

**Resolution No. 15-1060**

**A RESOLUTION AUTHORIZING A COST SHARING AGREEMENT  
WITH THE URBANDALE WINDSOR HEIGHTS SANITARY DISTRICT  
FOR PUBLIC IMPROVEMENTS REFERRED TO AS THE  
WASHINGTON AVENUE RELIEF SEWER**

**WHEREAS**, it is deemed necessary and advisable for the City Council of the City of Windsor Heights to participate with the Urbandale-Windsor Heights Sanitary District (The District) in taking actions to mitigate the risk of back-ups in the areas around 6800 – 7300 Washington Avenue; and

**WHEREAS**, the engineer for the District has drafted plans, specifications, form of contract and estimate of cost for public improvements, which according to the District’s Engineer will eliminate / mitigate the sewer back-ups for residents of the area, for which the public improvement project is titled, “Washington Avenue Relief Sewer”; and

**WHEREAS**, the plans, specifications, form of contract and estimate of cost have been approved by The District, and bids have been accepted for the project, described as: Construct Washington Avenue Relief Sewer including all labor, materials, and equipment for approximately 1.696 linear feet of 10-inch sanitary sewer installed by directional boring and by open cut, excavation and backfill, manholes, surface restoration and miscellaneous work, including clean-up; and

**WHEREAS**, The District has accepted the low bid of \$301,718.87 from GM Contracting, Inc. of Lake Crystal, Minnesota, contingent on an acceptable cost sharing agreement to complete said project with the City of Windsor Heights; and

**WHEREAS**, the City’s representative has engaged in negotiations with a purpose of identifying a cost sharing agreement that is equitable and both parties can agree to, the details of which are contained in the attached agreement labeled Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WINDSOR HEIGHTS, STATE OF IOWA**, that the attached cost sharing agreement between the City of Windsor Heights and The District is hereby approved and the Mayor and City Clerk are authorized to take all necessary actions to execute the agreement.

Passed and Approved this 19th day of October, 2015

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Diana Willits, Mayor

Attest: \_\_\_\_\_  
Brett Klein, City Administrator

**COST SHARE AGREEMENT**

**THIS COST SHARE AGREEMENT** (the “Agreement”) is entered into on this \_\_\_ day of \_\_\_\_\_, 2015 by and between the Urbandale/Windsor Heights Sanitary Sewer District (hereinafter the “UWHD”) and the City of Windsor Heights, Iowa (hereinafter the “City”).

**WHEREAS**, the City of Windsor Heights has experienced sanitary sewer backups causing flooding in the area of 69<sup>th</sup> Street and Washington Avenue; and

**WHEREAS**, the Urbandale/Windsor Heights Sanitary Sewer District provides for the disposal of all sanitary sewage within this area; and

**WHEREAS**, UWHD’s engineer has recommended that the flooding issue would be best resolved by constructing a relief sanitary sewer to accommodate additional capacity in the affected area (hereinafter the “Washington Avenue Project” or the “Project”); and

**WHEREAS**, the parties agree to move forward with the Project, and to share in the cost thereof.

**NOW, THEREFORE**, the City and UWHD agree to share the cost of the Washington Avenue Project in accordance with the terms of this Agreement.

1. Washington Avenue Project. The Washington Avenue Project consists of constructing a relief sewer along Washington Avenue between 73<sup>rd</sup> Street and 69<sup>th</sup> Street. In an effort to cause the least disruption in the Project area, the parties have chosen to proceed with construction via directional boring.

2. Financial Responsibilities. The total cost of the Project is currently estimated at between \$300,000.00 and \$420,000.00. UWHD agrees to pay for all design and construction costs of the Project as they become due. The City agrees to pay \$150,000.00 towards the cost of the Project, by making the following payments to UWHD:

- a. \$37,500.00 on or before January 31, 2016; and
- b. \$37,500.00 on or before January 31, 2017; and
- c. \$37,500.00 on or before January 31, 2018; and
- d. \$37,500.00 on or before January 31, 2019.

The above amounts shall not be subject to interest unless UWHD must bond for the Project, in which case, the City will pay the above payments plus interest amounts based on the bond rate received.

3. Project Letting and Award of Contracts. UWHD shall be solely responsible for bid letting of the Washington Avenue Project, which includes advertising for bids and awarding the construction contracts for the Project. UWHD will solicit bids for the public improvement in accordance with the plans developed by UWHD, as the plans may from time to time be modified in order to carry out the work as contemplated.

4. Project Management. The parties hereby agree to work in a cooperative manner in proceeding with the Project, including managing the design, engineering, construction and inspection of the Project. UWHD shall obtain all governmental and non-governmental reviews and approvals, licenses and permits that are, or may be, required and necessary for the Project.

5. Ownership and Maintenance. The parties agree that the infrastructure installed for this Project shall be owned and maintained in the same manner as all other infrastructure within the

Urbandale/Windsor Heights Sanitary Sewer District.

6. Indemnification. To the extent permitted by law, the parties to this Agreement shall indemnify and save harmless the other party, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, which arise out of, or in any way result from, or are connected to, or are due to any acts or omissions of the indemnifying party. No party shall be required to indemnify save harmless the other party if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the party seeking indemnification. Where such claims, suits, or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each party agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. This indemnification shall survive the termination of this Agreement.

7. Time of the Essence. The parties agree that time is of the essence and the parties shall use their best efforts to facilitate the obligations under this Agreement in a timely manner.

8. Amendments. Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and UWHD.

9. Governing Law. This Agreement shall be construed according to the laws of the State of Iowa.

10. Notices. All notices and other communications under this Agreement shall be in writing, shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by facsimile transmission and shall be deemed received three (3) business days following the date when mailed or on the date when delivered or faxed (provided the fax machine has issued a printed confirmation of receipt), and shall be directed to the parties at the addresses shown below. A party may change its designated person or contact information from time to time by giving written notice to the other party.

If to the City:                   City of Windsor Heights, Iowa  
  c/o City Administrator  
  1145 66<sup>th</sup> Street, Suite 1  
  Windsor Heights, Iowa 50324

If to UWHD:                    Urbandale/Windsor Heights Sanitary Sewer District  
  c/o Board Chairperson  
  1145 66<sup>th</sup> Street, Suite 1  
  Windsor Heights, Iowa 50324

11. Authority to Execute. The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute the Agreement.

12. Section Headings. All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of the Agreement.

13. Entire Agreement. This Agreement represents the entire understanding between the parties regarding the subject and supersedes all prior written or oral communications between the parties regarding this subject.

14. Severability. In the event any clause or provision of this Agreement is held illegal, invalid, or unenforceable under present or future laws, then that provision shall be modified or deleted as so ordered and the remainder of this Agreement shall not be affected thereby.

15. Waiver. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of a provision of this Agreement, including failure to require full and timely performance of any provision, shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by authorized parties, and attached to the original Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first written above.

**URBANDALE/WINDSOR HEIGHTS SANITARY SEWER DISTRICT**

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

**THE CITY OF WINDSOR HEIGHTS**

\_\_\_\_\_  
**Diana Wilits**  
**Mayor, City of Windsor Heights**