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City of Hiawatha

Engineering Department

101 Emmons St., Hiawatha Iowa, 52233-1697
PHONE (319) 393-1515 ext. 511 FAX (319) 393-1516

To: Mayor and City Council **Date: 6/29/2016**

From: John Bender PE, City Engineer

Re: Indian Creek Dry Creek Sanitary Sewer Capacity Improvements

Description: 28e Agreement for Segment #7 and Segment #11

Report:

The City of Marion is now the lead agency to continue with the Indian Creek Dry Creek Sanitary Sewer Improvements. Attached is the new 28e agreement to be signed by Hiawatha, Cedar Rapids, and Robins to construct the improvements in the Section 7 and Section 11 of the long range improvement plan. Hiawatha has been working with the City of Cedar Rapids for the improvements included in Section 2.

Attached is the map showing the areas identified in the January 11th, 2007 agreement identifying the cost share determined by the capacity each city purchased. Also attached is a copy of the 2007 agreement with the estimated cost.

Hiawatha purchased a peak flow of 6.41million gallons per day or approximately 17% of Section 7 cost and approximately 25% of the Section 11 cost.

Hiawatha purchased a total estimated cost of $1,254,207.00 for these improvements. These dollars have been included in the current CIP as follows:

- FY17 $349,967.00
- FY 18 $629,651.00
- FY19 $274,589.00

Again these costs are estimates along the proposed timeframe for construction. Engineering recommends approval of the 28e agreement in order for Marion to start design and construction of these 2 sections.

If you need any further information, please let me know.

28E Agreement between the City of Marion, Iowa (Marion), the City of Cedar Rapids, Iowa (Cedar Rapids), the City of Hiawatha, Iowa (Hiawatha), and the City of Robins, Iowa (Robins)
for
Segments 7 and 11 of the Indian Creek and Dry Run Creek
Sanitary Sewer Capacity Improvements
April 6, 2016

This agreement entered into this ____ day of _____, 2016, by and between Marion, Cedar Rapids, Hiawatha, and Robins.

WHEREAS, Marion, Cedar Rapids, Hiawatha, and Robins are public agencies as defined by Section 28E.2 of the Code of Iowa, and

WHEREAS, Section 28E.3 of the Code of Iowa provides that any power or powers, privileges or authority exercised or capable of exercise by a public agency of the State of Iowa may be exercised and enjoyed jointly by a public agency of the State of Iowa having such power or powers, and

WHEREAS, Marion, Cedar Rapids, Hiawatha, Robins and Linn County have previously entered into an agreement dated January 11, 2007 and titled 28E Agreement between the City of Cedar Rapids, Iowa (Cedar Rapids), the City of Marion, Iowa (Marion), the City of Hiawatha, Iowa (Hiawatha), the City of Robins, Iowa (Robins) and the County of Linn, Iowa (Linn County), regarding the planning, construction, and maintenance participation for the Indian Creek and Dry Run Creek Sanitary Sewer System Program, and

WHEREAS, Marion, Cedar Rapids, Hiawatha, Robins and Linn County agreed to amend the original 28E Agreement with Amendment No. 1 dated August 8, 2008, and

WHEREAS, Marion, Cedar Rapids, Hiawatha, Robins and Linn County entered into a project agreement dated August 8, 2008 and titled 28E Agreement between the City of Cedar Rapids, Iowa (Cedar Rapids), the City of Marion, Iowa (Marion), the City of Hiawatha, Iowa (Hiawatha), the City of Robins, Iowa (Robins) and the Count of Linn, Iowa (Linn County) for Segment 2 of the Indian Creek and Dry Run Creek Sanitary Sewer Capacity Improvements, and

WHEREAS, the parties to this agreement propose to enter into a new project agreement to construct Segments 7 and 11 of the sanitary sewer capacity improvements as shown in Exhibit A and described as generally located along Indian Creek and Dry Run Creek as follows:

a) From 36th Street Drive (east of) to approximately 300 feet north of Iowa Highway 100, approximately 6,393 lineal feet (Segment 7);
b) From confluence of Indian Creek and Dry Run Creek to approximately 700 feet north of the intersection of Alpine Road and West 14th Avenue, approximately 4,972 lineal feet (Segment 11), and

WHEREAS, Marion is proposed as project sponsor to administer and provide for design, easement acquisition, bidding and constructing of the Segments 7 and 11 project, and

WHEREAS, the city council's of Marion, Cedar Rapids, Hiawatha, and Robins have informed themselves as to the proposed improvements.

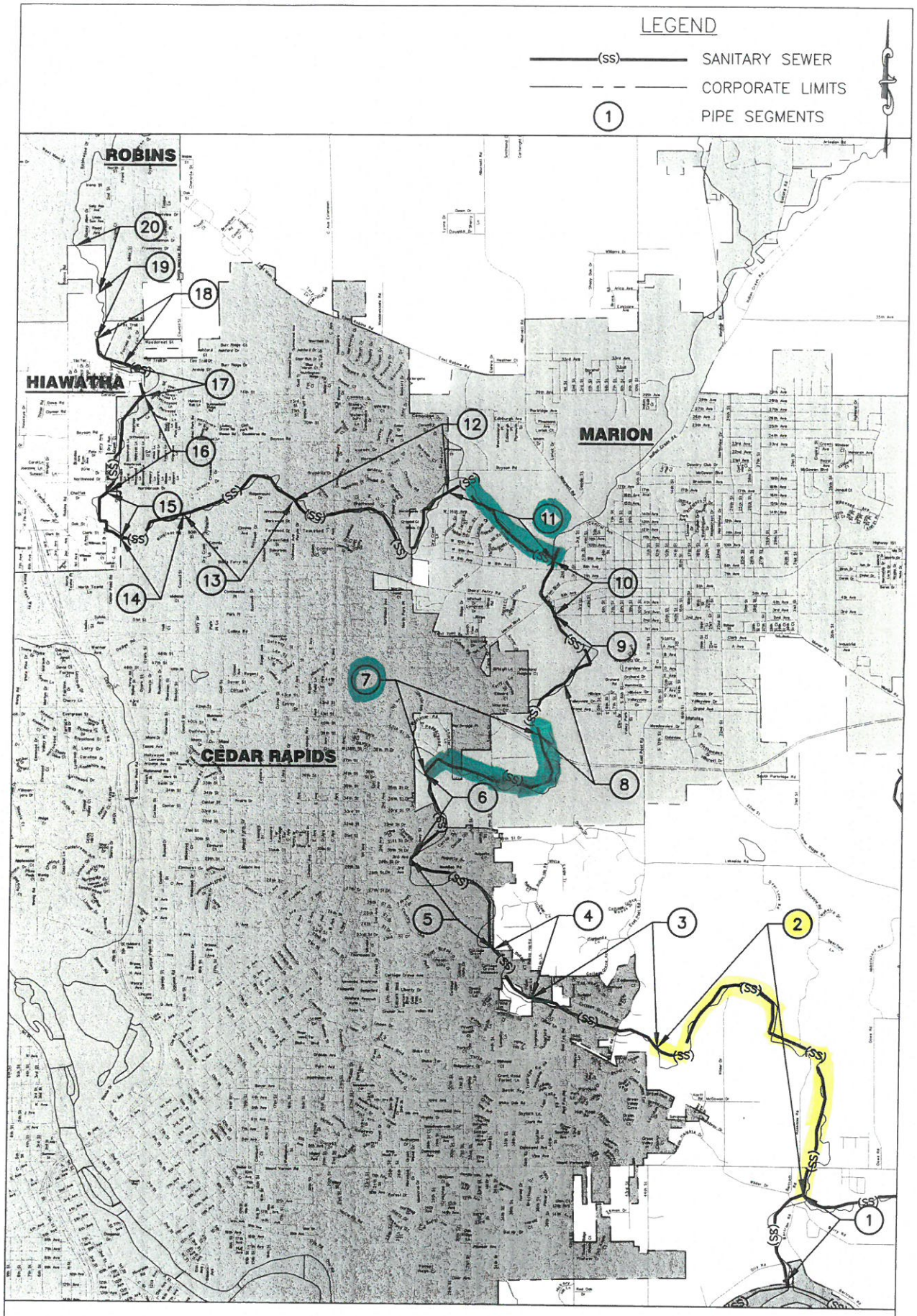
IT IS NOW AGREED that Marion, Cedar Rapids, Hiawatha, and Robins enter into this Agreement pursuant to Chapter 28E of the Code of Iowa providing for cooperative action pursuant to the

proposed sanitary sewer capacity improvement project and, said cooperative actions include the following:

1) SCOPE OF WORK – Marion will design, acquire easements, let, and construct improvements for Segments 7 and 11 of the Indian Creek Trunk Sewer per plans, specifications, and cost opinions produced by Marion. Work is to include construction of a new sanitary sewer including manholes and related surface restoration. Project may be designed and constructed in two or more phases.
2) DURATION - This Agreement shall commence on the date that all parties sign this Agreement and shall continue thereafter until the final completion of the project and settlement of the financial conditions of this agreement.
3) PURPOSE - The purpose of this Agreement is to accomplish the proposed project as described herein in accordance with the aforesaid scope of work and in agreement with conditions specified in this Agreement.
4) ADMINISTRATION - Marion shall be responsible for the administration of this project.
5) Marion, Cedar Rapids, Hiawatha, Robins, and Linn County agree to defend, indemnify and keep harmless, each other against all claims, damages, liabilities, judgments, costs, and expenses which may in any way be alleged or brought against Marion, Cedar Rapids, Hiawatha, and Robins to the extent caused by the actions of either party or its agents, employees, or workmen in any respect whatsoever and arising out of the activities undertaken in connection with this Agreement.
6) FINANCING – Marion shall initially finance the cost of Segments 7 and 11 projects and provide engineering, right-of-way and/or easement acquisition, construction inspection, observation, and contract administration. Costs of construction inspection, observation and contract administration eligible for cost sharing and reimbursement shall be 3% of the contracted construction costs. Prior to acceptance of a bid, Marion will provide each party to this agreement a copy of all bids received on said project and shall indicate which bid is proposed for acceptance, if any. Marion shall receive written concurrence on proposed bid acceptance from each party to this agreement prior to awarding the construction contract. Cedar Rapids, Hiawatha, and Robins shall reimburse Marion for their proportional share of the costs in accordance with Item 3 of the January 11, 2007 agreement referenced hereinabove. Estimated quantities and prices for Segments 7 and 11 projects are indicated on attached project estimate for budgeting purposes only. Cumulative adjustments resulting in more than $12,000 change to awarded contract shall be mutually agreed to by Marion, Cedar Rapids, Hiawatha, and Robins prior to execution of construction contract change orders.
7) TERMINATION:
   a) This Agreement shall be considered binding upon Marion, Cedar Rapids, Hiawatha, and Robins as the plans are prepared and the project let and shall not be terminated until provisions of paragraphs 7b are met after work has begun on the project.
   b) This Agreement will be terminated upon final acceptance of the work by Marion and final settlement of the financial conditions set forth in paragraph 6 thereof.

Signed: **Attest:**

Nicolas Abouassaly, Mayor, Marion	Date	Wesley Nelson, City Clerk, Marion	Date
Jeff Pomeranz, City Manager, Cedar Rapids	5/27/16 Date	Amy Stevenson, City Clerk, Cedar Rapids	Date
Bill Bennett, Mayor, Hiawatha	Date	Kelly Kornegor, City Clerk, Hiawatha	Date
Chuck Hinz, Mayor, Robins	Date	Lori Pickart, City Clerk, Robins	Date



DATE: 05/5/16
SCALE: 1"=3000'

INDIAN CREEK AND DIRT RUN CREEK
SANITARY SEWER CAPACITY IMPROVEMENTS

FILE NO.: 655625

Indian Creek Trunk Sewer Improvements

Marion PN SS_____

Segment 7 - Cost Breakdown by Jurisdiction

~~May 1, 2015~~

November 2015

Jurisdiction	Requested Peak Flow (at Segment 7)	% of Total	Phase 1 Total Project Costs (Mar 2016 to May 2017)	Phase 2 Total Project Costs (Winter 2016 to Summer 2017)	Total
Cedar Rapids	10.78	28.5%	$ 588,556.67	$ 596,873.35	$ 1,185,430.02
Marion	12.44	32.9%	$ 679,187.85	$ 688,785.20	$ 1,367,973.05
Hiawatha	6.41	16.9%	$ 349,967.37	$ 354,912.63	$ 704,880.00
Robins	8.22	21.7%	$ 448,788.11	$ 455,129.77	$ 903,917.88
Linn County	0.00	0.0%	$ -	$ -	$ -
Total	37.85	100.0%	$ 2,066,500.00	$ 2,095,700.95	$ 4,162,200.95

Indian Creek Trunk Sewer Improvements

Marion PN SS_____

Segment 11 - Cost Breakdown by Jurisdiction

~~May 1, 2015~~

November 2015

Jurisdiction	Requested Peak Flow (at Segment 11)	% of Total	Phase 1 Total Project Costs (Mar 2017 to May 2018)	Phase 2 Total Project Costs (Winter 2017 to Summer 2018)	Total
Marion	1.14	4.4%	$ 48,861.55	$ 48,834.94	$ 97,696.49
Cedar Rapids	9.89	38.5%	$ 423,895.34	$ 423,664.53	$ 847,559.88
Hiawatha	6.41	25.0%	$ 274,739.04	$ 274,589.45	$ 549,328.49
Robins	8.22	32.0%	$ 352,317.46	$ 352,125.63	$ 704,443.09
Linn County	0.00	0.0%	$ -	$ -	$ -
Total	25.66	100.0%	$ 1,099,813.40	$ 1,099,214.55	$ 2,199,027.95

28E Agreement Between the City of Cedar Rapids, Iowa (Cedar Rapids), the City of Marion, Iowa (Marion), the City of Hiawatha, Iowa (Hiawatha), the City of Robins, Iowa (Robins), and the County of Linn, Iowa (Linn County).

Regarding the planning, construction, and maintenance participation for the Indian Creek and Dry Run Creek Sanitary Sewer System Program.

January 11th, 2007

Cedar Rapids, Marion, Hiawatha, Robins, and Linn County agree as follows:

Intent

By this agreement the parties hereto intend to establish a Program to jointly plan and share in the cost to replace the existing sanitary sewer system, as shown in Exhibit A, in order to increase capacity and accommodate present needs and future growth (the Program). This Program shall include planning, construction, and maintenance of the Indian Creek / Dry Run Creek sanitary sewer system (the System) in Cedar Rapids, Marion, Hiawatha, Robins, and Linn County.

Duration

The term of this Agreement shall commence on the date of execution by the last signatory party hereto and shall run until completion of all portions of the sanitary sewer system planned and constructed hereunder and shall continue indefinitely for the maintenance of the system, unless a shorter duration is mutually agreed upon by the parties hereto, and subject to provisions in the "Surcharges" section of this Agreement.

Legal or Administrative Entities

An administrative entity is hereby created that will be known as the Indian Creek/Dry Run Creek Sanitary Sewer System Board of Directors (the Board). The Board shall consist of six members with equal voting. The Board shall be comprised of the City Engineers for Cedar Rapids, Marion, Hiawatha, and Robins the Linn County Engineer, and the Cedar Rapids Water Pollution Control facility director; or their designees, hereafter referred to as "Board Members."

Provisions

1. Project Identification

The System shall be constructed in phases (see Exhibits A and B) (all Exhibits referenced are hereby incorporated herein)with increased capacity and shall be planned and constructed to replace the existing system and including the removal or mitigation of the existing system, located generally from the confluence of Indian Creek and the Cedar River along Indian Creek from the Cedar River to Dry Run Creek and along Dry Run Creek from Indian Creek to the southern corporate limits of Robins as shown in Exhibit A. The System shall be designed to provide sufficient capacity to accommodate requested volumes from all parties, adjusted up to the next standard pipe size.

2. Allocation of System Capacity and Proportionality

The design flow capacity in the System will be based on requested peak hourly flow identified by each party as shown on Exhibit C. Any excess capacity in the actual segment due to adjusted pipe size will be proportionally allocated to jurisdictions based on their original requested percentages. As increased capacity becomes available following the planning and construction of each project, this capacity shall be made available to the parties based on the requested peak hourly flow for that program division as shown by Exhibit C.

3. Funding

The Program will be accomplished in multiple phases over a number of years. Program costs are to be allocated by phase proportional to requested capacity within the new system. A project sponsor for each phase will be the party within whose jurisdictional authority all or a majority of the segment lies ("the project sponsor"). The other parties will pay their share of construction costs within 30 days of invoice and 90 days of project acceptance from the sponsoring jurisdiction. The other parties share will be based on their proportion of flow allocation in that particular phase. Phases may include more than one pipe division.

4. Ownership

In incorporated areas, each party will own the portion of the System that lies within their jurisdiction. In unincorporated areas the project sponsor will own the actual portion of the System.

5. Monitoring

Flow monitors shall be installed and maintained as reasonably necessary to facilitate flow measurement within the multi-jurisdictional sanitary sewer system. Cedar Rapids will be the administrator of the monitoring system and is hereby authorized to perform such duties as may be necessary for purchasing, installing, and maintaining flow meters, collecting, storing and distributing data.

A. Meter Location - To facilitate flow measurement within the System, flow monitor locations shall be maintained at or near jurisdictional boundaries. When meter locations at jurisdictional boundaries are not feasible, several options will be used to measure and calculate jurisdiction peak hour, daily maximum, and monthly average flow contributions to the sewer at jurisdictional boundaries. These options could include:

- Short-term monitor installation
- Estimated flows using developed area calculations
- Population equivalent if census data is available
- Grab sample technique using field data based on flow depth and velocity meter

Meter locations will be added or relocated upon agreement between or among the parties, as the case may be, and after they are determined to be necessary to reflect new sewer development connections, annexation boundaries, and other significant events. Cedar Rapids shall be granted reasonable access to these sewer manhole locations as may be necessary to conduct monitoring, sampling, and analysis as deemed necessary to verify compliance with this Agreement.

B. Protection of Jurisdictional Boundary Flow Monitors – Connection to any manhole containing a flow monitor as described in subsection 5A and any point ten (10) pipe diameters upstream or downstream of the said manhole shall be prohibited. Each party hereto will enact such ordinances or regulations to insure this prohibition.

C. Flow Monitor Network Operation – Cedar Rapids will continue to maintain and operate the flow monitors and monitoring equipment to the current standards as set forth in Exhibit D or improved standards as may be hereafter adopted. Cedar Rapids will provide monthly reports conforming substantially to the format shown in Exhibit E to each party generally by the 15th day of the following month. Cedar Rapids may prepare requested data reports (peak hour flow events, rain event summaries, etc.) as its workload circumstances will allow and will be subject to an additional service charge. Each party may install internal or duplicate monitoring at any location in the System provided such monitoring does not impact the Cedar Rapids flow monitor. If internal or duplicate monitoring provides flow monitoring data that differs more than 10 percent from the System flow monitors installed by Cedar Rapids Water Pollution Control then that party and Cedar Rapids shall meet and review respective flow monitor information (such as: calibration records, field notes, O&M records, etc.). If Cedar Rapids and such party cannot agree on a monitored flow level the matter shall be referred to the Board and the Board shall decide which monitored flow level shall be utilized.

D. Flow Monitor Network Service Charges – Each year Cedar Rapids will develop and distribute a budget to all parties that establishes actual costs for operating and maintaining the System flow monitors. Budget calculations for future fiscal years shall be distributed no later than December 1st of the previous year. Each party will pay Cedar Rapids the charges as established by the budget. Flow Monitor Service Charges will be assessed per monitoring location. The charges for special data report preparation by Cedar Rapids will be based on its labor costs plus reasonable overhead and administrative fees. All service charges will be incorporated in the current monthly invoice sent to each party as part of its sewer treatment charges.

6. Adjustment of Capacity

Any party that has excess capacity as determined herein may sell some or all of the excess capacity to another party. If more than one party desires to purchase additional capacity, the amount offered will be split among the parties that desire it in proportion to their original requested capacity amount, as shown in Exhibit C, or as otherwise agreed to by those parties.

The charge for excess capacity will be based on the final project costs adjusted for inflation and depreciation. The inflation adjustment shall be 3% per year based on an approximation of a 20-year average of the Engineering News Record Construction Cost Index and Consumer Price Index. The cost adjusted for inflation will then be multiplied by the percent of remaining service life based on straight-line depreciation for an 80-year service life. As represented by Exhibit F.

7. Maintenance and Repair

Major Maintenance and repair costs for the System developed under this agreement shall be shared among the parties proportionate to the flow allocations. Major Maintenance and Repairs are defined as: Point Repairs, Linings, Replacement, Reconstruction, Televising, and Joint Sealing.

Costs for minor maintenance and repair of sanitary sewers and manholes will be performed and paid for by the party in whose jurisdiction the sewers and manholes are located. Minor maintenance and repair is all maintenance and repair that is not defined herein as "Major." Each party shall perform such inspections as are reasonably necessary at least every ten years, and also following extraordinary or abnormal conditions such as those that result in dislodging lids or abnormal flow meter readings.

The project sponsor of a particular phase will coordinate maintenance and repair of that phase, with approval of the other participating parties, with the exception of repairs covered in the "Emergency Repairs" section of this agreement. Participating parties will pay their proportional share of these costs within 60 days of receiving invoice from the project sponsor.

8. Emergency Repairs

Emergency repairs shall consist of repairs of an immediate nature, which are required due to a loss of service in the System. Repairs deemed an emergency by the project sponsor jurisdiction do not require the approval of participating parties prior to repairs being performed. Participating parties will pay their proportional share of these costs within 60 days of receiving invoice from the project sponsor.

9. Surcharges

If a party's flow exceeds the flow limitations (hereinafter an "Occurrence") that are shown on Exhibit C Cedar Rapids shall provide written notice to that party and to the Board. The party whose flow exceeds the flow limitations shall pay a surcharge for each Occurrence. The surcharge shall be the percentage of that party's monthly sanitary sewer charge for the month in which the Occurrence happens and will be paid in addition to the monthly charge.

Each party experiencing an Occurrence shall pay an additional monthly surcharge (on the monthly billing amount) for each month there is an Occurrence in accordance with the following schedule:

a. For the first month during which there is at least one Occurrence ("First Occurrence"), and any other month within the first 90 days following the First Occurrence, during which there is at least one Occurrence, the party shall pay a 10% monthly surcharge.
b. For any month during a 2-year period commencing after the 90th day following the First Occurrence, during which there is at least one Occurrence, the party shall pay a 25% monthly surcharge. If there is not an Occurrence during this two-year period, the next Occurrence shall be deemed the First Occurrence and the penalties and time period set forth in subparagraph a. shall apply.
c. For any month during a one-year period commencing two years after the 90th day following the First Occurrence, during which there is at least one Occurrence, the party shall pay a 50% monthly surcharge. If there is not an Occurrence during this one-year period, the next Occurrence shall be deemed the First Occurrence and the penalties and time period set forth in subparagraph a. shall apply.
d. For any month after the year period described in Section 9(c), during which there is at least one Occurrence, the party shall pay a 100% surcharge. If there is not an Occurrence during any twelve consecutive month period, the next Occurrence shall be deemed the First Occurrence and the penalties and time period set forth in subparagraph a. shall apply.

The surcharges herein specified shall not apply for an Occurrence as a result of an extraordinary rainfall event, equal or exceeding the rainfall produced by a 100-year storm event.

The surcharges herein specified may, at the discretion of the Board Members be waived if all of the following conditions are met:

a. The Occurrence did not cause or contribute to a sanitary sewer system overflow, and;
b. The Occurrence did not cause or contribute to basement backups for homes connected to the downstream sewer segments, and;
c. The Occurrence did not cause or contribute to any regulatory compliance action by the Environmental Protection Agency, the Iowa Department of Natural Resources, or the Linn County Health Department, and;
d. The party experiencing the Occurrence implements a program to reduce infiltration and inflow to its sanitary sewer system.

For the purpose of determining a surcharge, each flow measuring location shall be independent from the others for determining the number of Occurrences and the surcharge shall apply only to the flow for that flow measuring location.

Surcharges shall be paid into an account maintained by Cedar Rapids and managed by the Board to be used for future Indian Creek and Dry Run Creek trunk sewer projects or for major maintenance and repair of it. The funds in the account will be used to offset the total costs of future projects or repairs prior to determining the proportionate share for each party.

If an Occurrence results in a fine from a regulatory agency (Environmental Protection Agency or the Iowa Department of Natural Resources) or judgment from a third party lawsuit, the parties hereto shall pay the amount of the fine or judgment or proportionally share in the payment of fine or judgment if more than one party is responsible for the Occurrence. A party that is in compliance with flow limitations will not participate in payment of fines or judgments.

10. Non-Participation

Any party that fails to participate in major maintenance or share in the cost of the System as a whole or in any of the phases of the construction of the System for which it has a proportional share will not be allowed flow in the new System or those segments of the System until said party has paid its proportional share or purchased capacity from another party as per the "Adjustment of Capacity" section of this Agreement. All flows over the purchased amount shall be treated as Occurrences and subject to the "Surcharges" section of this Agreement.

11. Amendment

This Agreement may be amended from time to time by the mutual agreement of all parties. All amendments must be in writing and signed by all parties hereto.

Signed:

3-2-07

Jim Prosser, City Manager, Cedar Rapids — Date

3/7/07

Tom Patterson, Mayor, Hiawatha — Date

1/17/07

Lu Barron, County Supervisor, Linn Co. — Date

3/9/07

John Nieland, Mayor, Marion — Date

14 APR 2007

Joel Miller, Mayor, Robins — Date

Attest:

3-2-07

Ann Ollinger, City Clerk, Cedar Rapids — Date

3/7/07

Kim Downs, City Clerk, Haiwatha — Date

1/17/07

Rebecca Shoop, Auditor — Date

3-12-07

Wesley Nelson, City Clerk, Marion — Date

4/3/07

Lori Pickart, Robins City Clerk — Date

DRAFT

RESOLUTION NO. 16-
City Council

RESOLUTION APPROVING A 28E AGREEMENT BETWEEN THE CITY OF HIAWATHA, CITY OF MARION, CITY OF ROBINS AND THE CITY OF CEDAR RAPIDS FOR THE CONSTRUCTION OF SEGMENTS 7 AND 11 OF THE INDIAN CREEK/DRY RUN CREEK SANITARY SEWER SYSTEM CAPACITY IMPROVEMENTS PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, that the Mayor and City Clerk are hereby authorized to sign a 28E Agreement between the City of Hiawatha, City of Marion, City of Robins, and City of Cedar Rapids, Iowa, and said 28E Agreement shall be filed with the Secretary of State for the following purpose and under the following terms:

for the construction of Segments 7 and 11 of the Indian Creek/Dry Run Creek Sanitary Sewer System Capacity Improvements Project from 36th Street Drive (east of) to approximately 300 feet north of Iowa Highway 100 , approximately 6,393 lineal feet (Segment 7); from confluence of Indian Creek and Dry Run Creek to approximately 700 feet north of the intersection of Alpine Road and West 14th Avenue, approximately 4,972 lineal feet (Segment 11), with all cities agreeing to participate in the cost of contract construction costs.

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 6th day of July, 2016.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk