd</sup> Street intersection improvements and authorizes the Mayor and City Administrator to execute the documents necessary to enter into this agreement.

Passed and approved this 1st day of March, 2010.

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Jerry Sullivan, Mayor

ATTEST:

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Marketa George Oliver, City Administrator

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF CLIVE AND THE CITY OF WINDSOR HEIGHTS FOR  
THE 73<sup>RD</sup> STREET AND UNIVERSITY AVENUE INTERSECTION  
IMPROVEMENT PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY OF CLIVE, IOWA, a municipal corporation ("Clive") and the CITY OF WINDSOR HEIGHTS, IOWA, a municipal corporation ("Windsor Heights") (Clive and Windsor Heights are referred to herein individually as a "City" or jointly as the "Cities"), pursuant to Chapter 28E of the Iowa Code.

WHEREAS, Clive and Windsor Heights deem it beneficial to jointly undertake a public improvement project involving the reconstruction of certain roadway improvements at the intersection of 73<sup>rd</sup> Street and University Boulevard; and

WHEREAS, under Chapter 28E of the Code of Iowa, Clive, as a public agency, may enter into an Agreement with Windsor Heights, another public agency, to provide services to the mutual advantage of both agencies.

NOW, THEREFORE, the parties hereto agree as follows:

1. Description of Project and Definition of Project Cost. The project that is the subject of this Agreement is a public improvement project involving the reconstruction of certain roadway improvements in Clive and Windsor Heights, including the widening of the University Avenue Bridge, reconstruction of University Avenue to accommodate additional turning lanes at the 73<sup>rd</sup> Street intersection and associated utility relocation/reconstruction necessary to facility to the roadway improvements, as generally depicted in Exhibit A as Division 1 improvements, attached hereto and incorporated herein by this reference, (collectively, the "Project").

The "Project Cost" shall be those costs associated with Division 1 improvements, including but not be limited to, (a) professional fees for topographic and boundary survey, structural engineering for the bridge widening, traffic engineering, and row of way appraisals and plats (b) preparation of plans and specifications for the project, and preparation of bid documents for the Project (the "Improvements Contract"), (c) project management and contract administration services including testing, and (d) actual construction costs of the Project. The parties agree that the preliminary Project Cost estimate for Division 1 improvements is \$1,111,843.00 as set forth in Exhibit B attached hereto and incorporated herein by this reference.

The estimated allocation of the Project Cost between the portion of the Project located in Clive and the portion of the Project located in Windsor Heights is also set forth in Exhibit B.

2. Allocation of Grant Funding Between Cities. The Cities acknowledge and agree that the following grants have been obtained by the Cities to apply to the Project Costs: (a) STP funds in the amount of \$690,000.00, (b) TSIP funds in the amount of \$230,000.00, (c) FFY 2010 Omnibus Earmark funds in the amount of \$300,000. Additionally, the City of Clive is approved to receive \$700,000 from Stimulus Round II funding, if approved by Congress.

3. Responsibility for Project Cost in Excess of Grant Funding. The Cities agree that the actual Project Cost shall be allocated between the Cities based on the cost of the Project improvements located within each City's corporate boundaries, and each City shall apply their portion of the grant funds to reduce the Project Cost. If the portion of the actual Project Cost allocated to Windsor Heights exceeds the grant funds applicable to the Windsor Heights portion of the Project, Clive, as the lead agency, will bill Windsor Heights for the amount that the actual Project Cost which exceeds Windsor Heights grant funds. Such billing shall be made within thirty (30) days after the improvements associated with Windsor Heights' portion of the Project are accepted, and Windsor Heights agrees to pay to Clive such amount within thirty (30) days after the date of the invoice from Clive. Clive acknowledges and agrees that Clive shall pay from its City funds the portion of the actual Project Costs allocated to Clive remaining after the grant funds are applied.

4. Lead Agency/Project Approval. Clive will serve as the lead agency for the Project, and will enter into the construction contract for the Project. The Cities agree, however, that each City must approve the construction drawings for the Improvements located within that City's corporate boundaries before the bid documents may be prepared. The Cities also agree that Clive will not enter into the Construction Contract until the bids for the Improvements Contract have been considered and a bid accepted by both the Clive City Council and the Windsor Heights City Council. The City of Clive will be the lead agency, responsible for the daily construction administration of the project.

5. Allocation of Funding between Cities. The Cities acknowledge and agree that the actual project construction costs will be divided based on the actual work occurring in each City's boundary. The construction quantities will be divided into separate divisions by the City's corporate boundary in the construction drawings.

6. Acquisition of Right-of-Way and Easements. Each City acknowledges and agrees that it is responsible, at its own cost, to obtain any required right-of-way or easements for the Project. Additionally, the City of Clive agrees to provide appropriate space on their right-of-way on the southwest corner of 73<sup>rd</sup> Street and University for the placement of a welcome sign by the City of Windsor Heights.

7. Termination. Prior to the award of the Contract, either City may terminate this Agreement by providing the other City with written notice not less than thirty (30) days prior to the effective date of the termination.

8. Notice. Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or when deposited in the United States mail, postage prepaid, sent certified or registered, and addressed as follows:

To Windsor Heights:           City Administrator  
  City of Windsor Heights  
  1133 66<sup>th</sup> Street  
  Windsor Heights, Iowa 50324

To Clive:                            City Manager  
  City of Clive  
  1900 N.W. 114th Street  
  Clive, Iowa 50325

or to such other address or person as hereafter shall be designated in writing by the applicable party.

9. 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. 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.

10. Filing/Recording of Agreement. After execution by the parties, this Agreement shall be filed with the Iowa Secretary of State in accordance with the provisions of Iowa Code § 28E.8. The Agreement shall then be recorded in the office of the Polk County Recorder in accordance with Iowa Code § 28E.8.

11. Separate Legal Entity. This Agreement is not intended to establish a separate legal entity.

12. Administrators. The Clive Community Development Director and the Windsor Height City Administrator shall be the designated administrators of this Agreement.

13. Duration. This Agreement will go into effect upon passage by the Clive City Council and the Windsor Heights City Council, and filing and recording as provided in paragraph 8 of this Agreement. This Agreement shall remain in effect until the earliest to occur of the following: (a) it is terminated by the written agreement of the Cities, (b) it is terminated in accordance with paragraph 5 of this Agreement, or (c) the improvements associated with the Project are accepted by the Cities, and Windsor Heights has paid to Clive the actual Project Costs as outlined in this Agreement.

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

CITY OF WINDSOR HEIGHTS, IOWA

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

Jerry Sullivan, Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Marketa Oliver, City Administrator/Clerk

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2010, before me, \_\_\_\_\_, a Notary Public in and for the State of Iowa, personally appeared Mayor, Scott Cirksena and Pamela Blessman, to me personally known, and , who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Clive, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Ordinance No. \_\_\_\_\_ passed (the Resolution adopted) by the City Council, under Roll Call No. \_\_\_\_\_ of the City Council on the – \_\_\_\_\_ day of \_\_\_\_\_, 2010, and that Scott Cirksena and Pamela Blessman acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the  
State of Iowa

CITY OF WINDSOR HEIGHTS

By: \_\_\_\_\_  
Mayor, Jerry Sullivan

(SEAL)

ATTEST:

\_\_\_\_\_  
Marketa Oliver, City Administrator

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2010, before me, \_\_\_\_\_, a Notary Public in and for the State of Iowa, personally appeared Mayor Jerry Sullivan and Marketa Oliver, to me personally known, and , who being by me duly sworn, did say that they are the Mayor and City Administrator, respectively, of the City of Windsor Heights, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Ordinance No. \_\_\_\_\_ passed (the Resolution adopted) by the City Council, under Roll Call No. \_\_\_\_\_ of the City Council on the – \_\_\_\_\_ day of \_\_\_\_\_, 2010, and that Jerry Sullivan and Marketa Oliver acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the  
State of Iowa

Exhibit A

Proposed Improvements  
(Division 1)

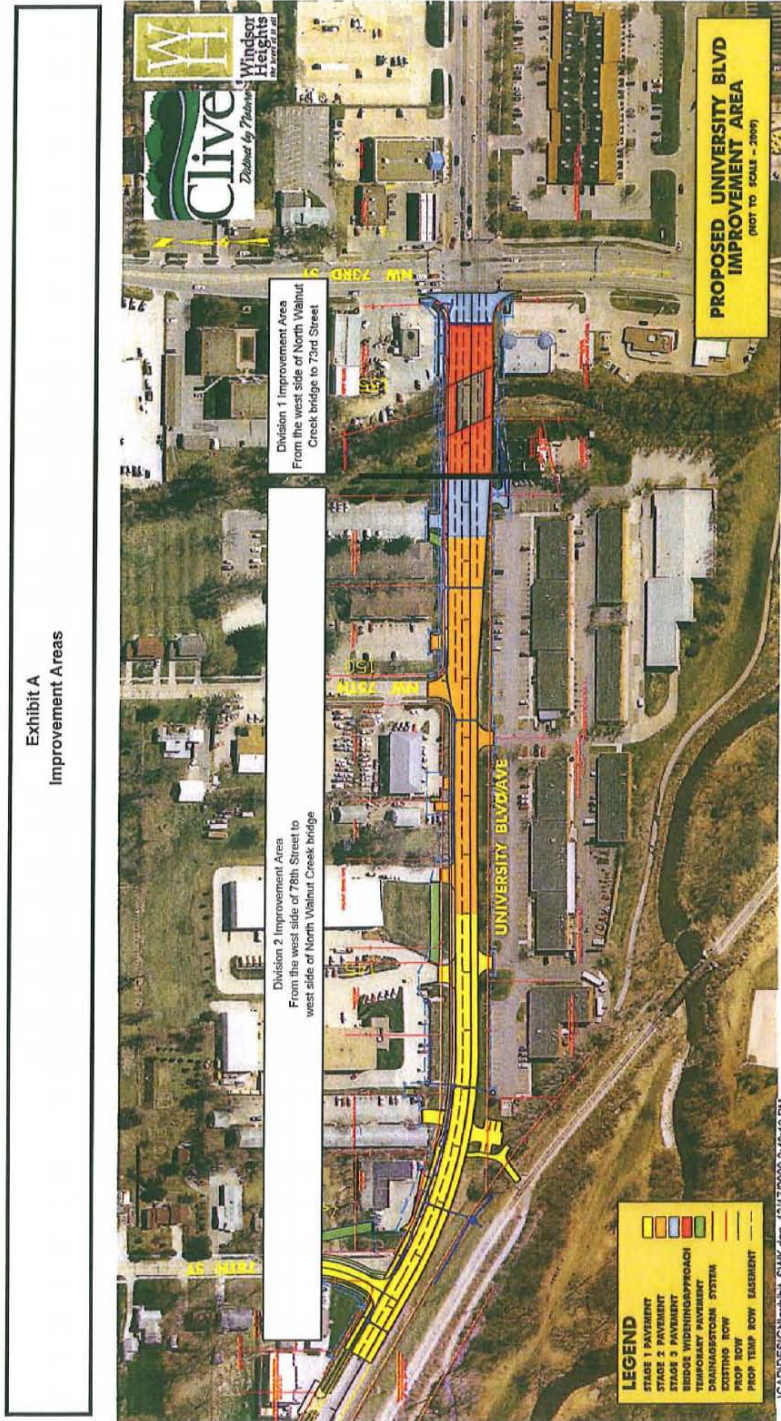


Exhibit B

Estimated Total Project Cost

	Clive (Division 2)	Clive (Division 1)	Windsor Heights (Division 1)	Totals
Estimated Costs	\$1,611,337	\$758,714	\$353,129	\$2,723,180
Estimated Funding				
STP	\$340,000	\$204,000	\$136,000	\$680,000
TSIP	\$115,000	\$69,000	\$46,000	\$230,000
Earmark	\$150,000	\$90,000	\$60,000	\$300,000
Clive Local	\$1,006,337	\$395,714	\$0	\$1,402,051
Windsor Heights Local	\$0	\$0	\$111,129	\$111,129

STP/TSIP/Earmark funding is allocated based on the following split: 50% Division 2, 30% Clive Division 1 and 20% Windsor Heights Division 1.